



Key Decision Report of the Corporate Director of Resources

Officer Key Decision	Date: 5 November 2021	Ward(s): All
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THE APPENDIX TO THIS REPORT IS NOT FOR PUBLICATION

SUBJECT: Procurement strategy and contract award for a contract for the appointment of external legal advisers to assess the Support Payment Scheme (SPS) applications from non-recent child abuse survivors.

1. Synopsis

- 1.1 This report seeks pre-tender approval for the procurement strategy in respect of a services contract for the appointment of external legal advisers to assess the Support Payment Scheme (SPS) applications from non-recent child abuse survivors in accordance with Rule 2.7 of the Council's Procurement Rules.
- 1.2 External, independent lawyers are required to undertake the assessment of applications made under the SPS.

2. Recommendations

- 2.1 To approve the procurement strategy and contract award for a contract for the appointment of external legal advisers to assess the Support Payment Scheme (SPS) applications from non-recent child abuse survivors as outlined in this report.
- 2.2 To award the contract to DAC Beachcroft via a direct call-off from the Crown Commercial Framework Agreement RM3788: Legal Services for the Wider Public Sector (Lot 2a) for a period of 30 months with provision for the council to extend the contract for between six (6) and twelve (12) months on two (2) occasions.

3. Date the decision is to be taken:

17 December 2021

4. Background

4.1 Nature of the service

The Council have recently agreed a scheme to provide financial support for eligible survivors of non-recent abuse suffered when in the care of the council's children's homes from 1966 to 1995.

The proposed scheme would enable eligible abuse survivors to receive a financial support payment of £10,000, without having to bring a civil compensation claim.

The services the council is looking to procure will consist of reviewing documentation submitted by non-recent child abuse survivors in support of their application for a payment under the SPS and information held by the Council relevant to the applications. The documentation will be assessed to ascertain whether the application meets the threshold for a payment to be made under the SPS.

A need for the assessment of applications to be carried out by an independent body has been identified. The assessment of applications will require the detailed analysis of information and material. The analysis will need to be carried out by individuals with appropriate professional expertise. It is therefore proposed that an independent service provider ['ISP'] with the necessary professional expertise, namely an external law firm, is engaged to assess applications under the SPS.

4.2 Estimated Value

The total value of the contract will be dependent on the number of applications that are assessed; therefore, this can only be estimated. Based on information available at this point in time the estimated value of the contract to be awarded is £600k. The actual cost may be higher or lower depending on whether the number of applications is above or below the anticipated number and on the time taken to assess applications.

The recommended framework agreement sets out the hourly rates tendered by the eighteen framework suppliers, and therefore benchmarking can be carried out for comparable services. The framework agreement includes options for fixed and capped fee arrangements which have been assessed in detail in order to ensure the most suitable arrangements are put in place.

This is a new requirement and there is no existing contract for these services and no historical spend.

4.3 Timetable

Approval of Direct Award – 26 November 2021

Call-off from framework agreement – December 2021

Contract start date - December 2021.

This contract needs to be put in place as soon as possible so there is no delay to the commencement of the SPS. This is a new arrangement; therefore, there is no existing contract which could put constraints on when the contract can begin.

A full consultation has been undertaken with the Islington Survivor's Network (ISN) and other survivor support groups, survivors and other key stakeholders on the proposed SPS. The outcome of the consultation and final SPS was the subject of a separate report to the council's Executive on 14 October 2021. At that meeting, the Executive approved the final SPS.

4.4 **Options appraisal**

The option to provide the service in-house is not recommended as consideration of applications for payments under the SPS needs to be undertaken independently of the Council as advised by leading counsel. Therefore, the recommended approach is to commission the services externally from a legal firm with expertise in child abuse insurance matters.

Legal services are subject to the light-touch regime under Section 7 Social and Other Specific Services of the Public Contracts Regulations 2015. The council wishes to commence the operation of the SPS in spring 2022. There is a significant amount of work involved in putting in place the necessary procedures, processes, documentation (e.g. application form) and staffing before the scheme can start. This includes training for internal staff and the staff of the external service provider and members of the independent appeal panel. A full competitive tender process would delay the commencement of the SPS and therefore is not recommended. Due to the sensitive subject matter, this is also not the preferred option.

The quickest and most straightforward option is to access an established framework agreement which has been competitively procured in accordance with the requirements of the Public Contracts Regulations 2013 and which allows for direct call-off. This would also avoid the issue of advertising such a sensitive matter in the public domain. It would give access to a preferred provider, whilst satisfying competition and value for money requirements. Using an existing framework agreement will provide a simple and legally compliant route to market for the purchase of legal services.

A number of framework agreements have been considered, and it has been concluded that the competitively procured Crown Commercial Services framework agreement RM3788, Legal Services for the Wider Public Sector Lot 2a would provide the 'best fit' for the services required by the council. All legal firms on the framework agreement are under a specific duty to minimise costs, maximise efficiency and seek further innovations throughout their engagements, therefore providing best value to the council.

The benefit of undertaking a call-off contract from an established framework agreement is that the council reduces contract award time significantly and facilitates implementation of the SPS by the required start date.

Therefore, the recommended option is a direct award to DAC Beachcroft via a call-off contract from the Crown Commercial Service (CCS) framework agreement RM3788: Legal Services for the Wider Public Sector. DAC Beachcroft have been responsible for the design of the SPS and providing legal advice to the council in connection with the SPS.

The framework does provide an option for carrying out a mini competition amongst the firms on the framework. It was considered whether the holding of a mini competition would provide better value for money for the council. However, on balance, it was concluded that this would not be the case because of the advantages ensuing from DAC Beachcroft's extensive prior involvement in the SPS and the blended hourly rate negotiated with DAC Beachcroft. Further, holding a mini competition would inevitably delay the appointment of an external service provider. It is important that the external service provided is appointed as soon as practicable as they will be involved in the setting up of the operation of the scheme. Any significant delay in their appointment, would put at risk the commencement date of the scheme.

4.5 Key Considerations

The Council is committed to social value as part of the commissioning process and improving the wellbeing of residents in the borough.

The former leader of the Council formally apologised to victims of child abuse in Islington care homes for the Council's past failings. It is recognised that nothing can compensate for the traumatic harm caused to and which still affects survivors of historic abuse. However, a full remedial support offer which has practical support, a financial element and recognition and acknowledgement by the Council of the abuse that they suffered, is important to survivors and can be part of a survivor's journey that helps them to heal. The SPS is major part of this process in offering support to survivors of abuse.

The hourly rate for the legal services required are in excess of the London Living Wage. There are no TUPE, pensions and staffing implications, arising from the award of this contract.

4.6 Evaluation

The ordering procedure for the CCS framework agreement RM3788 must be followed. Section 3 outlines the direct award procedure and explains the correct process. The Council must identify its requirements, and identify suitable suppliers from the framework agreement that are capable and authorised to provide the relevant services. An assessment of which supplier best meets the requirements must then be undertaken. This process has identified DAC Beachcroft as the preferred provider.

4.7 Business Risks

The main business risk associated with this contract is the capacity of the SPS team to locate the documentation and information held by the council in relation to the applicants and for the service provider to access applications under the SPS within a reasonable timescale acceptable to the applicants if a high number of applications were to be received immediately following the commencement of the SPS. This will be mitigated to a certain extent by applications being able to be made and registered prior to the formal commencement of the SPS.

A further risk is the estimated cost of the SPS could be exceeded if either the number of applications received is higher than anticipated or the estimated average time taken to access applications is exceeded.

- 4.8 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to complete an anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.
- 4.9 The following relevant information is required to be specifically approved in accordance with rule 2.8 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the service	Legal services contract to assess the Support Payment Scheme (SPS) applications for nonrecent child abuse survivors See paragraph 4.1
2 Estimated value	The call-off contract has an estimated value of £600K of Islington Council spend. See paragraph 4.2
3 Timetable	As detailed in this report See paragraph 4.3
4 Options appraisal for tender procedure including consideration of collaboration opportunities	As detailed in this report See paragraph 4.4
5 Consideration of: Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications	As detailed in this report See paragraph 4.5
6 Award criteria	As detailed in this report See paragraph 4.6
7 Any business risks associated with entering the contract	As detailed in the report - see paragraph 4.7
8 Any other relevant financial, legal or other considerations.	See paragraphs 5.1 and 5.2 below

5. Implications

5.1 Financial implications:

The council's support payment scheme (SPS) is for survivors of child abuse in Islington's children's homes covering the period 1965-1995. The intention is to provide support payments to qualifying, former residents, but without restricting individuals' rights to pursue a civil compensation (public liability) claim.

An actuarial firm estimated the number of individuals who were resident at any point in Islington children's homes in the 30-year period 1965 to 1995 to be between 1,700 and 2,400 with a best estimate of 2,000. This is not an estimate of the individuals likely to be eligible for the scheme, just the number who were resident in that period.

This contract is estimated to have a cost of £600k, based on these estimated numbers. The actual cost will depend on the numbers coming forward.

A reserve of £16m exists on the council's balance sheet and an additional £4m has been approved also from reserves. The cost of payments and this contract would also be expected to be fully funded from this reserve.

5.2 Legal Implications:

The council is establishing the SPS pursuant to its general power of competence (section 1 Localism Act 2011). The council has power to provide the legal professional services detailed in this report in order to facilitate the operation of the SPS (section 1 Localism Act 2011 and section 111 Local Government Act 1972). Accordingly, the council may enter into a contract with an external service provider for the provision of those services (section 1 Local Government (Contracts) Act 1998).

The legal services that are being procured are subject to the light touch regime set out in Regulations 74 to 77 of the Public Contracts Regulations 2015 (the Regulations). The threshold for application of this light touch regime is currently £663,540. The value of this contract was below this threshold. However, the council's Procurement Rules for Light Touch Services requires a formal tender process with a minimum of five (5) written competitive tenders or use of an existing suitable consortium or framework arrangement. Direct call-off of a contract from the Crown Commercial Service (CCS) framework agreement RM3788: Legal Services for the Wider Public Sector (Lot 2a) meets the requirements of the regulations and the council's Procurement Rules. That framework was established following a competitive tendering exercise undertaken in accordance with the regulations. The framework is available to all local authorities and therefore may be accessed by the Council

Further, the principles of procurement as outlined in the Public Contracts Regulations 2015 (Regulation 18) have been followed: "Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner."

The Corporate Director of Resources has delegated authority to award contracts of up to £2m funded from revenue (Constitution: Part 3 – paragraph 8.8). Accordingly, the Corporate Director is authorised to award the proposed contract (estimated cost £600k) to DAC Beachcroft provided he is reasonably satisfied that the contract represents value for money or the council.

5.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:

No negative carbon emission or environmental impacts are anticipated.

5.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A full RIA is appended.

6. Reasons for the decision:

6.1 The Council requires independent legal services to assess the Support Payment Scheme (SPS) applications from non-recent child abuse survivors. Utilising the CCS framework agreement RM3788: Legal Services for the Wider Public Sector offers an expedient and compliant route to engage a suitable law firm.

7. Record of the decision:

7.1 I have today decided to take the decision set out in section 2 of this report for the reasons set out above.

Signed by:

DAVID HODGKINSON

17 December 2021

Corporate Director of Resources

Date

Appendices

- Exempt Appendix
- RIA

Background papers: None

Report Author:	Yasmin Amevor
Tel:	0207 527 3132
Email:	Yasmin.amevor@Islington.gov.uk

Financial Implications Author:	Steve Key
Tel:	0207 527 5356
Email:	Stephen.Key@islington.gov.uk

Legal Implications Author:	David Daniels
Tel:	0207 527 3277
Email:	David.daniels@islington.gov.uk