

**Health Professions Council
Finance & Resources Committee 20th November 2006**

PROVISION OF LEGAL SERVICES

Executive Summary and Recommendations

Introduction

At the HPC meeting on 11th May 2006 the Council agreed the way external legal services will be provided. A copy of the paper is attached for reference.

The Council also agreed that the provision of legal advice relating to fitness to practise cases and public law which are currently provided by Kingsley Napley and Bircham Dyson Bell should be periodically market tested.

Four documents have been prepared. They are as follows:

- i Appointment process
- ii Advertisement
- iii Pre-qualification questionnaire
- iv Timetable

Decision

The Committee is requested to approve:

- i The appointment process
- ii The advertisement
- iii The pre-qualification questionnaire
- iv The timetable

Background information

None.

Resource implications

Minimal for tendering process.

Financial implications

Minimal for tendering process.

Appendices

Council paper dated 27th April 2006.

Draft appointment process, advertisement, pre-qualification questionnaire and timetable

Date of paper

3rd November 2006

Health Professions Council
Council 11th May 2006

PROVISION OF LEGAL SERVICES

Executive Summary and Recommendations

Introduction

A paper on the provision of legal services was presented to the Council on 2nd March 2005. The Council decided that the policy for the provision of legal services should be reviewed in May 2006.

An updated copy of the paper is attached.

The paper identifies twelve types of legal services required by the Health Professions Council (HPC). In the financial year 2006/2007 the HPC is forecast to spend 14% of its operating expenses on legal services supplied by external contractors. The majority of these legal costs are spent firstly with Kingsley Napley in relation to Fitness to Practise tribunals and secondly with our Parliamentary Agents Bircham Dyson Bell. The HPC does not employ in-house lawyers.

The paper proposes to continue the policy. However, it is recommended that competitive tenders should be sought for the provision of services in relation to Fitness to Practise tribunals and Parliamentary Agents and that the exercise is concluded by 31st March 2007.

Decision

The Council is asked to consider whether the provision of the legal services required by the HPC should continue to be supplied as detailed in the attached paper and consider the questions set out in the paper. The Council is also requested to approve that:

An Invitation To Tender document will be prepared and issued seeking the provision of the services of firstly a Parliamentary Agent and secondly the provision of legal services associated with HPC's Fitness to Practise processes.

That the exercise is completed so that contracts can be approved by the Council before the start of the 2007 - 2008 financial year on 1st April 2007.

Background information

None

Resource implications

Financial implications

14% of operating expenses in the FY 2006/2007.

Background papers

None

Appendices

Policy for the Provision of Legal Advice paper.

Date of paper

27th April 2006

Date	Doc No	Dept/Cont	Doc Type	Title	Status	Int. Aud
2006-04-10	20	2006	04-1	Provision of Legal Services	Final DD: None	Public 1: None

HPC's Policy for the Provision of Legal Advice

Introduction

The paper is divided into five sections.

- Section I Details the areas where legal advice is required by HPC
- Section II Describes how HPC prepares cases
- Section III Reviews the costs of providing legal advice
- Section IV Advantages and Disadvantages of providing in-house legal advice
- Section V Recommendations

Section I – Areas requiring legal advice

Twelve key areas have been identified where HPC requires legal advice. In alphabetical order they are as follows:-

1. Article 37 - Appeals
 2. Article 39 - Offences
 3. Commercial contracts
 4. Employment law
 5. Fitness to practise
 6. Information
 7. Legal assessors
 8. Other specialist legal advice
 9. Parliamentary Agents
 10. Public law
 11. Section 29 CHRE
 12. Training
1. Article 37 - Appeals

Article 37 of the Health Professions Order 2001 requires the HPC to manage two types of appeal process. They are decisions of the Education and Training Committee, for example decisions to withdraw approval of courses and decisions of the Registration Committee for example grandparenting or international registration applications decisions.

Bircham Dyson Bell provides legal advice to the Council in relation to these types of appeals.

2. Article 39 – Offences

Since 9th July 2005 HPC has had the power to prosecute individuals who have committed a criminal offence under Article 39 of the Health Professions Order 2001.

Bircham Dyson Bell provides legal advice to the Council in relation to these type of cases.

3. Commercial Contracts

When the HPC enters into significant commercial arrangements with other organisations, legal advice is sought before entering into a contract. Examples include: IT software projects, building or refurbishment work, and the purchase of land and buildings.

Since April 2001 HPC has used the services of Bircham Dyson Bell.

4. Employment Law

Due to the ever increasing complexity of employment law the HPC requires specialist HR legal advice. The type of advice sought covers: employer/employee disputes, job applicants, ex-employees, Partners and Council members.

HPC currently uses Kingsley Napley. Kingsley Napley are not contracted to provide and have been engaged on an hourly basis.

As in other legal situations, barristers and QCs may be engaged for specific cases.

It is not the intention of the Executive to establish an in-house resource.

5. Fitness to Practise

It is forecast that the number of Fitness to Practise tribunal days will increase. This is due to three factors. They are as follows:

- Increase in number of registrants as aspirant groups become statutorily regulated by HPC.
- Increase in the number of Fitness to Practise allegations due to an increased awareness of HPC and its ability to act swiftly and appropriately.
- Increase in the length of Tribunals due to the number of competence cases.
- Review orders.

The HPC currently engages external legal services to prepare and present allegations against registrants at Conduct and Competence Tribunals, Health Tribunals and Interim Orders.

Currently all of HPC Fitness to Practise cases are prepared and presented by Kingsley Napley, based at St John's Lane, London EC1.

However, the Fitness to Practise Department has been reducing their reliance on Kingsley Napley.

- Non-complex interim orders are being presented by HPC case managers. For example evidence of registrants serving custodial sentences.
- Certain conduct cases are being presented to HPC tribunals by HPC case managers.
- In Scotland and Northern Ireland, local barristers are engaged to present Fitness to Practise cases.

It is the intention of the Executive to continue to exclusively engage Kingsley Napley to prepare and present fitness to practise cases until spring 2006.

The HPC has a Service Level Agreement with Kingsley Napley.

6. Information

The HPC has on occasions sought legal advice on Data Protection and the Freedom of Information Act.

7. Legal Assessors

Article 34 of the Health Professions Order 2001 requires HPC to appoint legal assessors.

As at 1st November 2004 HPC has engaged thirteen legal assessors. Of the twelve, three have been specifically retained to deal with Scottish issues and two with Northern Ireland issues.

It is anticipated that the number of legal assessors will be increased as the number of Fitness to Practise cases increases.

8. Other specialist legal advice

It is assumed that the HPC may occasionally require specialist legal advice on a range of issues. Examples include: environment, planning, rates and tax.

It is the intention of the Executive to engage specialist legal advice as required.

9. Parliamentary Agent

HPC continues to require advice from a Parliamentary Agent. This is to enable the Health Professions Order 2001 and the consequential HPC rules to be amended in a swift and economic manner.

Bircham Dyson Bell, based at 50 Broadway, London SW1, currently provides this service to the HPC.

The HPC has a Service Level Agreement with Bircham Dyson Bell.

It is the view of the Executive that periodically the provision of these types of legal services should be put out for competitive tendering. It is proposed that such an exercise should be undertaken during the financial year 2006/7 and be completed so that contracts can be approved by the Council before 1st April 2007.

10. Public Law

Advice on public law is provided to HPC by Bircham Dyson Bell.

11. Section 29 CHRE

The Council for Healthcare Regulatory Excellence (CHRE) has the power and does refer HPC's conduct and competence and registration restoration panel decisions to the courts where they believe that the panel has been too benign.

As and when such cases arise legal advice will not be sought from the lawyers who presented the case but will be provided by Bircham Dyson Bell. It is assumed that this process will occur two to four times per year.

It is not the intention of the Executive to change this policy.

12. Training

Specific training is required to educate a range of HPC's Council members, Partners and employees on their roles and responsibilities as defined by the Health Professions Order 2001, the HPC rules and other legislation.

To date this type of training has been predominantly provided by Jonathan Bracken of Bircham Dyson Bell.

Section II – Case Preparation

The Council for Professions Supplementary to Medicine (CPSM) case preparation policy was to assign the complete disciplinary process to external lawyers. This covered not only case preparation and presentation but also the majority of day-to-day managerial function such as the drafting and sending of all communications.

The HPC has instigated a radically different case preparation policy. When expert legal advice is not required then the work is undertaken in the Fitness to Practise Department. This:-

- Reduces spend on external legal fees on non-legal tasks.
- Improves the quality, consistency and speed of HPC service.
- Captures economies of scale.

In addition, it is anticipated that the Fitness to Practise Department will take on additional tasks such as obtaining witness statements.

Section III – Costs

HPC requires expert legal advice to enable it to deliver its Strategic Intent.

The HPC Budget for 2006/2007 for the Fitness to Practise Department and Legal Services is as follows

Budget		
	£	%
Fitness to Practise Department (excluding legal expenses)	1,080,215	10
Legal Expenses		
Fitness to Practise	1,254,000	11
Rest of Organisation	26,000	
Legal Advice		
Fitness to Practise	188,220	2%
Rest of Organisation	130,500	1%
Legal Assessors (including expenses)	64,976	1%
Fitness to Practise Budget	2,587,411	23%
Total HPC income	11,208,971	100%

It should be noted that overhead costs such as IT and Office Services are not included.

In addition, it should be noted that both the Foster and Donaldson reviews may result in regulation of assistants and the consolidation of the nine UK regulators of health professionals which may lead to significant changes to these figures.

Section IV – Advantages and Disadvantages of providing in-house legal advice

Given the range of legal advice required by the HPC and the cost of providing the advice, how should HPC proceed?

There are two key questions. They are as follows:

- (i) Should the HPC employ lawyers to undertake work in-house, in particular fitness to practise cases?
- (ii) Should we increase the number of organisations providing Fitness to Practise legal advice to HPC?

The advantages and disadvantages have been assessed as follows.

Should HPC employ lawyers in-house to prepare and present Fitness to Practise cases?

Advantages

- Lower labour costs.
- Build in-house expertise.

Disadvantages

- In-house lawyers may get personally involved in decisions to proceed with cases.
- Easier to disengage poor service provider rather than underperforming employee.
- In-house team may seek to use external lawyers to “belt and brace” decisions.
- In-house lawyers will have reducing exposure to non-HPC cases.
- Inability to rapidly increase amount of cases that HPC would be able to process.
- Increased indirect costs, such as office services.
- Unattractive career opportunity to ambitious lawyers.

Should we increase the number on Fitness to Practise legal teams rather than relying exclusively on Kingsley Napley?

Advantages

- Provides cost comparison.
- Provides service comparisons.
- Increase in short term capacity.
- Increases breadth of legal advice and experience.

Disadvantages

- Reduces the ability to negotiate lower costs from single provider.

Date:
2006-01-20

Ver:
0

Dept/Cmte:
SER

Loc Type:
PRD

Title:
Prop. Sec. Officer - Legal Admin.

Status:
Emp.
Emp. Type:

Int. Aud.
Confide. Lev.
RD: None

- Inconsistency in presentation of cases and differing approaches to case work.
- Need to build relationship with more than one provider.

Process to Appoint Two Legal Services Providers

The Health Professions Council (HPC) is seeking to appoint two providers of legal services to supply a range of services with effect from 1st April 2007. Please note that the HPC will not engage one organisation to supply both services.

The HPC is a UK statutory regulator of 170,000 health professionals. Full details about the organisation can be found on the website www.hpc-uk.org.

Based in central London, the organisation has approximately 90 employees with annual operating expenditure of £13 million.

The successful organisations will be required to advise and assist the Council on one of two types of legal issues. They are as follows

Public Law:

- i Interpretation and development of the Health Professions Order 2001 and related Rules.
- ii Relevant home country, UK, EU and International legislation
- iii UK public law

- iv CHRE Section 29 appeals

- v Freedom of Information Act

- vi Advise and present registration appeals to Council

- vii Advice relating to Data Protection Act and Freedom of Information Act

Legal advice on employment legislation, and general commercial advice is not part of the services that will be provided.

Fitness to Practise:

- The preparation and presentation of Fitness to Practise cases. The HPC currently holds approximately 250 – 350 hearings per year.

- High Court appeals arising from Fitness to Practise cases.

The appointment process will be conducted in three stages.

Firstly, providers interested in supplying this service to the HPC will be requested to submit a pre-qualification questionnaire.

Secondly, qualifying providers will be required to submit a tender document containing the following information:-

- Estimate of human resources to deliver the service
- Names of members of the team who would supply the service and their CVs
- Relevant experience
- Draft service level agreement
- Proposed charging regime
- Two references

A total of ten hard copies of the tender document should be provided. Faxed or emailed tenders will not be accepted. They should be delivered to the HPC no later than noon on Friday 2nd February 2007. Tenders received after this date will not be considered.

All tenders will be reviewed by a panel consisting of the HPC President, members of the Council, the Chief Executive and the Director of Fitness to Practise. Shortlisted organisations will be informed no later than 23rd February 2007.

Thirdly, shortlisted law firms will be invited to make presentations to the appointment panel on Thursday 22nd March 2007 for the provision of public law advice and Friday 23rd March 2007 for advice associated with HPC Fitness to Practise tribunals.

They will be required to make a presentation to the panel lasting not more than 20 minutes. The presentation should address either the question “What are the challenges facing a regulator of health professionals?” or “How should Fitness to Practise procedures evolve?” This will be followed by a Questions and Answers session. The meeting is expected to last not more than one hour.

It should be noted that:

1. The HPC does not commit itself to accept the lowest, or any, expression of interest submitted.
2. The HPC will not be liable for or pay expenses or losses whatsoever which may be incurred by any tenderer in the preparation of a submission.
3. The contract(s) if awarded will be awarded to the legal services provider based on the following criteria:
 - Understanding of the HPC
 - Experience of the service provider
 - Cost

- Service level agreement

4. It is intended that both legal services providers will be appointed for a period of four years. The contract will be reviewed annually.

It is anticipated that the selected law firms will start the provision of service on 1st April 2007.

Draft advertisement

To be placed in the Law Society Gazette
Thursday 30th November 2006

Health Professions Council

Provision of legal services relating to Fitness to Practise cases and Public Law

The Health Professions Council (HPC) is seeking expression of interest for the provision of legal advice relating to fitness to practise cases and public law. The HPC is a UK statutory regulator of 170,000 health professionals. Full details about the organisation can be found on the website www.hpc-uk.org.

Interested organisations will need to demonstrate substantial experience of legal issues relating to professional regulation and have significant expertise in either providing advice on public law or conducting Fitness to Practise proceedings.

To maintain equality of arms, lawyers who represent HPC in fitness to practise proceedings are not also instructed to provide policy-related advice. Consequently, a minimum of two appointments will be made and no single bidder will be appointed to provide both services.

Any contracts awarded will be non-exclusive and services will be provided on a call-out basis. HPC does not guarantee to provide any minimum or specified level of work.

Those interested in this opportunity should complete a pre-qualification questionnaire and return it no later than 15th December 2006 at noon. Completed questionnaires received after that date will not be considered.

Applications will then be shortlisted and selected applicants invited to tender.

For an informal discussion about the services required, please contact Marc Seale, Chief Executive, HPC, on 020 7840 9701.

Requests for a pre-qualification questionnaire should be addressed to Jane Tuxford, Health Professions Council, Park House, 184 Kennington Park Road, London SE11 4BU.

[HPC logo]

CONTACT INFORMATION	
Name of organisation	
Address	
Status – <i>eg Partnership</i>	
Telephone number	
Website	
Main contact – Name and job title	
Main contact – telephone number	
Main contact – email address	

Briefly describe your case management system	
Location of office where team working with HPC will be based	
Approximate travelling time to HPC offices	
Number of employees based at above office	
Copy of organisation chart (please enclose)	
Copy of last 3 audited accounts (please enclose)	
Current full charge out rates for team members	
Example of organisations that you work with that have similar responsibilities to the HPC	

<p>What are your disaster recovery arrangements?</p>	
<p>Potential conflict of interest with any of your existing clients</p>	
<p>Provide a copy of your equality and diversity scheme.</p>	

Please return completed form to: Marc Seale, Chief Executive, Health Professions Council, Park House, 184 Kennington Park Road, London SE11 4BU

Deadline for return is noon on Friday 15th December 2006. Completed questionnaires received after that date will not be considered.

Timetable

2006:

20 th November	Finance & Resources Committee approve process
30 th November	Advertisement in Law Society Gazette
15 th December	Deadline for pre-qualification questionnaires to be received by HPC

2007:

w/c 8 th January	Meeting to shortlist
12 th January	Invitation to tender dispatched
2 nd February	Deadline for tenders to be received by HPC
w/c 19 th February	Meeting to shortlist
23 rd February	Invitations to interviews dispatched
22 nd and 23 rd March	Interviews
1 st April	Appointments become operational