

Report for: ACTION



Contains Confidential or Exempt Information	Part I apart from Appendix 1 - Not for publication by virtue of paragraph 4 of Part 1 of Schedule 12A of the Local Government Act 1972.
Title	Procurement of Specialist Social Care Legal Services
Responsible Officer(s)	Alison Alexander, Managing Director and Strategic Director of Children's Services
Contact officer, job title and phone number	Hilary Hall, Head of Strategy, Commissioning and Performance, 01628 683893
Member reporting	Cllr Natasha Airey, Lead Member for Youth Services and Safeguarding
For Consideration By	Cabinet
Date to be Considered	26 November 2015
Implementation Date if Not Called In	Immediately
Affected Wards	All
Keywords/Index	Legal services

REPORT SUMMARY

1. This report deals with the procurement of specialist social care legal services which are currently provided by the Joint Legal Team in Reading Borough Council under an agreement across the six unitary authorities in Berkshire.
2. It outlines an approach to the procurement which will be an open market tendering exercise of specialist social care legal services.
3. The recommendations are proposed because: the service has not been subject to market testing since the Royal Borough became a unitary authority in 1998 and costs have continued to escalate annually. The value for money and to residents needs to be tested which will be achieved through allowing other potential providers the opportunity to tender.
4. If adopted, the key financial implications for the Council are that the current total spend on specialist social care legal services will be re-assessed with a view to realising savings for 2016-2017 and the opportunity for further savings in subsequent years.

If recommendations are adopted, how will residents benefit?

Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
1. Better value for money with no detriment to the quality of the services secured by the Royal Borough.	From 1 April 2016

1 DETAILS OF RECOMMENDATIONS

RECOMMENDATION that Cabinet:

1.1 Approve the approach to procuring specialist social care legal services through an open tendering exercise.

2 REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 Specialist social care legal services are currently provided by the Joint Legal Team hosted by Reading Borough Council, under an agreement across the six unitary authorities dating from 1998. The latest agreement came into effect on 19 July 2013 and is a rolling annual agreement without any fixed term.
- 2.2 The host authority, Reading Borough Council, is required to carry out a review by 31 October each year of the operating costs and providing any required increase in funding is not greater than the rate of inflation, the increase takes effect.
- 2.3 Services provided under the agreement include:
- Conduct of proceedings under relevant legislation.
 - Court attendance under relevant legislation
 - General advice and representation, including advice on Cabinet reports.
 - Advice and representation in relation to Judicial Reviews.
 - Advice on commissioning of services, provider failure and safeguarding issues.
 - Conduct of claims to the Criminal Injuries Compensation Authority on behalf of children in care.
 - Advice and representation in connection with specific social care services.
 - Advice in connection with Local Safeguarding Children Boards and Safeguarding Adults Boards.
 - Advice and representation on matters involving disclosure of information.
 - Advice on complaints.
 - Legal training of staff.
- 2.4 Details of financial and other information incurred by the Royal Borough are at Appendix 1 (Part 2).
- 2.5 It is now appropriate to review the Royal Borough's involvement in the agreement in order to test whether the current provider offers value for money. Notice has been given that the Royal Borough will be withdrawing from the agreement with effect from 31 March 2016. It is important to note that the duration of cases can be anything from a month to a year; consequently, negotiations will take place with the Joint Legal Team to ensure that they continue to work on any cases open to them at the point of transfer until the close of the case.
- 2.6 There are a number of public and private sector legal bodies providing specialist social care legal services similar to that required by the Royal Borough. In order to assess the likely interest, it is proposed to go out to the market with a detailed specification in December 2015. The market testing would be open to all providers including those in the private and public sector.
- 2.7 The outcomes of the exercise would be assessed in January 2016. Subject to sufficient interest and securing value for money, detailed negotiations would commence in January 2016 with the new contract effective from 1 April 2016. In

giving notice on the existing agreement, the Royal Borough has invited Reading Borough Council to take part in the market exercise.

Table 1: Options

Option	Comments
Continue to participate in the rolling annual agreement for Joint Legal Team.	This is not recommended because the agreement has not been market tested and it is timely to test whether the Royal Borough is securing value for money from the agreement.
Pursue an approach to procuring specialist social care legal services through an open tendering exercise. Recommended	This approach will enable the Royal Borough to test the market and secure savings on its current investment.

3 KEY IMPLICATIONS

Table 2: Defined outcomes

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
Reduction in spend on specialist social care legal services whilst maintaining quality of service	Less than 17%	17%-25%	25%-30%	More than 30%	1 April 2016

4 FINANCIAL DETAILS

Financial impact on the budget

- 4.1 The Royal Borough currently purchases specialist social care legal services and this is expected to rise in 2015-2016. The option proposed will secure savings for 2016-2017 with the potential for further savings in subsequent years.

Table 3: Costs

	2015/16	2016/17	2017/18
	Revenue £'000	Revenue £'000	Revenue £'000
Reduction	£0	17%-25% reduction	8% reduction

5 LEGAL IMPLICATIONS

- 5.1 If the current specialist social care legal services are to be carried out by a different provider this means that there is likely to be a TUPE transfer of staff

involved with the provision of that service as TUPE provisions apply where there is a 'Service Provision Change' (SPC).

- 5.2 A SPC can arise when a service is re-tendered to a new provider, or where the service is brought back in-house.
- 5.4 In order for TUPE to apply, there must be an 'organised grouping' of employees carrying out the 'activities' that will be transferring. It is likely that some employees at the Joint Legal Team may be within scope for a potential TUPE transfer. The Joint Legal Team has confirmed that they do not consider that any of their staff involved in children's social care legal work are in a position that they should transfer as no-one will be engaged wholly or for the majority of their time on RBWM matters either now or at the transfer date.
- 5.5 This TUPE situation is likely to arise in relation to the procurement of the service to a different provider. Therefore, any potential tender of the service (depending on what is decided following the market testing), will need to factor in TUPE consultation to the process. If there is a TUPE transfer, the staff will transfer to the new provider, not RBWM, and therefore it is likely that the new provider will factor this in to their tender offers.
- 5.6 In addition to any potential TUPE situation, the contract also states that if the service is no longer provided jointly at any time, the parties shall make 'every possible effort' to redeploy the staff. The Host Authority may seek to enforce this clause if it becomes apparent that no TUPE transfer will occur, in order to try and redeploy the staff elsewhere.
- 5.7 If there are redundancies due to the reduction of work, RBWM may be liable to contribute towards such redundancy costs in accordance with clause 11 of the contract. Clause 11.2 of the contract states that terms of redundancy 'shall be agreed between the Parties' or in default then a proportion dependent on the utilisation of the service (currently 4/25th of the cost).
- 5.8 There are no further contractual provisions in the contract regarding a party's exit from the joint agreement; therefore giving notice as it has done would appear sufficient to terminate the legal work.

6 VALUE FOR MONEY

- 6.1 Procuring specialist social care legal services through an open tendering exercise will provide better value for money for the Royal Borough's investment.

7. SUSTAINABILITY IMPACT APPRAISAL

- 7.1 N/A

8 RISK MANAGEMENT

Table 4: Risk management

Risks	Uncontrolled Risk	Controls	Controlled Risk
Insufficient interest in the market and/or more costly	Medium	Option to renegotiate with Reading Borough Council to	Low

Risks	Uncontrolled Risk	Controls	Controlled Risk
		secure legal services through the Joint Legal Team	

9 LINKS TO STRATEGIC OBJECTIVES

9.1 The recommendations made within this report have been made in the context of achieving the Council's strategic objectives for Value for Money and Equipping Ourselves for the Future.

10 EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION

10.1 N/A

11 STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS

11.1 If the current specialist social care legal services are to be carried out by a different provider this means that there is likely to be a TUPE transfer of staff involved with the provision of that service as TUPE provisions apply where there is a 'Service Provision Change' (SPC).

11.2 This TUPE situation is likely to arise in relation to the procurement of the service to a different provider. Therefore, any potential tender of the service (depending on what is decided following the market testing), will need to factor in TUPE consultation to the process. If there is a TUPE transfer, the staff will transfer to the new provider, not RBWM, and therefore it is likely that the new provider will factor this in to their tender offers.

12 PROPERTY AND ASSETS

12.1 None.

13 ANY OTHER IMPLICATIONS

13.1 None.

14 CONSULTATION

14.1 None.

15 TIMETABLE FOR IMPLEMENTATION

Table 5: Timetable

Date	Details
December 2015	Undertake market testing with full specification.
January 2016	Evaluate outcomes of market testing and make decision on next steps.
January – March 2016	Negotiate terms of contract with preferred supplier.
1 April 2016	New contract fully operational.

16. APPENDICES

16.1 The appendices supporting this report are:

- Appendix 1: Financial and activity details for children's and adults social care legal services (PART II).

17. BACKGROUND INFORMATION

17.1 None.

18. CONSULTATION (MANDATORY)

Table 6: Consultation schedule

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
Internal				
Cllr D Burbage	Leader of the Council	31/10/15	4/11/15	Report rewritten
Cllr N Airey	Lead Member for Youth Services and Safeguarding	25/10/15 13/11/15	27/10/15 15/11/15	Comments included
Cllr D Coppinger	Lead Member for Adult Services Health and Sustainability	25/10/15 13/11/15	27/10/15 16/11/15	Comments included
Alison Alexander	Managing Director	25/10/15 13/11/15	25/10/15 6/11/15	Comments included
Andrew Brooker	Interim Strategic Director of Corporate Services	26/10/15 13/11/15	2/11/15	Comments included
Christabel Shawcross	Deputy Managing Director and Strategic Director of Adults, Culture and Health	26/10/15 13/11/15	2/11/15	Comments included
Simon Fletcher	Strategic Director of Operations	26/10/15 13/11/15		
Shared Legal Solutions	Sean O'Connor and Jennifer Lee	25/10/15 13/11/15	27/10/15 16/11/15	Comments included
Edmund Bradley	Finance Partner	25/10/15 13/11/15	2/11/15	Comments included
Christopher Targowski	Cabinet Policy Manager	25/10/15 13/11/15	29/10/15	Comments included
Martin Strawson	Procurement and Business Development Manager	25/10/15 13/11/15	26/10/15	Comments included

REPORT HISTORY

Decision type:	Urgency item?	
Key decision	No	
Full name of report author	Job title	Full contact no:
Hilary Hall	Head of Strategy, Commissioning and Performance	01628 683893