

Essex Legal Services
Seax House
Victoria Road South
Chelmsford
CM1 1QH



Section 15 Discussion Paper
Legal Services Board
One Kemble Street
London
WC2B 4AN

Our Ref: PMT/LAWA/247
Your Ref:
Date: 22 April 2015

Dear Sir/Madam

I am writing on behalf of Essex Legal Services which is the in-house legal service of Essex County Council. The Service comprises some 130 staff who provide legal services to the County Council and a wide range of public organisations across England. These are not just local authorities but include Police, Fire, Schools, Probation (until very recently when the Service became community rehabilitation companies), Health and Harbour and Country Park Authorities.

The most general point I would like to make is that the discussion paper is a helpful summary and analysis of the current position relating to in-house lawyers and that perhaps not surprisingly, we fully support the conclusions that the paper comes to.

The public service, much like the legal profession, is going through a significant period of change. In simple terms, much of that change relates to a welcome joining up of public services with many variations in the ways that services are commissioned or delivered, including in partnership with the private and third sectors.

For some time, we have not seen Essex Legal Services so much as a County Council legal service but rather a public sector legal service offering legal services to our employer but also to other public bodies, particularly those with whom it works in partnership. There is a real value to this, as for many years, local authorities have invested in legal services in a way that many other public bodies have not. As the delivery of public services becomes more joined up and complex, there is a need more widely within public sector organisations for the type of legal skills that council in-house lawyers can bring to bear. Accordingly, a very small part of developing the public service to be more cost effective and efficient, relies on in-house lawyers being able to work across the sector.

It should be noted, that this is not just an issue for regulation as in order to provide services, the local authority providing them must have the vires to do so. One of the impediments to in house council lawyers for example acting for other public bodies, is the fact that the Government is not always diligent in updating the schedule to the

Local Authority (Goods and Services) Act 1970 which is one of the main sources of statutory authority for one council to provide services to another public sector body. However, a key impediment here are the solicitor conduct rules which tie in the power of the solicitor to act closely with the legal power of a local authority to provide services. Whilst at first blush, the connection seems logical and sensible, it is in fact an impediment for this reason. If an in-house solicitor was allowed under the professional rules to for example provide unreserved activity to a public sector body not listed under the 1970 Act, then this may of itself be sufficient legal authority (from the view point of any vires argument) to undertake that work (for example it could be seen as incidental to the exercise of the Authority's powers. If however the position remains as it is, it is more difficult to argue that the conduct rules permit work to be undertaken to organisations not listed in the Schedule to the 1970 Act. In addition, the Schedule to the 1970 Act can be amended relatively easily by government and on occasions local government will lobby government to make the necessary change, as it did successfully recently in relation to the interim community rehabilitation companies providing Probation Services. The ability of in house lawyers to provide services to these types of organisation would assist in discussions with Government around any necessary clarification of vires provided by the 1970 Act.

It is also the case that access to justice would be served by changing the conduct rules to allow in-house lawyers to undertake the maximum amount of work allowable under Section 15(4) rather than the restrictions currently in place which are identified within the discussion paper. An example from our practice is that much of the adult social care service in Essex has been "spun out" to a wholly local authority owned company, Essex Cares. Under the current rules, Essex Legal Services can provide legal services to Essex Cares. However, Essex Cares would like ELS to go further and provide legal services to vulnerable adults for whom they care who find it difficult to access normal services for sometimes very routine matters. Essex Cares would therefore like ELS to be able to provide legal services to vulnerable clients similar to the services that ELS can provide to other vulnerable adult clients who are subject to orders from the Court of Protection (where the conduct rules allow ELS to act). At the moment, a number of these clients have difficulty accessing traditional legal services on the high street etc. and most of the legal needs that would require to be met are unreserved activity. Allowing in house lawyers to provide this Service to people who currently either do not receive legal services or if they do in a way that is not sustainable, would improve access to justice. Issues also arise where services are delivered by public organisations which have become private entities. I have already referred to community rehabilitation companies delivering probation services but also recently, to schools becoming academies. These organisations have for years relied upon local authority legal services and many would choose to continue to do so. Such organisations delivering public services, should not be locked out from being able to use in-house lawyers as a result. Charities also express a desire to be able to use in-house lawyers particularly as they are increasingly involved in delivering aspects of public service particularly to the young and vulnerable. They may not have access to knowledgeable legal services (in the areas which they operate) at a price they can afford and for the most part, they will then not seek legal advice and

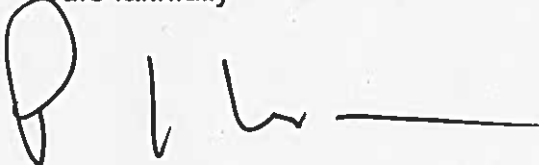
assistance. This is another area where the access to justice agenda could be advanced.

The majority of legal services delivered in house by local authorities are provided by solicitors assisted by legal executives and paralegals. As with ELS, in house barristers are employed but they are relatively few in number and therefore the different approach taken by the regulators is not significant on a day to day basis. Nevertheless, there will be obvious advantages in a uniform approach to regulation.

It would also be advantageous to in-house local authority solicitors for the conduct rules to allow services to be delivered to the fullest extent possible under Section 15(4). There is no doubt that providing for this would encourage the development of services in ways I have described above and no doubt beyond and although the question of local authority vires would remain, one less impediment in the shape of professional conduct rules would be beneficial in this context. It could have an impact on the number of applications for ABSs that would otherwise have to be made by local authority legal departments which at the moment is the only comprehensive solution available to in-house legal services in keeping up with the changes that are impacting upon their employers. There is a danger in local authority legal departments being forced to use the ABS as a vehicle to keep pace which could lead to some in-house services becoming fully privatised. The private sector certainly has a role to play in the delivery of legal services in the public sector but it would not be in the interests of the public sector to lose the skills, expertise and resource currently held within in-house teams.

Thank you for the opportunity to comment.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Thomson', followed by a horizontal line.

Philip Thomson
Director for Essex Legal Services

DX 123300 Chelmsford 7

Telephone: 03330134070

Fax: 01245 506650

Internet: www.essex.gov.uk

Email: philip.thomson@essex.gov.uk