

Report title: Essex Legal Services		CPSC/03/21
Report to: Corporate Policy and Scrutiny Committee		
Report author: Paul Turner, Director, Legal and Assurance		
Date: 26 January 2021		For: Discussion
Enquiries to: Katie Bray, Head of Legal, e-mail: katie.bray@essex.gov.uk		
County Divisions affected: All Essex		

1. Purpose of Report

To provide Scrutiny Committee with the requested briefing on charges made by Essex Legal Services (ELS).

2. Recommendations

None – the report is for information and discussion.

3. Introduction to ELS

3.1 ELS is Essex County Council's in-house legal service. It supports the Council by advising and supporting service areas on legal issues to enable them to deliver their operations by managing risk. ELS defends the Council in disputes and legal challenges and provides legal support for innovative projects and procurements. ELS also supports the Monitoring Officer, who is the Director responsible for ELS, in ensuring that the Council has effective governance and decision-making processes in place and reviewing reports for compliance with the law.

3.2 ELS is operationally divided into the following areas:

- * Property;
- * Corporate and Commercial;
- * Highways and Environment;
- * Health and Adult Social Care (which includes the Deputyship team which is explained in section 4 of this report);
- * Children and Education;
- * Dispute resolution and Employment.

The service is supported by a practice management team that includes Finance Management and Legal Office Support.

3.3 The service includes qualified and experienced legal professionals who are supported by caseworkers and paralegals.

- 3.4 The service holds the Lexcel accreditation which is the Law Society's legal practice quality mark for client care, compliance and practice management which it uses to ensure that all workloads are progressed in accordance with a high standard of client care. This standard has been held by the service since 1999. In the recent 2020 Lexcel Assessment, the Lexcel Assessor commented that 'ELS should continue to be highly commended for the very high standards of file management which was evidenced across all fee earners – often the standard remains nothing short of the electronic equivalent of immaculate'.
- 3.5 ELS also represent external clients in the health care, local government and emergency services, charities and education sectors. It has supported these clients for a number of years and has built strong relationships with many neighbouring local authorities.
- 3.6 ELS is part of an informal partnership with many district, borough and county councils in the eastern region for the purposes of sharing best practice ideas and sharing work where specialist expertise is needed or demand cannot be met within a local authority for a number of reasons. ELS pick up a lot of this work and act for 'partners' to the extent that they have the expertise and capacity to do so.
- 3.7 In addition the service is responsible for the Council's relationship with Essex Legal Services Limited (ELSL) which is a company, wholly owned by the Council, and fully regulated by the Solicitor's Regulatory Authority. ELSL is authorised to act for clients outside of Essex and private businesses, including other local authority companies or services that were previously part of the Council (e.g. Juniper Education Limited). Three officers in ELS are Directors of ELSL and are seconded to ELSL for this purpose. All ELSL work is outsourced to ELS. ELSL mainly carries out property, employment and commercial work for other public bodies, academy trusts and Juniper Education Limited. The turnover of the company is small but it is important that the company is maintained for the time being to allow the flexibility for ELS to act for external clients and maintain its income target. There is also a regulatory debate about the extent to which local authorities can provide legal services to each other and it may be that ELSL will in the future be an alternative way of doing this.
- 3.8 Since the merger of ELS with the Corporate Law service in 2017 the service has refocussed on providing ECC with good customer service rather than as a commercial operation. That said commercial activity remains a significant part of our business.

4. Introduction to the Deputyships Team

- 4.1 The Deputyship Team administer the financial and property affairs of Essex residents who lack the mental capacity to do so themselves and where no other willing or suitable alternative applicant exists. This includes residents in residential and care and in the community (currently some 1,700 clients).

- 4.2 The appointment of the Council as a deputy is by order of the Court of Protection (COP) and ongoing monitoring of duties is carried out by the Office of the Public Guardian (OPG).
- 4.3 When the team acts as deputy it makes all decisions relating to client's financial, property and mobility affairs including making investments, claiming benefits, decisions around property and ensuring access to funds for daily living costs and one-off items. Frequently this involves stabilising and recovering the client's financial affairs which may have become neglected as the client's capacity has deteriorated. Some clients have very complex financial affairs whilst others are simple.
- 4.4 The team has to provide annual accounts to the COP for each client showing income and expenditure and justifying expenses. The team are also subject to assurance visits from the OPG.
- 4.5 The outcomes of this service are financial safeguarding for vulnerable residents and, where applicable, recovery of care fees due to the Council.
- 4.6 Clients are mainly referred to the service via Adult Social Care but direct referrals can also be made via the ECC website.
- 4.7 Clients pay an annual fee for the service which is limited by the Court of Protection

5. ELS Budget

- 5.1 Until 2017 ELS operated an internal trading model whereby ELS had to earn its entire budget from ECC or external clients. This was not always helpful to ECC or ELS since it impacted on how ELS deployed resources and on some officers willingness to seek legal advice. In 2017, when ELS merged with the Corporate Law Team, a new financial model was introduced under which ELS is provided with core funding to meet most of its costs and is free to deploy resources in the best interests of the Council. The 2020/21 budget from ECC for ELS is approximately £4.5m. The cost to run the service is approximately £5.8m. The remainder of the costs of running the service are covered by the income that the service makes.
- 5.2 The largest cost for the service is employee costs but there are a number of other costs that the service funds on behalf of ECC. This includes the cost of court applications (e.g. for childcare proceedings where the court fee is £2055), expert witness costs, the costs of medical experts and Counsel costs. The majority of these costs are incurred on childcare matters however other one-off large expenses can be incurred by other service areas when they need to respond to a court application (e.g. a judicial review) or bring criminal proceedings (e.g. Trading Standards). The approximate cost of these items varies on an annual basis but typically equates to approximately £1.7m per annum and are paid for from the ELS budget.

- 5.3 The service brings in income of approximately £1.2m per year from its work advising external clients (such as other local authorities) on matters that they cannot or do not want to resource internally. Income is also met by working on highway or planning agreements which are needed for new developments (the cost of which is paid by the developer) and property transactions where the purchaser has agreed to pay our legal costs.
- 5.4 In addition there is some work done for ECC which is not funded out of the core budget. This includes those matters that are funded from capital or which will generate a capital receipt and some work the work is funded from a reserve. This again varies annually depending on the work required but for 2020/21 is likely to be circa £700,000.
- 5.5 ELS has different charging rates for different circumstances. These fees are commercially sensitive and ELS operates in a commercial market and it would be inadvisable to release the fees to the public.
- 5.6 Work done for ECC is charged at an hourly rate which covers the cost of producing the advice. Work done for external clients is generally done at rates which include a profit element, although the hourly rates are always much lower than those which a private firm would charge. This enables ECC to support partner authorities in a mutually beneficial arrangement.
- 5.7 Sometimes ELS enters into a commercial arrangement with other local authorities where work is undertaken at a lower rate than would otherwise apply in exchange for a guaranteed volume of work and an opportunity to earn commercial rates. The rates charged are therefore flexed on a commercial basis in order for ELS to be as commercially viable as possible.

6. Deputyships Team Fees

- 6.1 The Deputyship Team can only charge prescribed fixed costs that are paid to public deputies and which are set by a practice direction issued by the Court. In summary this is £775 for the first year and £650 for each subsequent year, plus a £300 annual fee where the service user owns or rents property. At present, the projected income greater than the cost of delivering the service and the service is currently budgeted to deliver an annual surplus of circa £485,206. This follows a period of many years when the service made an operating deficit.
- 6.2 The service therefore covers all its staffing costs and other direct costs associated with running the service (e.g. resources, IT requests, recruitment costs etc.). The team also cover their indirect costs (e.g. a contribution towards support services and other corporate over heads).
- 6.4 An indirect benefit of the service offered by the team is the role the team play in managing their client's debts which involves paying off debts owed to ECC social care which may otherwise not be recovered.