
Internal Audit report – FTP legal procurement phase II

Executive Summary

As part of the 2019-20 Internal Audit Plan as approved by the Committee, BDO LLP have undertaken an advisory review of the case preparation and presentation legal contract. The first phase of the review took place in Q2.

Previous consideration	None.
Decision	The Committee is invited to discuss the report.
Next steps	Recommended actions agreed with the Executive will be tracked for progress in the Committee's standing recommendation tracker report.
Strategic priority	Strategic priority 1: Continuously improve our performance across all our regulatory functions
Risk	1 - Failure to deliver effective regulatory functions 3 - Failure to be a trusted regulator and meet stakeholder expectations 4 - Failure to be an efficient regulator
Financial and resource implications	The cost of the audit is included in the Internal Audit annual fee.
Author	BDO LLP



Health & Care Professions Council

HEALTH & CARE PROFESSIONS COUNCIL MANAGEMENT LETTER - FINAL

PROCUREMENT REVIEW - PHASE 2

JANUARY 2020

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Audit Committee

BDO 4 March 2020

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1. Introduction

- 1.1 HCPC are in the process of procuring the provisions of legal services for their Fitness to Practise (FtP) regulatory function. The current provider of this service is Kingsley Napley (KN), who were selected via the Official Journal of the European Union (OJEU).
- 1.2 The Kingsley Napley contract commenced on 1st April 2014 via during the 2013/14 financial year. For the 2019/20 financial year the contract with KN was extended for an additional year at an additional cost of approximately £4.8million. The contract was not subject to tender for the 2019/20 financial year mainly due to the uncertainty around the transfer of social workers to the new regulator - Social Work England (SWE). It is anticipated that the move of social workers to SWE will take place in December 2019, and will therefore reduce the number of cases that are processed by the Investigating Committee in making a 'case to answer' decision and thus move to the final hearing stage.
- 1.3 The service being procured is with respect to providing external legal services. The successful supplier will be expected to act on behalf of HCPC when a FtP case has been reviewed by the Investigating Committee panel and they have reached a 'case to answer' decision. The supplier will be required to prepare the case for final hearing. This will include taking witness statements, attendance at preliminary or case management meetings and undertaking advocacy before a final hearing panel.
- 1.4 HCPC are looking to procure a supplier for a period of one year with the option to extend for a further year should contract performance and the working relationship work well.
- 1.5 We reviewed the first stage of the procurement process in Q1 of the 2019/20 financial year. We found a few minor areas where improvements could be made to the process such as ensuring that the procurement time table is complied with. At the time of completion of the audit work the Invitation to Tender (ITT) document had just gone live.

2. Approach

- 2.1 Our approach included reviewing the FtP legal tender procurement process, interviewing key members of staff such as the Head of FtP, a review of the procurement timetable and reviewing key tender documentation such as the ITT, the bid packs from both potential suppliers and the scoring spreadsheet used by panel members. The key stages also included the supplier decision-making process conducted by the contract award panel, the notification of the successful and unsuccessful applicants and the plans in place for the final stages of the procurement process.

3. Overall Conclusion

- 3.1 Our assessment confirmed that the process for procuring the new provider of FtP legal services is generally sound with a few minor improvements required.

4. Key Observations

- 4.1 An award panel ranked suppliers at the initial two stages: (1) submission of supplier proposals and (2) supplier presentations. Once these were completed, panel's decision on the preferred bidder was sent to the Procurement Manager who added the costing rankings (third stage) to the scoring matrix to identify the successful supplier.
- 4.2 Initially, the panel was to consist of the Chair of Council (the Chair), the Head of FtP and the Executive Director of IT and Resources. Two weeks prior to the first assessment, the Chair decided that in addition to the current

make-up of the panel there would also be two additional Council members. It was unclear how the selection of panel members had been made and where it had been agreed.

- 4.3 The addition of two Council members on the panel increased the number of non-executives in the decision making process and thus increased its independence. Non-disclosure agreements and declarations of interest were submitted by both additional panel members prior to the assessment process commencing. The additional members were not experts in the FtP field but one had a legal background. Where there are decisions made to change the composition of the panel these should go through a formal review and approval process. The Interim Chief Executive was not in post at the time the extension of members was made. The Interim Chief Executive explained that although he was not made aware of the reasons surrounding the decision to increase the Panel composition, he suggested that it was due to the size of the contract and the interest that the Council has in this area.
- 4.4 Consensus meetings were held to discuss the prospective bidders at each of the three stages. At these meetings, the five panel members discussed their scores and their perceptions of each supplier. Any outliers with regards to scoring were discussed. Discussions with the Head of FtP and the Procurement Manager advised that these meetings were not minuted. A tender evaluation spreadsheet was used to record all Panel member's scores for the two suppliers in line with the Procurement Policy.
- 4.5 The procurement timetable was set out as per the Provision of Legal Services ITT. It was advised by the Procurement Manager that once the Panel interviews were completed with the suppliers, the consensus meetings for the suppliers were held directly afterwards. Interviews as per the timetable were held w/c 14th October 2019. At this point the scoring was complete and it was identified who the successful supplier would be. Notification of the final outcome was set as the 06 December 2019 as per the timetable and was achieved. A Council meeting was held on 04 December 2019 to inform Council of the final decision. Although the timescales were achieved as per the ITT there are efficiencies which could be made with regards to the notification of the final outcome of suppliers. If suppliers are notified of decisions earlier, then consultation regarding Service Level Agreements (SLAs) can be brought forward and if there are any issues with the agreement this would allow for sufficient timing to hold further discussions or hold discussions with an alternative supplier. Council could be notified of the successful supplier via an email from the Chair as a direct Panel member herself.
- 4.6 The contract was awarded to the incumbent supplier KN subject to the agreement of the SLAs. Through discussion with the Head of FtP and the Interim Finance Director (FD) of HCPC there are conflicting views regarding how this will progress. The Head of FtP expects this to be a smooth process whilst the Interim FD expects there to be push back from KN, as SLAs will be more challenging than the current set. This could result in HCPC going back to Capsticks Solicitors LLP (Capsticks) (the unsuccessful bidder) to try and establish an agreement instead. There is still a risk that an agreement cannot be achieved with either KN or Capsticks and thus HCPC will struggle to resource this element of cases. If Capsticks and HCPC can come to an arrangement over the SLAs, the planned handover time of 3 months would have already begun to be eroded. This could further result in Capsticks not being ready to manage cases from 01 April 2020.
- 4.7 As part of our review we held interviews with the FtP Department Lead (DL) and the Operational Manager (OM). Both officers were heavily involved with the ITT document in setting out what would be required of the successful supplier. The DL and OM are not involved with the decision making stage of which supplier will be successful nor do they see the bids prior to the supplier being selected. It was advised, they - the DL and OM will only have input once the SLAs have been agreed and there is either a continuance of the incumbent supplier or a handover is required. As the DL and OM will have direct involvement with the successful supplier on a daily basis once in place it could be beneficial to have the DL and OM involved with the negotiation stage of the SLAs. This is especially important as the current Head of FtP is leaving HCPC and will no longer be the subject matter involved in the procurement of the Legal Services Contract.

5. Suggested areas for improvement

- 5.1. To address the observations raised in this report we are suggesting the following management interventions be considered as the tender process progresses and for future tenders:
- a. Where decisions to change the composition of the Panel are made these should be transparent and clearly discussed and documented at Council and SMT meetings.
 - b. Going forwards, consensus meetings are documented.
 - c. Going forwards consideration should be taken with regards to timings and the gap between identifying successful suppliers and unsuccessful suppliers.
 - d. A Contingency plan with supporting timescales should be put in place in the event that an agreement cannot be made with regards to the SLAs and the management of these.
 - e. Consideration should be given as to whether the Department lead and the Operational Manager should be involved in the next stage of the agreement of the SLAs.
- 5.2. We would like to thank the FtP function and those involved from procurement for the assistance provided during the completion of this special review.

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