

## ABERDEEN CITY COUNCIL

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COMMITTEE: Social Care and Wellbeing Committee

DATE: 22<sup>nd</sup> April 2010

DIRECTOR: Stewart Carruth

TITLE OF REPORT: Appointment of Legal Representative Category 1 (Safeguarder) for Children's Hearings System

REPORT NUMBER: CG/10/042

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### 1. PURPOSE OF REPORT

- 1.1 The report will seek the Committee's approval to appoint to the Aberdeen City Council's Legal Representative Panel an additional Legal Representative under Category 1 (Safeguarders) in terms of the Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009.

### 2. RECOMMENDATION(S)

- 2.1 That the Committee approves the appointment of an additional Legal Representative to the Legal Representative Category 1 (Safeguarder) Panel until 30<sup>th</sup> October 2011.

### 3. FINANCIAL IMPLICATIONS

- 3.1 None as a Legal Representative. The Children's Legal Representative Grant Scheme was established in 2002 to enable local authorities to reclaim costs from the Scottish Executive expended in order to facilitate legal representation of children at hearings. On 4<sup>th</sup> June 2009, further provision was made by the Scottish Government for state funded legal representation for relevant persons who meet the specified criteria. (See also paragraph 6.1.4 below).
- 3.2 There is provision within the Democratic Services budget of £40,800 to pay for fees in respect of reports and travel and subsistence whilst undertaking duties as a Safeguarder.

### 4. SERVICE & COMMUNITY IMPACT

- 4.1 The report will link to the Community Plan and to vibrant, dynamic and forward looking with regard to strengthening local democracy by developing structures, which allows influence and participation in decision making, to build the personal empowerment of citizens and to take

positive steps to include marginalised groups. There is links to safety, in terms of working to protect people's rights to live in confidence and without fear for their own or other people's safety. In terms of Equalities and Human Rights Impact Assessment, as stated at 3.1 above, the scheme was extended and provides guidance on factors which may affect a person's ability to effectively participate in a children's hearing.

## 5. OTHER IMPLICATIONS

- 5.1 The inability to appoint and maintain a panel of Legal Representatives/Safeguarders would result in a statutory requirement failure. The appointment of a Legal Representative under Category 1 (Safeguarder) would protect the interests of children and relevant persons at a children's hearing or Sheriff Court case.

## 6. REPORT

### 6.1 Appointment of Legal Representative

- 6.1.1 Under the terms of the Children's Hearings (Legal Representation) (Scotland) Rules 2002, persons will be appointed to act as a "legal representative" where the Children's Hearing or Business Meeting consider that one or more of the Court of Session's stated criterion apply. Also, in order to ensure that children's rights may be vindicated and in the interests of justice, the 2002 Rules introduce powers to enable Business Meetings to appoint a Legal Representative.
- 6.1.2 The above rules were extended to support the effective participation of relevant persons where it is considered they would otherwise be unable to effectively participate in a children's hearing. This has resulted in a significant increase in the number of cases where legal representatives have been appointed.
- 6.1.3 When a Children's Hearing or Business Meeting consider it necessary to protect a child or relevant persons rights by appointing a Legal Representative, the Children's Reporter will inform the appropriate person in the relevant local authority (In Aberdeen City Council's case it is a Committee Services Officer located within the Legal and Democratic Services Team). The local authority will then make the appointment from persons in Categories 1 and 2 (see paragraph 6.1.5 below) recording the details of the individual selected for the case and advising the reporter in order that papers/reports may be issued.
- 6.1.4 At the end of each quarter, local authorities should send a claim to the Scottish Government detailing the cases which required representation, the cost and the name and address of the representative appointed. Each claim must list the date and location of the Children's Hearing, the Scottish Children's Reporter Administration unique reference number of the case, a breakdown of the fee rate payable and the itemised costs of any travel and subsistence. The grant will then be paid to the local authority.

6.1.5 To qualify as a “Legal Representative”, Scottish Ministers consider that persons who are to act as legal representatives must be legally qualified and should have a good understanding of the nature and ethos of Children’s Hearings. Specifically, Scottish Ministers consider children’s legal representatives at Children’s Hearings must be persons who are:

Category 1: Solicitors holding practising certificates and appointed to a local authority panel of Safeguarders; or

Category 2: Solicitors holding practising certificates and appointed to a panel of curator *ad litem*.

6.1.6 Children’s Legal Representatives must therefore be appointed only from the categories of persons described above. They would be able to undertake work as a Legal Representative and as a Safeguarder when required.

6.1.7 There are currently eight Legal Representatives on the Panel under Category 1 (Safeguarders) until 30<sup>th</sup> October 2011, thereafter a reappointment process would be undertaken, following which, a further report would be submitted to the Committee.

## 6.2 Appointment of Safeguarders

6.2.1 Safeguarders may be appointed by a Children’s Hearing or by the Sheriff to safeguard a child’s interest in proceedings. The Council has a responsibility under the Social Work (Panel of Persons to Safeguard the Interests of Children) (Scotland) Regulations 2001 to maintain a local list of Safeguarders.

6.2.2 There are currently 18 Safeguarders on the Panel for Aberdeen City. Duties of a Safeguarder are as follows:-

- (a) to study the papers on the case which will be provided by the Reporter and which will include a statement by the Chairman of the Hearing of the reasons for appointing a Safeguarder;
- (b) to interview the child and other people, for example, parents as necessary in order to develop a full picture of the background;
- (c) to provide a detailed written report to the Hearing; and
- (d) to attend the Hearing at which the Safeguarder may be questioned by the Hearing Members and the Hearing will be required to give the Safeguarder the opportunity of speaking to the report and making any other relevant points.

6.2.3 In terms of the Regulations, the Council is required to consult with the Chairperson of the Children’s Panel and the Sheriff Principal on appointments to the Panel of Safeguarders. Both have indicated that they would be happy to approve this appointment.

6.2.4 Administration of the Panel of Safeguarders and Legal Representatives is dealt with by Democratic Services, Corporate Governance in order to maintain their independence. Fees and expenses for Safeguarding work was payable in accordance with recommendations from the Convention of Scottish Local Authorities (COSLA). Previously, COSLA would provide an annual update on allowances and fees and have been applying an across the board increase based on the overall yearly inflationary increase. A decision was taken in January 2006 to cease recommending a rate and to leave it to the individual member councils to decide what rate is appropriate, taking into account individual circumstances. It was agreed in line with the majority of other local authorities that an annual inflationary increase to the Safeguarder fees would be attributed.

6.2.5 The name of the proposed new Legal Representative under Category 1 (Safeguarder) is Mrs. Hayley Mullen.

## 7. REPORT AUTHOR DETAILS

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## 8. BACKGROUND PAPERS

Children's Hearings (Legal Representation) (Scotland) Rules 2002 and Amended Rules 2009.