

**THIS AGREEMENT** is made on \_\_\_\_\_

**BETWEEN**

DERBYSHIRE COUNTY COUNCIL (DCC) of County Hall, Smedley Street, Matlock, DE4 3AG,

and

DERBY CITY COUNCIL (DC) of The Council House, Corporation Street, Derby, DE1 2FS

**BACKGROUND**

Under section 25A of the Children Act 1989 local authorities have a duty to appoint Independent Reviewing Officers (IROs) to review the cases of every looked after child in their area. After reviewing a case an IRO may refer it to the Children and Family Court Advisory and Support Service if he or she feels that it is appropriate to do so.

In order to assist IROs in carrying out their statutory functions effectively, whilst maintaining their independence, Derbyshire County Council and Derby City Council will enter into an arrangement whereby IROs will receive legal advice which is independent of their employing authority. Derbyshire County Council will provide legal advice to IROs employed by Derby City Council and Derby City Council will provide legal advice to IROs employed by Derbyshire County Council. This arrangement is made under s.101 of the Local Government Act 1972.

Regulation 48 (2) of the Care Planning, Placement and Case Review (England) Regulations [2010] stipulates that IROs must perform their functions in an independent manner, having regard to a child's best interests. It is anticipated that this arrangement will assist the IROs at both Derbyshire County Council and Derby City Council to maintain independence when reviewing cases.

**DEFINITIONS**

**1.1 In this Agreement, these words have the following meanings:**

“Commencement Date” – Means the Date of this Agreement.

“DCC Legal Advisor” – Means a qualified solicitor at senior level or above employed by DCC.

“DC Legal Advisor” – Means a qualified solicitor at senior level or above employed by DC.

“DCC IRO” - Means an Independent Reviewing Officer employed by DCC.

“DC IRO” - Means an Independent Reviewing Officer employed by DC.

“Parties”- Means the parties to this Agreement

“Party” – Means a party to this Agreement

“Referral” – Means a telephone call made during normal office hours by an IRO to a Legal Advisor followed by the provision of the necessary paperwork.

“Services”– Means the provision of legal advice to Independent Reviewing Officers by Legal Advisors.

## **2. PERIOD OF AGREEMENT**

**2.1** The Agreement will start on the Commencement Date and will continue unless and until one of the Parties gives the other at least one month’s notice in writing that it wishes to bring the entire Agreement to an end.

## **3. DERBYSHIRE COUNTY COUNCIL’S RIGHTS UNDER THIS AGREEMENT**

**3.1** A DCC IRO may make a Referral to a DC Legal Advisor if s/he feels that it is appropriate to obtain legal advice. However, before legal advice is sought from a DC legal advisor DCC will have exhausted its internal escalation procedures.

#### **4. DERBYSHIRE COUNTY COUNCIL'S OBLIGATIONS UNDER THIS AGREEMENT**

**4.1** Wherever possible, where a DCC Legal Advisor receives a Referral from a DC IRO s/he will normally acknowledge instructions in writing within five working days and this will include the following –

- (a) Name and job title of the officer providing advice.
- (b) Confirmation of the oral instructions or reference to any written instruction.
- (c) Confirmation of any oral advice given in relation to the matter.
- (d) What immediate action if any the DCC Legal Advisor suggests.
- (e) What immediate action if any the DCC Legal Advisor will take.
- (f) DCC's reference number for the advice.

**4.2** At the conclusion of a matter, the DCC Legal Advisor will return any original documents or other property to the DC IRO if required.

**4.3** DCC Legal Advisors will record the amount of time spent advising DC IROs and a half year and annual report will be provided to the appropriate individual at DC.

#### **5. DERBY CITY COUNCIL'S RIGHTS UNDER THIS AGREEMENT**

**5.1** A DC IRO may make a Referral to a DCC Legal Advisor if s/he feels that it is appropriate to obtain legal advice. However, before legal advice is sought from a DCC legal advisor DC will have exhausted its internal escalation procedures.

## **6. DERBY CITY COUNCIL'S OBLIGATIONS UNDER THIS AGREEMENT**

**6.1** Wherever possible, where a DC Legal Advisor receives a Referral from a DCC IRO s/he will normally acknowledge instructions in writing within five working days and this will include the following –

- (a) Name and job title of the officer providing advice.
- (b) Confirmation of the oral instructions or reference to any written instruction.
- (c) Confirmation of any oral advice given in relation to the matter.
- (d) What immediate action if any the DC Legal Advisor suggests.
- (e) What immediate action if any the DC Legal Advisor will take.
- (f) DC's reference number for the advice.

**6.2** At the conclusion of a matter, the DC Legal Advisor will return any original documents or other property to the DCC IRO if required.

**6.3** DC Legal Advisors will record the amount of time spent advising DCC IROs and a half year and annual report will be provided to the appropriate individual at DCC.

## **7. CHARGING**

**7.1** The Parties will not charge for the provision of advice and assistance up to three hours to an IRO on an individual matter and anything subsequent to be by separate agreement.

**7.2** The Parties may agree to vary the charge for Services provided under this Agreement if it is agreed in writing by both Parties.

## **8. LIAISON AND REVIEW**

**8.1** A representative for DCC Legal Advisors, DCC IROs, DC Legal Advisors and DC IROs shall meet together at a venue and on such dates and times as the Parties may reasonably determine to review the performance of this Agreement.

## **9. VARIATION**

**9.1** Either Party may at any time during the Agreement request a meeting with the other Party to discuss a proposed variation to the Agreement.

**9.2** Any variation to the Agreement must be agreed in writing by all the Parties to the Agreement.

## **10. COMPLAINTS AND DISPUTE RESOLUTION**

**10.1** If a difference of opinion or dispute arises between DCC and DC in relation to the provision of the Services, the matter shall be referred to senior employees as is appropriate in the circumstances.

## **11. DATA PROTECTION**

**11.1** Both parties will comply with the Data Protection Act 1998 when supplying Services under this Agreement.

## **12. INSURANCE**

**12.1** Both Parties to the Agreement will maintain public liability insurance of not less than £10,000,000 (ten million pounds) and professional indemnity insurance of not less than £5,000,000 (five million pounds) and employers' liability insurance of not less than £10,000,000 (ten million pounds) with a reputable insurance company or companies authorised to insure such business in the UK throughout the period this Agreement and for a period of six years following the termination of this Agreement.

**12.2** The terms of any insurance or the amount of cover shall not relieve the Parties of any liabilities arising under this Agreement.

**12.3** Each Party shall produce to the other Party, on request, copies of all insurance policies referred to in Clause 12.1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

**12.4** If, for whatever reason, a Party fails to give effect to and maintain the insurances required by this Agreement then the other Party may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Party in breach of the Agreement.

### **13. INDEMNITY**

**13.1** DCC will indemnify DC for all loss incurred by DC as a result of negligent advice given by a DCC Legal Advisor to a DC IRO pursuant to this Agreement PROVIDED THAT this indemnity shall not apply to the extent that any loss suffered by DC is wholly or partly attributable to the default or negligence of DC employees.

**13.2** DC will indemnify DCC for all loss incurred by DCC as a result of negligent advice given by a DC Legal Advisor to a DCC IRO pursuant to this Agreement PROVIDED THAT this indemnity shall not apply to the extent that any loss suffered by DCC is wholly or partly attributable to the default or negligence of DCC employees.

### **14. RIGHTS OF THIRD PARTIES**

**14.1** The Parties confirm their intent not to confer any rights of any third parties by virtue of this Agreement and accordingly the Contract (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

### **15. SEVERABILITY**

**15.1** If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid provision eliminated.

## **16. WAIVER**

**16.1** The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.

**16.2** A waiver of any right or remedy arising from a breach of this Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

## **17. ENGLISH GOVERNING LAW**

**17.1** This Agreement will be governed by the laws of England and Wales.

**18.** All references to the plural shall include the singular and all references to the masculine shall include the feminine.

Signatures:

On Behalf of Derby City Council

On Behalf of Derbyshire County Council