
APPOINTMENT OF LEGAL REPRESENTATIVES

**Responsible Cabinet Member – Councillor Chris McEwan
Efficiency and Resources Portfolio**

**Responsible Director – Paul Wildsmith
Director of Corporate Services**

SUMMARY REPORT

Purpose of the Report

1. To seek permission of Council to waive Contract Procedure Rules under Rule 15 of the Contract Procedure Rules in order to appoint counsel to represent the Council to defend a number of claims.

Summary

2. The Council has received a number of claims relating to equal pay in common with other authorities across the country. The Council will require legal representation in forthcoming hearings in relation to ongoing claims. There is a shortage of Counsel working in this area and therefore a procurement process to select appropriate Counsel is impracticable. Solicitors acting for the Council in relation to these claims have conducted a thorough exercise in evaluating the quality and cost of a range of Counsel nationally and have provided details to the Council for consideration. It is recommended that the requirements of paragraphs 49 and following are waived in accordance with Rule 15 contract procedure rules to allow the appointment of Queen's Counsel and junior counsel to provide the Council with representation at forthcoming hearings.

Recommendation

3. It is recommended that Council agree to waive Contract Procedure Rules under Exemption Clause 15 to allow for the appointment of both senior and junior counsel to represent the council.

Reason

4. The recommendation is supported to enable the appointment of appropriate representation in relation to forthcoming hearings.

**Paul Wildsmith
Director of Corporate Services**

Background Papers

No background papers were used in this report.

C. Whitehead : Extension 2306

S17 Crime and Disorder	This decision will not have an impact on Crime and Disorder.
Health and Well Being	There are no implications for Health and Well Being
Sustainability	This decision will not have an impact on sustainability.
Diversity	This decision will not have an impact on Diversity.
Wards Affected	All wards will be affected equally
Groups Affected	All groups will be affected equally
Budget and Policy Framework	This decision does not require a change to the budget or policy framework.
Key Decision	This is not an executive decision
Urgent Decision	This is not an executive decision.
One Darlington: Perfectly Placed	The successful defence of claims will assist the Council in delivering the Community Strategy.
Efficiency	The successful defence of claims will assist the Council in meeting financial targets.

MAIN REPORT

Information and Analysis

5. The Council's contract procedure rules require that the council undertakes a procurement exercise in relation to all contracts over £75,000 in value. A number of claims against the Council have come to a point where it is necessary to instruct a barrister to represent the Council at forthcoming hearings. It is likely that by the conclusion of the hearings these contracts will have a value greater than £75,000 the Council is required to conduct a procurement process under Contract procedure Rules unless the rules are waived.
6. The Contract Procedure Rules anticipate that on occasion due to the nature of the contracts or the specific nature of the services required it will be necessary to waive contract procedure rules. This is set out in Rule 15. It is not possible to waive contract procedure rules where the amount exceeds the amounts specified for advertisement in the Official Journal of the European Union. The OJEU rules recognise that the procurement of legal services should not be caught by the usual rules and has identified them as Part B services, those which do not require advertisement prior to appointment.
7. The instruction of legal counsel is an individual contract and junior counsel contracts are separate from QCs. The contract is not with the chambers but the individual. As a result the individual barristers do not tender for work in the usual procurement way, but await instructions through their clerks. The shortage of barristers operating in this area would mean that if tenders were sought they would not be received. It is therefore recommended that the Council's normal procurement processes are waived to allow the appointment of Queen's Counsel and junior Counsel. Council officers have required a comprehensive exercise be conducted to ensure that value for money is achieved through the selection process. All available counsel with relevant expertise have been considered from a range of different chambers.

Outcome of Consultation

8. No consultation has been carried out in relation to the content of this report.