

Officer delegated decision: 6 April 2018

Lambeth Children's homes redress scheme appointment of Independent Appeal Panel

Wards: All

Report Authorised by: Strategic Director, Corporate Resources: Jackie Belton

Portfolio: Deputy Leader for Finance and Resources, Councillor Imogen Walker

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Report summary

This report sets out the recommendations for appointment of the individual panel members that will comprise the Independent Appeal Panel (IAP) within the Lambeth Children's homes redress scheme (the scheme).

The constitution of the IAP is set out within the scheme document which states that the Council will appoint 3 multi-disciplinary IAP members, at least 1 of which will be legally qualified. The panel will be chaired by a retired Judge who will be a permanent member of the panel, with the other two panel members being drawn from a further support panel of independent experts including ex social workers, psychologists, guardians, ex looked after children and barristers. The full panel of 3 members will adjudicate on matters when disputes arise under the scheme with the exception of adjudication on matters relating to an applicant's eligibility to be accepted into the scheme where only 1 panel member, the retired judge, is required to adjudicate.

The scheme itself including the proposals for the panel was approved by cabinet on 18 December 2017. This is a waiver report to secure urgent approval for the appointment of IAP members for April 2018 so that the Council is able to fulfil its statutory responsibility under the Lambeth Children's homes redress scheme.

Finance summary

The total cost of appointing the framework of members that will sit on the Independent Appeal Panel within the redress scheme can only be estimated as it is dependent upon the volume of appeal cases that are received. It is however estimated that the cost of the IAP will be £360,000 with a further contingency of £120,000 making the total to be approved to £480,000 across the life of the scheme (30 months from March 2018 to August 2020).

The total cost of operating the panel has already been included within the overall cost of the redress scheme approved by cabinet on 18 December 2017. Whilst provision has been made for two IAP meetings per month, it possible that this will not be required and therefore this will result in financial savings to the Council.

Recommendations

- (1) To approve the appointment of Sir John Golding as the Independent Appeal Panel chair for an estimated contract value between £180,000 and £220,000 for the period of 6th April 2018 to 31st August 2020.
- (2) To approve the appointment of a support panel of the following seven barristers to be drawn against to comprise Independent Appeal Panel members when panel hearings are required for an estimated contract value between £90,000 to £160,000 for the period 6th April 2018 to 31st August 2020

Patricia Leonard – 7 Bedford Row
Richard Mumford – 1 Crown Office Row
Matthew Boyle – Crown Office Chambers
Craig Carr – 7 Bedford Row
Saleem Khalid – 1 Chancery Lane
Laura Johnson – 1 Chancery Lane
Farah Mauladad – Crown Office Chambers

- (3) To approve the appointment of a support panel of the following five other experts to be drawn against to comprise Independent Appeal Panel members when panel hearings are required for an estimated contract value between £60,000 to £100,000 for the period 6th April 2018 to 31st August 2020.

Julie Brown, Qualified social worker
Sean Dirrane, Former Looked after child
Miranda Fisher, Qualified Social Worker and Practice Educator
Inder K Hunjan MBE, independent consultant higher education sector/Local authority
Maria Townsend, educational background and psychologist

1. Context

- 1.1 On 18 December 2017 cabinet approved the proposed Lambeth Children's Homes redress scheme and for the scheme to be implemented from 2 January 2018. On the same day a report to council agreed the overall cost of implementing the scheme and the budgetary considerations around this.
- 1.2 The inclusion of an Independent Appeal Panel within the scheme and the costs associated with this were included in the reports to both cabinet and council and were approved by both.
- 1.3 Prior to the report on the scheme being taken to cabinet in December 2017 there was extensive dialogue with the survivors association and their solicitors in an attempt to reach agreement on a final scheme. During this time many changes were considered and made to the scheme as a result of the ongoing dialogue including considerations around the composition of the appeal panel.
- 1.4 The final version of the scheme provided for a multi-disciplinary appeal panel that would be chaired by a retired Judge and made up of a range of independent experts such as psychiatrists, psychologists, guardians and barristers.
- 1.5 There is an imperative to put arrangements in place so that the IAP is fully functional as a matter of urgency. Officers are unable to undertake a procurement which is fully in accordance with the Council's Contract Standing Orders. Under S.17.2 of the Contract Standing Orders there is provision to secure a waiver from Contract Standing Orders. It is therefore proposed to seek a waiver on the basis of urgency as the Council has a specific statutory obligation. .
- 1.6 Following the cabinet approval a systematic selection process was undertaken to identify suitable individuals that could be appointed to form the panel members. Details of the process are set out in section 2 of this report.

2. Proposal and Reasons

In order for the panel to operate as flexibly as possible over the duration of the scheme the recommendation is that a single retired judge is appointed as panel chair, and that a support panel of 7 barristers and 5 other experts are also appointed to be drawn from as necessary when panel hearings are required. It is also prudent to hold a retainer basis a reserve judge to act as a contingency panel judge should the need arise.

Appointment of Judges

- 2.1 As the appointment of Judges is a specialist discipline, council officers supported by Kennedy's LLP undertook a review of potential retired Judges' that could sit as the permanent member of the panel. To inform the process for selection discussions were held with the two barristers who have been involved in advising the council on the redress scheme, namely James Goudie Q.C. and Adam Weitzman Q.C. From those discussions we were able to put together a short list of candidates who fulfilled the primary selection criteria:
 - that proposed judges were of the Queen's Bench Division

- that they had relevant experience
- that they would be interested in chairing the Independent Appeal Panel
- that they had the required time commitment

- 2.2 A total of six potential judges were initially identified and then further shortlisted to exclude those that were completely retired from chambers and retiring judges who were still associated with chambers but unable to meet the required time commitment over the life of the scheme.
- 2.3 The three shortlisted judges were each invited to attend evaluation meetings with representatives from Kennedys LLP and the council. The same evaluation criteria outlined at 2.4, was used for all three meetings, and allowed for discussion of the scheme with the potential judges in more detail, assessing their suitability as a panel chair.
- 2.4 At the meetings we considered the suitability of the Judges' against the following criteria (a maximum of 5 points was awarded per criteria with a maximum score of 30 available overall):
- Experience - Relevant experience of abuse claims, redress schemes and personal injury cases generally
 - Knowledge - Level of interest expressed, knowledge and observations about the scheme
 - Alignment - Alignment with the council's scheme objectives
 - Commitment - Time commitment over life of scheme, other commitments
 - Conflicts – Any potential conflicts of interest, independence
 - Cost – Daily and hourly rates and terms & conditions
- 2.5 All three judges are highly qualified and experienced. Following evaluation it was determined that Sir John Golding had scored the highest and was the most engaged and suitable candidate he had an excellent rapport which was considered would work particularly well with the non legal panel members, he was the most senior and experienced Judge approached and he had a good understanding of the scheme and the best grasp of how the council wishes the appeal process to operate.
- 2.4 Following evaluation it is recommended that Sir John Golding is appointed as the permanent appeal panel chair. It is further recommended that the next highest scoring judge be appointed on a retainer basis to act as a contingency reserve judge should this be required at any time throughout the life of the scheme.

Barristers

- 2.7 In appointing the pool of barristers and non-legal experts to sit on the panel a similar selection process was undertaken. As part of the selection process we approached four sets of well-respected chambers whose barristers are instructed by both claimants and defendants in claims arising out of historic physical and sexual abuse of children.
- 2.8 The chambers approached were those that have barristers with extensive experience in and that have represented both claimants and defendants in child abuse hearings, namely:
- Crown office Chambers

- 1 Crown office Row
- 7 Bedford Row
- 1 Chancery Lane

- 2.9 The senior clerks from each of the four sets of chambers attended a meeting with representatives from Kennedys LLP and the council. A brief was provided to the clerks with regard to the terms and parameters of the redress scheme and in particular the requirements of the panel. Questions were taken from the clerks and clarifications provided at the meeting.
- 2.10 Each senior clerk was asked to nominate a number of counsel from their respective chambers whom they felt met the criteria for sitting on the panel. A copy of the counsel's curriculum vitae was also submitted to the council for consideration.
- 2.11 Nominations of barristers were evaluated against the following criteria (a maximum of 5 points was awarded per criteria with a maximum score of 20 overall):
- Experience – Membership of Personal Injury/Historic abuse forums
 - Knowledge - Split of instructions between Claimant/Defendant
 - Conflict – Conflicts of interest, independence
 - Costs – daily and hourly rates and cancellation fees
- 2.12 Following evaluation a pool of seven barristers is recommended from which one barrister at a time will be selected on a 'cab rank basis' to sit on the individual appeal panel hearings.
- 2.13 The following barristers are recommended for selection to the framework:
- Patricia Leonard – 7 Bedford Row
 Richard Mumford – 1 Crown Office Row
 Matthew Boyle – Crown Office Chambers
 Craig Carr – 7 Bedford Row
 Saleem Khalid – 1 Chancery Lane
 Laura Johnson – 1 Chancery Lane
 Farah Mauladad – Crown Office Chambers

Non-Legal Experts

- 2.14 In appointing the pool of non-legal experts a similar selection process was undertaken. A former Head of service at the Children and Family Court Advisory and Support Service (CAFCAS) was asked to signpost us to suitable potential candidates that CAFCAS have worked with historically on fostering panels.
- 2.15 A number of individuals were proposed and copies of their curriculum vitae were provided for evaluation. Each of the candidates were subsequently interviewed in person to determine their experience and suitability as a potential panel member.
- 2.16 In evaluating the non-legal experts the following criteria was considered (a maximum of 5 points was awarded per criteria with a maximum score of 25 overall):

- Experience - Working background
- Knowledge - Personal background
- Alignment - Ability to consider and retain information
- Commitment – Availability for life of scheme, other commitments
- Cost - Costs/cancellation fees

2.17 Following evaluation a pool of five non-legal experts is recommended from which one expert at a time will be selected to sit on the individual appeal panel hearings.

2.18 The following non-legal experts are recommended for selection to the framework:

Julie Brown, Qualified social worker

Sean Dirrane, Former Looked after child

Miranda Fisher, Qualified Social Worker and Practice Educator

Inder K Hunjan MBE, independent consultant higher education sector/Local authority

Maria Townsend, educational background and psychologist

3. Finance

3.1 The cost of operating an Independent Appeal Panel and in appointing the panel members to sit on each panel was included in the overall cost of operating the redress scheme approved by cabinet.

3.2 The cost of appointing the panel chair (retired judge), and the framework of barristers and non-legal experts is not a fixed cost but rather will be dependent upon the volume of appeal cases that are received throughout the life of the scheme. It is estimated that the cost of operating the panel will be in the region of £360,000 to £480,000 across the life of the scheme (30 months from March 2018 to August 2020) allowing for two full day panel hearings and one to two judge only determination days per month.

3.3 Although the scheme was launched in January 2018, the first appeals are not expected to be determined until April 2018, with the last of the appeals being determined up to eight months after the scheme closing date of 1st January 2018. The total cost will therefore be dependent upon the actual number of panel hearings that are required during the life of the scheme. It is expected that there will be up to two full panel hearings (comprising 3 panel members) per month and one judge only determination per month. The daily cost of a full panel hearing is £5,950 and the daily cost of a judge only determination £3,000.

3.4 The estimated cost for the Judge is expected to be between £180,000 and £220,000.

3.5 The estimated cost of the Barrister role is expected to be between £90,000 to £160,000.

3.6 The estimated cost of the non-legal support panel is expected to be between £60,000 to £100,000.

3.7 All costs associated with these appointments will be met from the cost centre that has been established for the redress scheme. Costs will be invoiced to the council by the individuals when they are required to sit on a panel hearing.

4. Legal and Democracy

- 4.1 The Council has delegated the authority to enact this report's recommendations to the Director of Finance & Property.
- 4.2 The Contract Standing Orders includes provision for officers to waive the Contracts Standing Orders in circumstances such as urgency or where it is demonstrably in the Council's best interest to do so.
- 4.3 The EU procurement regime applies to the proposed award by virtue of the Public Contracts Regulations 2015. The matters set out in this report fall within the Light Touch Regime. Only where an individual contract exceeds the relevant EU threshold will the Council be required to apply the full EU procurement rules.
- 4.4 The Council's Constitution requires that issues of an important or sensitive nature will be published on the Council's website for five clear days prior to the decision being taken (Constitution, Part 2, Section 3), where this is required by the Cabinet Member or Director concerned. It is suggested that this proposed decision is published on Officer Decisions in the interests of transparency. Any representations received during this period must be considered by the decision-maker before the decision is taken.

5. Consultation and co-production

- 5.1 The Council has sought to develop the historic abuse redress scheme in consultation with SOSA and has funded (separately) the costs of their legal representatives. In addition consultation on the redress scheme has been undertaken with a wide range of stakeholders.

6. Risk management

- 6.1 Without this framework in place the council would be exposed to increased risk as it could create additional costs from individuals pursuing remedies in accordance with the relevant civil framework.

Risk	Level	Mitigation
Panel chair is unable to commit to undertaking hearings for life of scheme, due to unforeseen circumstances.	Medium	Holding a retainer on a reserve judge as a contingency.
Barristers leave chambers or are unable to commit for life of scheme.	Low	Having a framework of barristers to select from minimises the risk associated with one or two dropping out.

Volume of appeal cases is more than the panel members are able to accommodate.	Low	Having a reserve judge and frameworks for the barristers and non-legal experts allow for running multiple panels in tandem should the need arise.
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7. Equalities impact assessment

7.1 An equalities impact assessment was undertaken as part of the redress scheme implementation. There are no additional equality implications arising out of this recommendation.

8. Community safety

8.1 There are no implications here.

9. Organisational implications

9.1 Environmental

None

9.2 Staffing and accommodation

None

9.3 Procurement

This has not been procured previously. Due to the urgency associated with the appointment of the Independent Appeals Panel a report has been prepared to waive Contract Standing Orders in accordance with 17.2e of Contract Standing Orders which makes provision for circumstances where there is a specific statutory obligation.

Officers have undertaken selection processes for each of the roles. The evaluation of candidates was based on predetermined selection criteria. There is no guarantee of the volume of work to the respective providers and figures provided in the report are based on estimates which are expected to vary depending on the demand for those services. All the providers are sole traders who will make their own arrangements for the payment of taxes to the HMRC.

9.4 Health

None

10. Timetable for implementation

10.1 The table below shows the timetable for implementation:

#	Description	Date
1.	Submitted to Category Board Administrator	13.03.2018

2.	Category Board	21.03.2018
3.	Decisions Online	28.03.2018 to 05.04.2018
4	Report Signed Off	06.04.2018
5	Contract commencement	07.04.2018

Audit trail				
Consultation				
Name/Position	Lambeth directorate/division or partner	Date Sent	Date Received	Comments in para:
Christina Thompson, Director of Finance & Property	Finance, Corporate Resources	07.03.18	09.03.18	
Andrew Pavlou, Legal Services	Governance and Democracy	07.03.18	07.03.18	4.1 – 4.3
Wayne Chandai Democratic Services	Governance and Democracy	06.03.18	08.03.18	4
Martin Crump, Finance	Finance	01.03.18	01.03.18	3.1-3.7

Report history	
Original discussion with Cabinet Member	N/A
Report deadline	N/A
Date final report sent	N/A
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	No
Date first appeared on forward plan	N/A
Key decision reasons	N/A
Background information	
Appendices	None

APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and Procurement and taken account of their advice and comments in completing the report for approval:

Signature _____ **Date** _____

Post Mark Nicolson

Head of Risk & Insurance

I approve the above recommendations:

Signature _____ **Date** _____

Post Jackie Belton

Strategic Director, Corporate Resources