

Title of report: Framework agreement for the provision of children's legal advocacy

Decision maker: Cabinet member corporate strategy and budget

Decision date: 29/02/2024

Report by: Head of Practice Management

Classification

Open

Decision type

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose

The purpose of this report is to seek authority to award a framework contract governing the use of solicitor agents and barristers in the future.

Recommendation(s)

That:

- a) Authority is delegated to officers to progress a tender exercise for a framework contract for the provision of children's legal advocacy work; and**
- b) The award of contracts to successful suppliers is delegated to the Director of Governance and Law.**

Alternative options

1. The council could decide not to proceed with this framework agreement and continue with current arrangements which involves securing 3 quotes from chambers and solicitor agents for specific pieces of work or hearings. This is not recommended as the sums of money being paid to certain suppliers can be substantial over a year. A more robust procurement process is required to ensure the council has undertaken proper due diligence checks on its regular legal suppliers.

Key considerations

2. The provision of effective and good value legal services enables the Council to deliver its priorities. Although most of the legal work is carried out in house, external representation in the form of solicitor agents and barristers is often necessary at Court hearings and for specialist advice.
3. The Children's Legal Team support the Children and Young People's Directorate of the Council in protecting and safeguarding children in Herefordshire. The Directorate was judged to be "inadequate" by Ofsted in 2022 and is currently subject to quarterly monitoring visits. A children's commissioner was appointed to oversee the improvements required and Leeds Council is now an improvement partner. The Ofsted inspection followed serious failings identified by the courts in the care of children in Herefordshire.
4. Since this time investment has been made in both the Directorate and the Children's Legal Team. The Children's Legal Team is now in a much improved position, having a permanent management team in place and attracting permanent children's lawyers; a position that is not the norm across local government. The team has also reduced in size in order to stream line and make budgetary savings. The local judiciary recognise the improvements that have been made and relationships with the council are positive, even where issues are identified. Open collaborative discussions take place between the council and the judiciary as to how these problems can be addressed.
5. It is critical that the Children's Legal Team are proactive and effective in their support of the Directorate. In the past the use of locums and external chambers has been significant. During 2023 a number of measures have been put in place, including a more flexible approach to attracting permanent staff and training existing staff. The team now has just one locum and this should end by April 2024. These measures mean more of the team are able to undertake a significant number of court hearings in house. Despite this there is still a requirement for external representation for example at short notice hearings or for specialist advice.
6. As part of its strategy to ensure a high quality and cost effective service from solicitor agents and chambers, Legal Services began last year to undertake a competitive tendering exercise to invite bids to join a 4 year framework under which they would provide legal services (to include advocacy in court and specialist advice) for agreed fees. The process would also formalise the monitoring of service quality and take into consideration any "value added" that the chambers could deliver at the same time.
7. Currently external legal support is sourced by seeking 3 quotes from different chambers and the Head of Law agreeing the most appropriate supplier, generally being the cheapest quote. This is undertaken on a case by case basis. However over a year (or longer) significant amounts of money can be paid to individual solicitors and barristers although they are less than that permitted under the PCR2015 Light Touch Regime.

Community impact

8. Specifically the procurement of this framework has a direct impact on the lives of children and young people requiring the protection and care of the local authority by ensuring proactive and effective legal advice and support to the Children and Young People's Directorate.

Environmental Impact

9. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.

The environmental impact of this proposal has been considered through the service specification and includes appropriate requirements on the contractor/delivery partner to minimise waste, reduce energy and carbon emissions and to consider opportunities to enhance biodiversity. This will be managed and reported through the ongoing contract management.

Equality duty

10. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
11. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our providers will be made aware of their contractual requirements in regards to equality legislation.

Resource implications

12. There are no resource implications with this decision. The purpose of this procurement exercise is to ensure that where external legal resources are required for children's cases, a more robust process is in place.

13. Over the past 3 years external legal advice on children's cases totalled £148k in 21/22, £224k in 22/23 and £125k to date (23/24). The aim is for this to reduce in future years as permanent staff take on more hearings. There will however still be a requirement to source external resources at short notice when staffing capacity is inadequate or if specialist advice is required.

Legal implications

14. There are no legal implications other than the services will be procured under the Council's procurement rules. Under the Public Contracts Regulations 2015, legal services about disputes or contentious matters are exempt from the Regulations, whilst all other legal services are subject to the light touch regime which has a current higher threshold compared to other services of £663,540 including VAT.

Risk management

15. The recommended action is to put in place more robust procurement processes in relation to securing external legal advocacy for children's legal cases to ensure due diligence checks are in place for regular legal suppliers.
16. In the first instance external support would be sourced via providers on the proposed framework. If this is not available then it would be sourced from other chambers and solicitors on the basis of 3 quotes.
17. If the recommended action is not followed, the council will continue to secure solicitor agents and barristers on the basis of 3 quotes. This does still ensure value for money is secured for the authority.
18. Regular budget monitoring gives assurance on the robustness of budget control and monitoring. A process is in place whereby 2 Heads of Service in the legal team must give approval for the work to be outsourced.
19. The risks will be managed at service level.

Consultees

20. Consultation was undertaken with Political Groups at a meeting on the 19 February 2024. The general view of those in attendance, was agreement of the recommendations ensuring the council follows procurement rules. There was support for the ability to recruit permanent children's lawyers and provide training and development opportunities to enable more hearings to be undertaken in house.

Appendices

None.

Background papers

None identified.