

Central Bedfordshire Council

EXECUTIVE

12 January 2016

Shared Legal Services

Report of Cllr Richard Wenham Executive Member for Corporate Resources
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This report relates to a Key Decision

Purpose of this report

1. This report follows the recommendations and report approved by Executive on 1 December which agreed in principle to the establishment of a shared legal service with another local authority(s) for the provision of legal services for Central Bedfordshire Council.
2. This report seeks Executive approval of the legal shared service provider following the selection process.
3. An appendix on the private agenda will be circulated late setting out the scores and recommended provider.

RECOMMENDATIONS

The Executive is asked to:

1. **note the outcome of the selection process for a provider of a legal shared service; and**
2. **appoint the provider as set out in Appendix A (to be circulated as a late item).**

Executive Summary

4. The report concludes that the provider recommended in Appendix A be appointed as a partner to Central Bedfordshire Council for the provision of legal services.

Overview and Scrutiny Comments/Recommendations

5. A presentation on the background to these proposals was given to the Corporate Resources Overview and Scrutiny Committee on 27 October 2015. The Committee was broadly supportive of the proposals. There were questions around the ways in which efficiencies might be made under this proposal whilst maintaining current service levels and around the detail of the current legal services – both of these issues were addressed in the previous report to Executive on 1 December 2015. Whilst the Committee was pleased to have received the presentation in advance of the report to Executive, there was a concern to give proper scrutiny to the proposals.
6. It was therefore discussed further at the Corporate Resources Overview and Scrutiny Committee at its meeting on 15 December 2015, when it was concluded that the approach taken to sharing legal services was supported by the Committee.

Issues

7. In common with other Local Authorities, Central Bedfordshire Council has experienced a tightening of finances, and this is set to continue for at least another four years to enable the present Government to achieve its objectives in reducing the deficit in public sector expenditure.
8. The financial challenge is heightened due to the effect of demography in Central Bedfordshire and rising demand for social care interventions along with a population increase creating further demand on universal services.
9. There are three key requirements of the options explored in this report and recommended:
 - they should make cashable savings. A target of at least £240k from the base budget has been set and is being recommended in the draft budget for 2016/17;
 - the quality of the legal advice and service must be maintained or improved – this includes requiring bidders to make proposals about how this will be guaranteed, taking into account the Council's current legal service and ensuring no diminution for example of the availability of planning lawyers or advocacy skills; and
 - current employees must have protection of terms and conditions and if possible improved employee welfare and terms.

The Selection Processes

10. As the arrangement is one of collaboration between public authorities the competition was not required to be run on strict EU procurement rules, although these were used as the basis of the competition between bidders to ensure transparency and fairness.
11. 3 bidders were invited to submit proposals – these were all those who were interested and whose Head Office was less than 1.5 hours travel time away from Priory House which is where legal services are based. Travel time of more than 1.5 hours was deemed to be unacceptable and impractical.

Elimination Process

12. There were some criteria set by the selection panel as potential 'elimination' questions – in other words if bidders could not comply with these criteria then they would be excluded from further consideration. These were;
 - a. The selected partner organisation will save a minimum of 10% of the current CBC spend on legal services and reduce the demand for legal services.
 - b. Quality and service levels will be maintained and improved.
 - c. Staff will be well looked after and provided for within the shared service and terms and conditions of employment and primary place of work will be unaffected.
 - d. The selected partner organisation will be able to demonstrate a satisfied customer base and will welcome the opportunity for CBC to take references.
 - e. Data handling and case management will be industry leading.
 - f. The partner organisation will have a secure financial footing with meaningful plans for expansion.
 - g. The CBC Monitoring Officer, who will be named along with a Deputy Monitoring Officer, who will be provided by the Legal Shared Service.
 - h. Implementation of the new service will be complete by 1st April 2016.

The weighting which was given to all of the criteria was 40% price (or savings) and 40% quality as well as 20% staff welfare.

The Selection Panel

13. The selection panel was chaired by the Director of Improvement and Corporate Services, and also comprised the Chief Finance Officer, the Chief Procurement Officer, and 2 representatives from the Council's Legal Services team. The bidders all carried out presentations to a group of 3 staff from Legal Services as well as all members of the panel. The Executive Member for Corporate Resources was involved throughout and received detailed briefings on the evaluations as well as attending the presentations.

The Assessment Process

14. Written bids were evaluated against firstly the 'elimination' questions shown above and then against the following criteria:
 - Commercial arrangements
 - Service partnership terms for new entrants.
 - Expectations and requirements of CBC.
 - Expected set up and transfer costs
 - Deployment/ implementation plan.
 - What portion of legal service is sourced outside of service and from whom?
 - What is the range of specialisms provided from within the service and what is excluded?
 - Expectation on exclusivity.
 - How will governance work?
 - What will CBC's share of the shared service be and CBC's expected contribution i.e. investment.
 - TUPE arrangements/ pension provision.
 - Plans for harmonisation of employment terms and conditions.
 - Approach to the delivery of social value.
 - Approach to data handling and case management

Where bidders were unclear on any of the above, they were required to answer further questions.

15. References were taken up.
16. The outcome of the selection process is shown at Appendix A.

The current Central Bedfordshire Council Legal service

17. CBC Legal Services comprises a team of 39 employees (34.52fte), comprised of qualified solicitors, paralegal and administrative staff.

18. The team aims to provide a comprehensive service for all CBC client departments and this covers the following areas of legal specialism:
- i) Child protection and associated litigation
 - ii) legal issues arising in connection with Adoption and fostering
 - iii) The law relating to Adult social care including ordinary residence and DoLs
 - iv) Court of protection
 - v) Education including management of admission appeals
 - vi) Employment Law litigation and advice
 - vii) Planning and development control including S.106, and planning enforcement
 - viii) Planning policy issues
 - ix) Highways law
 - x) General property law including lease and licenses and conveyancing
 - xi) Contract and procurement
 - xii) Judicial Review
 - xiii) General civil litigation – evictions; breach of contract.
 - xiv) Local Government law, corporate governance and monitoring officer function.
19. The above list of areas of activity exemplifies that fact that the legal issues arising for local authorities are wide ranging and this is one of biggest challenges faced by in-house legal teams in this sector. The legal profession, in common with other professions, has experienced a significant move towards greater specialisation and this in turn means that the in-house team must augment its service by using external solicitors and barristers whose charges reflect that fact that they include a significant uplift for overheads and profit margins.
20. The team members are divided into 3 main teams People, Commercial Services and Business Support, each headed up by a manager. These 3 teams are further sub-divided in to 9 teams based on functional areas. The budget for Legal Services was realigned for 2015/6 to fully fund all establishment posts. The disbursement budget was also increased to allow for additional external costs incurred due to an increase in child protection matters.

How savings will be made

21. There are a number of ways in which a bigger legal service (through sharing) can achieve efficiencies;
- The first is simply by having a wider range of staff (trainees, paralegals, lawyers and so on) and making better use of the range of staff and specialists so that we do not use expensive senior lawyers to do work that a trainee or paralegal could do.

In this way we are making sure that work gets done at the lowest grade commensurate with competence to carry it out satisfactorily. There will be a wider range of lawyers and more of them, enabling us to spread the work and maximise our efficiency.

- Also we know that existing shared services should be able to improve our systems, processes and support.
- With a bigger team, it is possible to develop specialisms that a smaller team cannot afford and so put less work out to the private sector.
- There are economies of scale which come from spreading fixed costs over a broader cost base, and from procuring systems, law libraries and so on for all of the authorities in the shared service.
- Finally, there is a market for lawyers with specialist knowledge and experience of working within the public sector. If the rates are competitive this model is attractive alternative to commercial firms with their expensive overheads. The surplus generated on external work subsidises the provision to internal (owners). In a company model, financial benefits are delivered through dividend distributions and indirectly through discounted rates for shareholders.

Council Priorities

- Creating stronger communities
 - Enhancing Central Bedfordshire
 - Improving Education and Skills
 - Delivering Great Residents' Services
 - An efficient and responsive Council
 - Protecting the vulnerable, promoting well being
22. This proposal would achieve cashable savings with no reduction in quality leading to a more efficient and responsive Council.

Legal Implications

23. The recently enacted Public Contract Regulations 2015 updated and to some extent reformed the previous regulations which had been in place for many years. One of the key developments in the relevant case law had involved the increasing use of shared services amongst bodies within the public sector. The courts had demonstrated a willingness to enable this public to public cooperation by exempting inter municipal cooperation from the requirements in certain circumstances.
24. The two main exemptions had become known as the Hamburg and the Teckal exemptions after the names of the cases in which the principles had been established by the European Court of Justice.

25. These exemptions have now been formally recognised within UK law in the new Public Contract Regulations¹. In summary, where the local authority is an owner or part owner of the provider organisation or exercises a significant influence over it, there is no private sector ownership and the bulk of its activity is undertaken for the owning/controlling bodies, the procurement of services from it is exempt from the requirements of Public Contract Regulations.
26. In addition to these exemptions the use of powers of delegation between local authorities, as enabled under the Local Government Act 1972, has also been used as a basis for obviating the need for a full procurement process because it is argued that delegation of a function is materially different to a procurement of services from a provider.
27. It should be noted that because the current Monitoring Officer and Assistant Director for Legal Services is also the manager of one of the potential bidders the Council has sought independent legal advice on the way forward from an external lawyer throughout this process.

Financial Implications

28. The financial implications are as set out in this report.

Equalities Implications

29. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Council employs a Policy Adviser to lead on these requirements and this role is not affected by the current proposal.
30. The Legal Services Team provide advice, as and when required relating to employment law and equality issues. On a few occasions, external legal advice has also been sought related to specific service development related proposals.
31. The development of a shared service proposal might help reduce the need to seek external legal advice.
32. Any transfer of council staff would be handled in accordance with the Managing Change Policy which takes full account of equality requirements related to employees.

¹ S.13 Public Contract Regulations 2015

Background Papers

The following background papers, not previously available to the public, were taken into account and are available on the Council's website:

None.