



Agenda item:

[No.]

Procurement Committee

On 22nd December 2009

Report Title.

Extension of Contract for Provision of Legal Services (Child Care Litigation) by London Borough of Islington

Report of: John Suddaby, Head of Legal Services

Signed :

A handwritten signature in black ink, appearing to read "John Suddaby".

Contact Officer :

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Wards affected: ALL

Report for: Non-Key Decision

1. Purpose of the report

To seek approval for the extension of the existing contract for Child Care Litigation for a further period of three months, until 31st March 2010.

2. Introduction by Cabinet Member (if necessary)

- 2.1. I support the recommendation for extension of the existing contract because it is essential to minimise risk in the discharge of the Council's safeguarding of children responsibilities pending completion of Legal Services' Strategic Review restructuring process.
- 2.2. The current arrangements also involve a commendable example of partnering working with a neighbouring borough that allows Haringey Legal Services' social care lawyers to renegotiate their relationship with the Courts during a difficult period for this Council.
- 2.3. I note that arrangements are being made to bring the work contracted out to Islington back in-house by the end of the proposed period of extension by which time Legal Services are confident that their restructured Social Care team will be adequately resourced and able to deal fully with the returned caseload without significant risk.

3. State link(s) with Council Plan Priorities and actions and /or other Strategies:

- 3.1. The extension of the existing contract contributes to achieving the following Council Priorities:
 - 3.2.1 A Thriving Haringey encouraging lifetime well-being at home, work, play and learning
 - 3.2.2 A Caring Haringey promoting independent living while supporting adults and children when needed.
- 3.2. The contract also contributes to the Council's strategies in the following ways:
 - 3.2.1 Community Strategy – this contract links in to the Council's Community Strategy by supporting the Council's priorities for Safer for all, Healthier people with a better quality of life by providing high quality support and care for vulnerable children through timely initiation and completion of care proceedings.
 - 3.2.2 Children's and Young People's Plan – the arrangement with Islington Legal Services facilitates compliance with the plan's priority on improving the safeguarding of children at risk of ill treatment and abuse through prompt and robust legal intervention.
 - 3.2.3 Safer for all (Safer Communities Plan) – the arrangement also complies with the plan's priority on creating a safer community for all by ensuring the necessary legal protection for children at risk of harm.

4. Recommendations

- 4.1. That approval be granted, under Contract Standing Order 13.02, for the variation of the existing contract with the London Borough of Islington for Child Care

Litigation by way of an extension for a period of three months, until 31st March 2010, with an increase in the hourly fees to the amount set out in paragraph 1.3 of Appendix A but otherwise on the existing terms and conditions.

5. Reason for recommendation(s)

5.1. The proposed extension is to accommodate a winding down arrangement to bring back in-house the cases which are currently being dealt with by the London Borough of Islington Legal Services by the continuation of the existing support until the completion of recruitment pursuant to the Legal Services re-structuring under its recent Strategic Review.

6. Other options considered

6.1 The contract could be allowed to expire. It is not going to be possible for Haringey Legal Services to have sufficient resources in place by 31 December 2009 in order to cover these cases which include sufficient administrative support as well as lawyers. Any additional staff would have to be locum staff. In addition some staff annual leave has already been planned and one of the experienced lawyers will be absent for a month in December and their work will need to be covered.

6.2 Consideration could be given to finding another legal service to provide this service instead. However, there is no obvious pool of alternative providers because acting on behalf of the local authority in care proceedings is not a legal service widely available in the private sector and only 1 or 2 other local authorities have spare capacity to provide this service. In addition, even with Islington Legal Services' proposed increase in its hourly rate their hourly rate is still less than what was quoted previously by alternative providers when the current contract was procured. The hourly rates originally quoted by and payable to Islington at the start of the current contract and their proposed increased hourly rate are set out in paragraphs 1.1 – 1.3 of Appendix A. The rates quoted by alternative providers are set out in paragraph 1.4 of Appendix A.

6.3 The hourly rate is not the only consideration in relation to cost because of the duplication necessary to take over existing proceedings. If another provider becomes involved at this point a third change would then be needed to bring the work back in house and this would overall be likely to be the most expensive option as well as the most disruptive.

6.4 It would not be helpful to create this level of instability in 25% of the care proceedings on 31 December just prior to the re-inspection by Ofsted. On the other hand by 31 March 2010 the potential impact on Haringey would be much reduced in any event as some of these cases will have finished.

6.5 A further option would be to leave all existing cases for Islington Legal Services to

manage to conclusion allowing Haringey's Legal Services to take on only the new cases. It is noted firstly that, given the average duration of care proceedings, some of the cases currently with Islington are not likely to be concluded for many months yet and the chances of Islington containing their rates beyond March 2010 are diminishing. At the same time, the in-house legal team is confident that by the end of the further period of extension the restructured team will be adequately resourced and sufficiently embedded to be able to take back the outstanding caseload without significant risk. This option is therefore not considered necessary or desirable from a value for money point of view.

6.6 The least disruptive option and one that offers best value is to maintain the status quo by extending the contract for 3 months until 31 March 2010 with a phased transition plan in place for the return of any cases which would still be outstanding by 1 April 2010. The Director of Children and Young People's Service has endorsed the proposal for this extension.

7. Summary

7.1 The workload pre care proceedings in all Haringey's childcare litigation cases began to increase significantly from the early part of 2008 in response to the implementation of new requirements for case management directed in public law family proceedings, the Public Law Outline. This came at a time when the first Serious Case Review undertaken for Peter Connelly acknowledged the need for the Council to employ an additional number of experienced, child care lawyers on a permanent basis. In order to implement the Legal Services' action plan to strengthen the experience of the social care team this led to a contract, obtained under Director's authority dated 25 Sept. 2008, with Islington Legal Services who agreed to undertake a number of care proceedings on behalf of Haringey Legal Services. This contract was for an initial 6 months ending 31 March 2009 and included an option to extend for a further 6 months.

7.2 By 31 March 2009 both nationally and in Haringey the number of care proceedings had increased both suddenly and significantly as a result of the increased scrutiny given to such matters in response to the criminal trial and the publication of the first Serious Case Review for Peter Connelly in November 2008. The option to extend the contract with Islington Legal Services was accordingly exercised on an urgent basis, under further Director's authority obtained on 31 March 2009, for a further 6 months ending 30 Sept. 2009.

7.3 By April 2009 the number of care proceedings conducted by Islington Legal Services on behalf of Haringey Legal Services had doubled to the current average level of 35. Given this continuing increased workload for the in-house service, by Sept. 2009, it was plain that there were still insufficient resources within Haringey Legal Services to assimilate an additional 35 cases. As a result, Director's authority was again obtained on an urgency basis on 23 Sept. 2009 allowing the extension of the contract for a further 3 months until 31 December 2009. At that point the appointment of permanent staff following the implementation of the Legal Services' Strategic Review of its structure had not progressed sufficiently in the Social Care Team and it was considered prudent to

have the new Assistant Head of Legal Services (Social Care) in post (on 5 October 2009) to finalise this process and manage any return of the caseload from Islington.

7.4 However, effectively in early October 2009 there was very little time for the new Assistant Head of Legal to progress a transition plan for the return of these care proceedings in house without a further period of extension beyond December 2009.

7.5 At this point, all the cases that are being undertaken by Islington Legal Services are existing care proceedings that have now been before the court for some time. Each of these has been conducted throughout by the same lawyers with the same supervising senior lawyer. Any change from the Islington lawyers having conduct of these cases needs to be managed carefully not only because they have the consistency of knowledge of the case and the relationships with the other legal representatives and the court but also because there would be a duplication of work required for any lawyer assuming the conduct of the case to have to familiarise themselves with the evidence filed and the issues to be resolved. These cases are all substantial and the charge is calculated on an hourly rate. There would be significant additional costs with any change of legal representation which is not managed gradually.

7.6 If the contract is extended for a further 3 months this allows for a phased transition for the return of those cases that are likely to continue beyond 31 March 2010. There is already joint planning between the senior lawyers in Islington and Haringey to achieve this at an appropriate point so as to minimise duplication. A further number of cases will finish and for those any duplication would be avoided altogether.

7.7 Islington Legal Services have indicated that they are willing in principle to accept the proposed extension on the basis that their hourly rate is increased to the extent indicated in paragraphs 1.1 to 1.3 of Appendix A. This has become necessary because it has recently become clear that Islington Legal Services' current hourly rate is not covering their costs.

7.8 It is noted that the hourly rate agreed with Islington at the start of the contract in September 2008 was the lowest quoted by the available providers identified. It was in fact substantially less and remains lower than the rates quoted by the alternative providers consulted including Creighton and Partners and the London Borough of Camden (see paragraph 1.4 of Appendix A) who undertake some of this particular work for other London Boroughs. By comparison with the alternatives reasonably available, Islington's proposed increased rate therefore represents value for money.

8. Chief Financial Officer Comments

8.1. The Chief Financial Officer concurs with the proposal as in both financial and service delivery terms, an extension offers best value for the Council. The calculated value of work to be commissioned during the extended period is £100,500 which will be fully paid by the Children and Young People's directorate.

8.2. It is important that the recruitment of an in-house advocate team is finalised as a matter of urgency and that momentum is kept up with the planned transition of cases back from Islington to ensure a high level of service is maintained.

9. Head of Legal Services Comments

- 9.1. Legal Services are categorised as Part B services under the Public Contracts Regulations 2006 so there is no requirement to advertise the services in Europe.
- 9.2. The Procurement Committee has power under CSO 13.02 to extend a contract providing that to do so is consistent with the Council's Financial Regulations.
- 9.3. Apart from the increase in the hourly rate, all other terms and conditions of the contract will remain the same.
- 9.4. The Head of Legal Services confirms that there are no legal reasons preventing Members from approving the recommendations in this report.

10. Head of Procurement Comments

- 10.1. The provision of Legal Services falls under Part B Category 21 of the EC Procurement Directives and is thus not subject to the full competitive regime.
- 10.2. The original outsourced contract with Islington Council was expected to be worth in the region of £100k but through unforeseen circumstances that resulted in an increased case workload, the contract value has increased to nearer £600k and over an extended period to that envisaged.
- 10.3. Through an effective recruitment campaign, Haringey Legal Services are becoming better placed to increase their capacity to enable any remaining outsourced work to be brought back in-house.
- 10.4. It is noted that the revised rates to be charged by Islington are being compared to rates originally quoted in mid-2008 by other potential service providers. Whilst this is acceptable for the purposes of this report, it is recommended that revised market rates are obtained should the outsourced service continue for any reason beyond March 2010.

11. Equalities & Community Cohesion Comments

- 11.1. Child Care Litigation ensures the Council is able to ensure equality of protection of all children in need of an Order as part of the Council's statutory responsibilities.

12. Consultation

- 12.1. Not applicable

13. Service Financial Comments

- 13.1. The proposed extension of the contract will allow for the provision of essential legal work in respect of care cases to continue. The estimated value of the initial contract period to 31 Mar. 2009 was £107,310 to cover some 14 cases. In reality some £171,000 was spent over this period attributable to the unavoidable referral of more cases than initially anticipated.
- 13.2. The first extension to 30 Sept. 2009 increased the actual spend to £380,000. The projected spend for the current 3-month period is a further £104,000 to give a total projected spend to 31 December 2009 of £484,000. This covers some 38 cases currently being dealt with by Islington.
- 13.3. The projected cost for the further proposed period of extension is £100,500. This is calculated at the proposed higher hourly rate applied to an average of 30 cases over the extended period assuming a wind down during the extension. As a result the current projection to cover the full contract including the initial period, the extensions to date and the proposed extension to 31 March 2010 is £584,500.
- 13.4. The costs of this contract are recharged by Legal Services to the Children and Young People's Service and the Director of that Service has indicated support for this extension.

14. Use of appendices /Tables and photographs

- 14.1. 'Appendix A'

15. Local Government (Access to Information) Act 1985

- 15.1. This report contains exempt and non-exempt information. Exempt information is contained in Appendix A of this report and is NOT FOR PUBLICATION. The exempt information is exempt under the following category (identified in the amended schedule 12A of the Local Government Act 1972) (3): Information relating to the financial or business affairs of any particular person (including the authority holding that information).