

**SURREY COUNTY COUNCIL**

**CABINET MEMBER FOR CHILDREN, YOUNG PEOPLE & FAMILIES**



**DATE: 6 JUNE 2019**

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**SUBJECT: APPROVAL TO AWARD A FRAMEWORK FOR THE PROVISION OF FORENSIC TESTING SERVICES**

**COMMUNITY VISION OUTCOME: People**

**SUMMARY OF ISSUE:**

Surrey County Council (the Council) has obligations to ensure that safeguarding decisions about children are made using high quality evidence suitable for the courts. Forensic testing is sometimes required to support child protection and care planning decisions.

High quality forensic testing and expert reports are used by the courts and social workers in care planning proceedings and pre-proceedings. Accurate DNA test results can help identify people within a child's family network with whom they could have ongoing contact or potentially be cared by. They can be used by social workers to develop individual care plans and assist the Council (as corporate parents) to better meet the needs of children and young people coming into care. Understanding a person's use of drugs and/or alcohol can be of value to social workers when deciding where to signpost parents/carers for additional advice, support and treatment. For example, where appropriate, vulnerable adults will be referred to substance misuse treatment services currently available through the Council's Public Health Team.

The current Forensic Testing Framework is due to expire at the end 31 July 2019. Therefore officers were required to go out to the market through a full tender process for a Framework under the Light Touch Regime. The services are broken into the following areas:

- DNA Testing
- Drug Testing
- Alcohol Testing

This report provides details of the procurement process, including the results of the evaluation, and, in conjunction with the Part 2 report, demonstrates why the recommended award delivers value for money and meets the needs of individuals in the Council. Due to the commercial sensitivity involved in the contract award process, much of the Finance and Value for Money details have been included as a Part 2 report.

**RECOMMENDATIONS:**

It is recommended that:

1. Following consideration of the available options, the results of the procurement process, and commercially sensitive information provided in Part 2 of the report, approval is given for the Council to establish a Light Touch Framework for the period 1 August 2019 – 31 July 2021 (with the option for extension up until, but not exceeding, 31 July 2024).
2. Delegated Approval to be given to the Service Manager (Gateway to Resources) to 'call off' this Framework in order to secure the services of approved forensic testing laboratories as required.
3. Delegated approval to be given to the Director of Commissioning to add new providers onto the Framework for Surrey as appropriate.

#### **REASON FOR RECOMMENDATIONS:**

As outlined in *Child First Commissioning Intentions for Children in Surrey 2017-22*, the Council is committed to ensuring children in Surrey get 'the right help, care and protection at the right time so they can thrive'. Forensic Testing Services are linked to this commitment because these services help inform care planning decisions.

The current Forensic Testing Framework is due to expire at the end of 31 July 2019. Due to the value of Surrey's spend on these services, which are statutory and sometimes court ordered, a compliant route to market is required. The route to market chosen for Forensic Testing Services has been through the use of the Framework (procured under the Light Touch Regime as outlined in Schedule 3 of the Public Contract Regulations (PCR) 2015).

This new Light Touch framework will have a focus on addressing issues that have been presented in the current framework in regards to: timeliness and quality of reports, the pricing schedule and the setup of the framework being over-complicated for providers, social workers and the finance teams. Robust and regular contract monitoring through the new Gateway to Resources team will have a strong focus on providers' performance and value for money and will ensure that the safety of children, young people and vulnerable adults remains a priority at all times.

#### **DETAILS:**

##### **Background**

1. In 2011 the UK Government carried out an official review of the Family Justice System called the Family Justice Review (FJR) which highlighted the need for timely decision making and high quality assessments prior to the commencement of care proceedings. The review recommended wide ranging reforms intended to put children's interests back at the heart of care proceedings.
2. Under the revised section of 32(1) (a) of the Children Act 1989 (introduced by section 14 of the Children and Families Act 2014), care and supervision proceedings must be completed 'without delay, and in any event, within twenty-six weeks beginning with the day on which the application was issued' unless the case is exceptional. This places an increased emphasis on timeliness and the quality of assessments during care proceedings.
3. In response to FJR and the changes to the Children Act, Surrey commissioned a Forensic Testing framework which commenced on 1 February 2016. This was due to end

on 31 January 2018 but has been extended until 31 July 2019 (within extensions possible in the contract).

4. Through a detailed service review conducted in 2018, a number of issues with the current framework were identified that need addressing through new commissioning arrangements:
  - There is not consistency and equity of services across the county. This includes the timeliness and quality of reports and training opportunities.
  - There is a significant difference between the different providers who have completed tests within contractual timescales.
  - The setup of the framework is over complicated for providers and the Council staff.
  - Feedback from Social Workers, Legal Services and service users is not sufficiently captured and fed back.
  - The Council sometimes wants a DNA and Drug and Alcohol tests taken at same time. However, the framework does not allow for this, therefore Surrey is unable to provide service users both services at the same time.
  - The pricing schedule was not fit for purpose, and the way forensic testing has been purchased and managed through the finance system has not allowed for any detailed analysis of spend to take place
  - Performance Monitoring forms need to be updated and simplified for both providers and the Council.

#### **Current Demand**

5. Surrey is experiencing a decrease in the number of children and young people being the subject of a child protection plan (CP). The rate of children on a CP plan in Surrey decreased from 40 per 10,000 children (April 2018) to 33 per 10,000 children (April 2019).
6. In 2018/19 the Council requested a total of 297 drug and alcohol tests, and 30 DNA tests.

#### **Financial Context**

7. In 2017/18, the Council spent approximately £170,000 on Forensic Testing services. In 2018/19, this figure increased to £225,000 with an overspend against a budget of £85,000. The Service needs to reduce spend by £47,000 during 2019/20 and a further £38,000 in 2020/21.
8. Officers are particularly interested in working with providers who are developing models that provide value for public money.

#### **Options Analysis**

9. Officers considered the following options when establishing the best route to market for Forensic Testing services:

Options	Description
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<p>Option 1: Framework under the Light Touch Regime</p> <p><b>CHOSEN OPTION</b></p>	<ul style="list-style-type: none"> <li>• A Framework under the Light Touch Regime would allow the project to limit the number of suppliers so the business would be attractive to the marketplace.</li> <li>• A Framework Agreement will provide select suppliers who will be standing by ready to supply their services ensuring services are provided in the timescales necessary for court proceedings.</li> <li>• By limiting the amount of providers on the framework suppliers have indicated to officers that they could offer volume discounts due to the volume of work not being spread thinly across lots of different suppliers.</li> <li>• A framework would also allow strong relationships to be built with the successful suppliers. Enhanced customer support and training for Council staff will be a requirement of the project, training will be provided in Surrey twice a year to ensure all new staff are trained on the forensic services framework and procedures.</li> <li>• Providers can be monitored/audited in a systematic way.</li> <li>• Effective contract management, as providers will be required to comply with our quality standards and minimum service standards.</li> <li>• Pre-agreed costs with providers for the tests and any other associated costs with volume discounts included.</li> <li>• This arrangement would not commit the Council to a fixed level of expenditure, therefore when our demand does drop during the life of the contract this will not be an issue for the Council.</li> <li>• If the demand in care proceedings does not reduce at the rate predicted, the Council will be covered through the framework.</li> <li>• There are improvements to the way the Framework will be set up, e.g. the Council will no longer pay for cancellations where more than 24 hours' notice is provided and will not pay for a second collection where the original sample is not adequate.</li> </ul>
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<p>Option 2: Dynamic Purchasing System under the Light Touch Regime</p>	<ul style="list-style-type: none"> <li>• This contractual arrangement would not be suitable for this service. A DPS is would be open to new suppliers all the time which is not appropriate for this type of service, where three providers should be able to cover Surrey's demand.</li> <li>• The Children's Services would find it difficult to build relationships with multiple Forensic Testing providers.</li> <li>• It is unlikely that there would be a number of new providers entering the market. Therefore the option of continually 'open' DPS would be a waste of time and resource.</li> <li>• Business demand (although increasing for Surrey) in the wider marketplace is relatively small, so by restricting the number of suppliers it would make the opportunity more attractive to providers.</li> </ul>
<p>Option 3: Block contracts</p>	<ul style="list-style-type: none"> <li>• Financial consequences may arise from under-used capacity if</li> </ul>

	<p>the anticipated demand for the block contracted service is not realised (demand is not guaranteed).</p> <ul style="list-style-type: none"> <li>• Surrey does not have the levels of need for block contracts.</li> <li>• There is a risk that the chosen provider will not be able meet the need and/or demand to cover all testing services across Surrey.</li> <li>• Tests are bespoke to individual circumstance and so a block contract may not provide the flexibility for this.</li> </ul>
Option 4: Spot purchasing these services would be required	<ul style="list-style-type: none"> <li>• If there are no contractual arrangements in place the Council would be required to spot purchase these tests. This would negatively affect the quality of testing as Social Workers/Gateway Team could potentially be purchasing from providers who are not accredited. It would also negatively impact on care planning timeframes and even the Courts' timeframes.</li> <li>• Spot purchasing does not ensure the best value for money and due to the level of spend is unsuitable for these services.</li> <li>• Breaches the Council procurement standing orders, and potentially EU Public Contracts Regulations.</li> <li>• Spending levels will continue to rise if no intervention or formal commissioning arrangements are established.</li> <li>• Quality of services will vary and the Council will be unable to manage poor performance.</li> </ul>
Option 5: Do nothing	<ul style="list-style-type: none"> <li>• This is not an option as under Section 11 of the Children Act (2004) the Council must safeguard and promote the welfare of children.</li> </ul>

## Service Specification

10. The service specification draws together the key information required by organisations wishing to bid for contracts to deliver forensic testing services in Surrey. The specification sets out our expectations of providers and the commissioned services, including:

- Aims and objectives of the tender process
- Framework structure overview
- Timeframes
- Demand and need analysis
- Service standards and expectations
- Service outcomes and performance monitoring
- Managing complaints
- Safeguarding children and vulnerable adults (including reference to their responsibilities under Section 11 of the Children Act [2004])
- GDPR
- Social Value
- Pricing

## Service Outcomes and Performance Monitoring

11. The outcomes framework set out below is designed to deliver a high quality value for money service for Surrey’s children, young people, families, carers, and practitioners. These outcomes will be embedded in the service offer and provide a clear focus for providers.

	<b>Outcomes</b>	<b>Indicators</b>
1.	The Local Authority has access to a high quality, independent and timely forensic testing service	Providers will: <ul style="list-style-type: none"> <li>• Carry out forensic tests and submit reports within specified timescales</li> <li>• Communicate with, and provide regular updates to, the Purchaser (and document the same clearly)</li> <li>• Produce high quality ‘ready’ reports with no changes or redactions required</li> <li>• Receive positive feedback from court, practitioners, children and families</li> </ul>
2.	Children, young people and families experience a clear and fair assessment and testing process	Providers will: <ul style="list-style-type: none"> <li>• Receive minimal valid complaints made against them</li> <li>• Communicate with children and families appropriately and document the same clearly</li> <li>• Communicate in an appropriate manner so that children and families understand the testing processes and content.</li> <li>• Be willing to work with an interpreter where required</li> </ul>
3.	Securing value for money and efficient use of public funds	Providers will: <ul style="list-style-type: none"> <li>• Ensure that all costs are outlined upfront, to prevent additional and unexpected charges</li> <li>• Be able to evidence that individuals analysing test results are suitably qualified, have relevant experience and (where relevant) are currently registered as a professional expert with the appropriate professional body</li> <li>• Provide scientific interpretation and analysis in relation to results of forensic testing services</li> <li>• Provide training and education support for our social workers as part of the Council’s Continuing Professional Development (CPD) offer</li> <li>• Provide customer support to organise sampling appointments and update on progress</li> </ul>

**Implementation of the framework within the new Children’s Services model**

12. There are significant changes happening within Children’s Services that are likely to have a positive impact on the journey of children and their families, hopefully reducing the need for purchasing from external providers and improving outcomes for our residents.

13. Within the new structure for Children's Services, the current Children in Need and Child Protection and Court teams have been deleted and replaced with 22 Family Safeguarding Teams, working to the evidence-based Family Safeguarding Model. These teams will employ larger numbers of qualified social workers and adult specialist workers. Wherever compatible with the welfare of the child, the aim of these teams will be to work alongside parents to support them to change their behaviours and keep children safe within their families. Where appropriate, vulnerable adults will be signposted to substance misuse treatment services currently available through the Council's Public Health team. Where this is not possible or appropriate, the teams will draw together their multi-disciplinary parenting assessments and use their work as a basis for initiating pre-proceedings/Public Law Outline (PLO) process and care proceedings.
14. By the time the new Forensic Services Framework 'goes live' in August 2019, the new Gateway to Resources Team will be fully operational, and all purchasing related to Forensic Testing will be centralised. This will ensure that the appropriate approvals have been sought, decisions are made and approved at regular planning meetings, and activity/spend across the county will be tracked consistently. These new arrangements will offer the ability to better track the Council's use of external providers, ensure a consistency in practice and individual commissioning, ensure that volume discounts are being applied as appropriate, and allow for improved monitoring of spend against budget.

<b>CONSULTATION:</b>
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15. Extensive consultation with the Council's Child Protection teams, Legal Childcare teams, Procurement and Corporate Finance has taken place throughout the project. Further work to undertake detailed process mapping with all the relevant teams took place in March and April 2019. This will inform our approach to mobilisation of the contracts, clarify call-off procedures (in very practical terms who will be responsible for what, etc.) and help the organisation put the right systems in place to monitor and track provider performance and financial spend throughout the life of the Framework.
16. In December 2018, a market engagement event was held and attended by five (5) Forensic Testing Providers. The purpose of this event was to:
  - a. Develop a common and shared perspective of supply and demand
  - b. Provide an overview of our vision for Forensic Testing Services
  - c. Receive provider feedback on the current offer/way of purchasing – what is working well and what are the challenges
  - d. Receive provider feedback on our proposed commissioning arrangements, provider's ability to deliver services as specified, and their feedback on how to best structure pricing schedules and conduct performance monitoring
17. Officers reviewed concerns that families have shared with our Quality and Experience team, and established that families reported that they often misunderstood the content of assessment and testing reports. Therefore the key learning from this will be to help children and families understand the testing and assessment processes so they are not further traumatised by the process and communication is improved. Officers recognise that these tests are carried out with some of Surrey's most vulnerable children and families and it is imperative that these tests do not cause unnecessary distress.
18. The Council has engaged with other local authorities and discovered that there is an appetite to jointly commission these services in the future. This could provide stronger

purchasing power to attract forensic testing experts, drive down costs and secure bulk discounts, therefore saving Surrey residents money. Working collaboratively takes time, however, and, therefore, Council officers will undertake further work with other local authorities from September 2019 to explore the possibility of jointly commissioning Forensic Testing Services with the aim of having a new, collaborative arrangement in place from August 2021.

19. A further supplier event was hosted in January 2019 to ensure the market was engaged and prepared for the tender.

#### **COMPETITIVE TENDERING PROCESS – OUTCOMES:**

20. This was an OJEU tender process and attracted six bids from providers.
21. Forensic Testing Services were first evaluated on a number of key compliance questions (in Section A) which were graded as pass/fail. If the prospective provider failed on any of the questions in Section A of the quality evaluation, they were deemed unsuccessful and their bid was not reviewed further.
22. All who passed Section A went on to be quality assessed through the use of Method Statement Questions (MSQs). Tenders were then scored as follows:
- 50% Quality – Suppliers answered four method statement questions which were evaluated on a 0-5 scale
  - 50% Price – Suppliers completed the pricing schedule for each lot and these were scored
23. Three tenderers are recommended to form part of the framework.
24. The Part 2 report provides further information on the successful providers.

#### **RISK MANAGEMENT AND IMPLICATIONS:**

25. Robust default and suspension clauses have been built into the contract. If the services (or any part of them) have not been carried out in accordance with the service specification and/or Framework Agreement, the Council will have sole and entire discretion to make deductions from the payment due to the provider, calculated as appropriate compensation to the Council. A provider may be suspended from delivering services under any call off contract for a fixed period or indefinite period. The suspension will last until such time as the provider is able to convince the Council that it is able to deliver the service from which it has been suspended.
26. Entry onto the Framework requires providers to pass a number of financial and quality checks. The first round of quality criteria was set as 'pass/fail' as officers cannot contract this service with providers who are not suitably accredited by the Ministry of Justice (MoJ), United Kingdom Assessment Service (UKAS) or similar to carry out forensic testing services in a manner required by the courts.

#### **FINANCIAL AND VALUE FOR MONEY IMPLICATIONS**

27. Prices submitted by providers varied significantly, as did the volume discounts that were offered. Volume discounts offered ranged between 2% discount and 20% discount, depending on the number and type of tests ordered.
28. As all purchases will now go through the Gateway to Resources team, the Resource Allocation Officers will be able to ensure that the best provider is approached first, based on the type of service required, and how many tests have previously been purchased, in order to get best value for money.
29. Further negotiation with providers is possible through the mobilisation period and at the point of call off. For example, one of the providers has offered to reduce their fees further if they are approached to conduct DNA and Toxicology (Drug and/or Alcohol) tests at the same time.

#### **SECTION 151 OFFICER COMMENTARY**

30. The Council is facing a very serious financial situation, whereby there are still substantial savings to be delivered to achieve a balanced budget in the current year and a sustainable budget plan for future years.
31. The Section 151 officer acknowledges that the service are putting in place a number of improvements to control expenditure in this area.

#### **LEGAL IMPLICATIONS – MONITORING OFFICER**

32. Parliament has made laws to safeguard and protect children. Some examples include the Children Act 1989, the Children Act 2004 and the Children and Families Act 2014. More examples could be given but it is generally accepted that children are in need of protection and that the Council has a duty to safeguard children.
33. The procurement was done to establish a Framework under the Light Touch Regime (LTR) of the Public Contracts Regulations 2015. The LTR allows the Council more flexibility in how it runs the procurement. An example is that unlike a standard Framework which is closed to other suppliers, a LTR Framework can be reopened to allow other suppliers to compete for a place on the LTR Framework.
34. The Council has a duty to secure best value when procuring. It has done this by running a competition to select suppliers who provide better value than their competitors in the competition.

#### **EQUALITIES AND DIVERSITY**

35. An Equalities Impact Assessment (EIA) has been carried out.
36. Key actions have been identified to maximise the positive and mitigate the negatives impacts on people with protected characteristics. In summary:
  - Through the use of a Framework, children and families should be less likely to be exposed to continued risk, or experience the distress and anxiety associated with drift and delay during pre-proceedings and care proceedings. The proposed

Framework should help ensure that appropriate support can be put in place more quickly, leading to better outcomes for children.

- Professionals will be required (as outlined in the service specification) to communicate with families (children and adults) in an appropriate manner to ensure they understand the processes relating to forensic testing. This includes working with an interpreter where required.
- Providers are expected to be able to undertake testing using a variety of sample types – for example: hair, nail, blood, urine and saliva swabs. For those observing religious protocols, it is expected that providers will take all reasonable steps to collect a sample that is most appropriate and acceptable to the donor. This will be monitored by the Gateway Team and Social Workers.
- Social workers will be aware of the individual family’s circumstances and may need to provide additional support, including the use of translation services where necessary.
- Mobilisation plans will be developed with accessibility for all in mind, and team managers will be aware of the individual needs of staff in their team, and will make the required adjustments to ensure everyone has access to training or mobilisation events.
- Performance Monitoring/Contract Management activities will take place with providers on a quarterly basis. This will ensure that providers are safeguarding children and families appropriately, communicating with families in a manner that is appropriate, and conducting the relevant tests within specified timescales.

37. The Council will be working with the currently commissioned providers and the potential new provider(s) to ensure there is a seamless transition in place from 1 August 2019.

38. A copy of the Equalities Impact Assessment can be found in Annex 1 of this report. The EIA has been approved by the CFLC Leadership Team and the CFLC Directorate Equality Group.

**OTHER IMPLICATIONS:**

39. The potential implications for the following Council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below:

<b>Area assessed:</b>	<b>Direct Implications:</b>
Corporate Parenting/Looked After Children	Set out below
Safeguarding responsibilities for vulnerable children and adults	Set out below
Environmental sustainability	No significant implications arising from this report
Public Health	Set out below

**SAFEGUARDING RESPONSIBILITIES FOR VULNERABLE CHILDREN AND ADULTS IMPLICATIONS**

40. A consistent and streamlined approach to purchasing forensic testing services should help to minimise drift and delay during pre-proceedings and care proceedings and

ensure a high quality, timely service is delivered. Thus, impact on the families will be positive and less onerous.

41. Using the resource of the Gateway Team to purchase services will free up social worker time, leaving social workers to get on with the job of supporting vulnerable families.
42. Robust and regular contract monitoring of the three providers will have a strong focus on provider's performance and ensure that the safety of children, young people and vulnerable adults remains a priority at all times.

#### WHAT HAPPENS NEXT:

43. The timetable for implementation is as follows:

Action	Date
Cabinet Member approval	6 June 2019
Contract award (allowing for standstill)	21 June 2019
Mobilisation meetings with successful providers	June – July 2019
Contracts to be signed and returned	w/c 24 June 2019
Framework commencement date (contract start date)	1 August 2019

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#### Annexes:

Annex 1 – Equality Impact Assessment  
Annex 2 – Part 2 Report

#### Sources/background papers:

- [Children's Commissioner \(2018\), \*Estimating the prevalence of the toxic trio\* - <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2018/07/Vulnerability-Technical-Report-2-Estimating-the-prevalence-of-the-toxic-trio.pdf> \(accessed 03.08.18\)](https://www.childrenscommissioner.gov.uk/wp-content/uploads/2018/07/Vulnerability-Technical-Report-2-Estimating-the-prevalence-of-the-toxic-trio.pdf)
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  - Surrey County Council (2018), *Needs Analysis for Forensic Testing and Expert Assessments in Surrey*
  - Surrey County Council (Internal document available on S-Net): *Child First: Commissioning Intentions for Children in Surrey 2017 – 2022*
  - Surrey County Council Finance Data
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