
FORMALISATION OF PROCESS FOR APPOINTMENTS TO PANEL OF CURATORS AD LITEM

Report by Service Director Regulatory Services

EXECUTIVE COMMITTEE

26 May 2015

1 PURPOSE AND SUMMARY

- 1.1 This Report explains the current legal requirement placed on the Council to establish a panel of Curators ad Litem in the area and review panel membership on a regular basis and sets out a proposal to adopt a formal procedure for this going forward.**
- 1.2 In terms of The Curators ad Litem and Reporting Officers (Panel) (Scotland) 2001 Regulations, the Council currently has in place a Panel of Curators ad Litem. They have been appointed following consultation with the Sheriff Principal. The Panel requires to be reviewed and updated during the period not exceeding three years. Whilst there is no requirement in legislation to have a formal procedure in place for recruitment of appointees, in order to ensure the high quality of the Panel is maintained and to have consistent processes in place, it is proposed that it is necessary for such a policy to be developed.
- 1.3 This report sets out proposals to ensure that the process is clear and open. There has been interest in how the Council fulfils its duties under the regulations. It is proposed the Council agrees to delegate authority to the Service Director Regulatory Services to determine and administer the policy detailing such matters as the recruitment and the criteria required to be met by appointees to the panel. The Council are required to meet the fees of persons appointed as Curators from that Panel by the Courts. The Budget for this is set annually and managed by Legal and Licensing Services, albeit that the Council has no input in the individual case by case appointments made by the court

2 RECOMMENDATIONS

- 2.1 I recommend the Council delegates authority to the Service Director Regulatory Services to take forward the procedure in line with the process outlined in Appendix 1 and agrees to amend the Scheme of Delegation accordingly as by inserting the following "To determine and administer the policy regarding the recruitment and appointment and review of appointees to the Panel of Curators ad Litem."**

3 CURATORS AD LITEM AND REPORTING OFFICERS

- 3.1 In terms of the Curators ad Litem and Reporting Officers (Panel)(Scotland) Regulations 2001, the Council is required to establish a panel of persons from whom Curators and Reporting Officers may be appointed by the Court. The general duty of a Curator ad Litem is to safeguard the interests of the child. He or she will be called upon to prepare and present reports to the Sheriff Court in civil actions involving children such as adoption cases.
- 3.2 The Court also has power at Common Law to appoint a Curator ad Litem from the Panel where a person does not have legal capacity by reason of youth or mental disorder, and, in terms of the Children's Hearings (Legal Representation) (Scotland) Rules 2002, the Children's Hearing may appoint a Curator ad Litem from the Panel to act as child's legal representative.
- 3.3 The role of a Curator ad Litem in Court is quite separate and distinct from that of a solicitor in that a curator is not representing the individual and is not providing professional legal services.
- 3.4 Panel members are to be appointed for a period not exceeding three years, and persons may be reappointed. The Council have the right to terminate membership at any time where they are satisfied that the person is unable, unfit or unsuitable to continue as a member, or the Court reports to the Council that the person is unfit or unsuitable to carry out his or her functions.
- 3.6 The Council is responsible for the fees of such persons even where the Council is not otherwise a party in the action.

4 THE CURRENT PROCESS

- 4.1 In 2013, the Council reviewed the existing list of Curators ad Litem which it held. Letters were sent to those on the list, all of whom were Family Law Solicitors in the Scottish Borders, requesting, if they wished to remain appointed, that they provide an outline of their knowledge and experience of adoption law and processes. Resulting from this exercise, a number of names were removed from the then existing list. Contact was then made with the local Sheriff Clerks at Jedburgh and Selkirk Sheriff Courts respectively to ascertain their views on the proposed list. Two additional recommendations were made by them, one of whom confirmed he wished to be considered for appointment. The required consultation was then carried out on this amended list with the Sheriff Principal who confirmed her approval of the proposed list. There are currently seven Curators ad Litem on the list for the courts in the Scottish Borders. All are solicitors who hold current Practising Certificates from the Law Society of Scotland. No other checks are carried out by the Council.

- 4.2 As in previous years, the Council did not advertise for applicants for the new Panel. This is not a statutory requirement. It is at the discretion of the Council as to how they recruit and how many Panel members there should be. Following recent consultation with the Sheriff Clerks, it was ascertained that it would be useful for the future to have as wide a list as possible. Due to the size and nature of the Scottish Borders area, it becomes increasingly difficult to appoint a Curator ad Litem who is wholly independent of the parties involved in the case. This in turn has the potential to cause delays in essential reports being presented to the Court on time. It is accordingly considered necessary for the Council to invest in more robust processes for advertising for appointees to the Panel in the future.
- 4.3 The Council do not have a written policy in respect of the qualifications and experience which panel members should have. Regard was had by the officers carrying out the process for the terms of the Curriculum Vitae submitted by the applicants, with particular regard to their holding of a degree in law and a current Practising Certificate in Scotland. Regard was also had to any experience which they possessed in child welfare and dealing and child welfare issues in a Court setting.

5 GOING FORWARD

- 5.1 In order to ensure the high quality of the Panel is maintained and to ensure consistency in appointment, it is now considered necessary to have a policy in place detailing a process for identifying prospective panel members, selection criterion including both qualifications and experience requirements, together with a monitoring /review process of appointees. This will also give a transparency to the process of how the Council implements its duties under the Regulations.
- 5.2 It is proposed that the Council delegates authority to the Service Director Regulatory Services, as reflected in paragraph 6.7, to carry out the process in terms of the procedure outlined in Appendix 1 to this report.

6 IMPLICATIONS

6.1 Financial

There are no costs attached to any of the recommendations contained in this report. The Council already maintain a budget for the fees and it is reviewed as part of the budgetary process.

6.2 Risk and Mitigations

If the Council agree to amend the procedure for the appointments of such Curators it will reduce the risk of potentially adverse comment as to how it carries out a statutory duty.

6.3 Equalities

An Equalities Impact Assessment has been carried out on this proposal and it is anticipated that there are no adverse equality implications.

6.4 **Acting Sustainably**

There are no identified economic, social or environmental effects of doing or not doing what is proposed.

6.5 **Carbon Management**

There is no known impact on the Council's carbon emissions of doing or not doing what is proposed.

6.6 **Rural Proofing**

There are no rural proofing implications arising from this report.

6.7 **Changes to Scheme of Administration or Scheme of Delegation**

The Scheme of Delegation requires to be amended to in respect of this process for the Service Director Regulatory Services by inserting the following: "To determine and administer the policy regarding the recruitment and appointment and review of appointees to the Panel of Curators ad Litem"

7 CONSULTATION

- 7.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

Approved by

Service Director Regulatory Services Signature

Author(s)

Name	Designation and Contact Number
Nuala McKinlay	Chief Legal Officer

Background Papers: Nil

Previous Minute Reference: Nil

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

Contact us at Jacqueline Whitelaw, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 825431, Fax 01835 825071, email eitranslationrequest@scotborders.gov.uk.

1. 16 weeks prior to the existing Curators ad Litem Panel having been in place for 3 years, the Council shall write to:
 - (a) those parties currently on the Panel,
 - (b) the Sheriff Clerks office at Jedburgh and Selkirk Sheriff Court respectively,
 - (c) Dumfries and Galloway Council, City of Edinburgh Council, East, West and Midlothian Councils, being neighbouring Local Authorities and
 - (d) the Legal Faculties serving those areas

inviting nominations for persons as potential members of the Panel.
- 2 Not less than 16 weeks prior to the existing Curators ad Litem Panel having been in place for 3 years, the Council shall publicly advertise in Council's website inviting nominations for persons as potential members of the Panel.
- 3 Applicants at paragraphs 1 and 2 above shall be given 21 days to apply by way of submission of a letter and accompanying Curriculum Vitae.
- 4 The criteria for being considered for appointment to the panel shall be that a person falls within one of the three following categories and meets the relevant requirements of same:
 - (a) Being either a Member of the Law Society of Scotland, or, of the Faculty of Advocates, together with evidence of relevant experience of court practice and procedure and of Family Law matters ; or
 - (b) Being registered with the SSSC and holding either a CQSW or DipSW qualification together with relevant experience of court practice and procedure and of Family Law matters ; or
 - (C) A person currently registered with the GTC and holding either a Bachelor of Education, or another degree and a Postgraduate Diploma in Education and together with relevant experience of court practice and procedure and of Family Law matters
- 5 The Service Director Regulatory Services shall recommend those applicants who meet the criteria to the appointment to the Panel.
- 6 8 weeks prior to the existing Curators ad litem Panel having been in place for 3 years, the Council shall submit the list of recommended applicants to the Sheriff Principal of Lothian and Borders for consultation purposes. They shall also invite the Sheriff Principal to nominate any other persons as are appropriate having regard to the criteria as potential members of the Panel.
- 7 At 6 monthly intervals, the Council shall contact the Sheriff Clerks at Jedburgh and Selkirk Sheriff Courts respectively to ascertain if the courts have considered any member of the panel to be unable, unfit or unsuitable to continue to carry out the functions of a Curator ad Litem.
- 8 Upon receipt of any such report as to the actions of a Curator ad Litem as mentioned at paragraph 7 above, the Service Director Regulatory Services shall consider the terms of the report and shall decide as to whether the Curator ad Litem shall receive a warning as to their actions or whether their appointment shall be terminated and the lists amended accordingly. It shall be at the discretion of the Service Director as to whether or not such person be re-appointed arising from any future application.