



UKHCA Case Study

## **Procurement challenge case study**

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Prepared for UKHCA member organisations by:

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# Table of Contents

Procurement challenge case study ..... 3

## **Disclaimer**

Whilst every effort is made to ensure the accuracy of this case study content, advice should be taken before action is implemented or refrained from in specific cases. The legal provisions referred to relate to the law in England & Wales; as Scotland and Northern Ireland are distinct and separate jurisdictions within the United Kingdom, advice should be sought from lawyers qualified to practise in those jurisdictions where appropriate.

## Procurement challenge case study

We advised about a procurement challenge against the award of a contract by a County Council. We obtained an emergency injunction for the client which effectively forced the Council to re-run part of its procurement process.

Our client is an existing provider of domiciliary care (care at home) on behalf of the Council. The Council decided to re-tender its domiciliary care packages. Being a public body, the Council elected to follow a procurement process under the procurement rules set out in the Public Contracts Regulations 2006.

As part of the procurement process, the Council chose to hold an interview. The invitation to tender ("ITT") stated that the interview accounted for 40% of the available marks. Unfortunately for our client, it was not clear from the ITT what was being measured at interview, or what criteria were to be applied to score the interview. As a result, there was a risk that the Council could have just awarded high marks to people it felt it could get along with and low marks to people the interviewing panel happened not to like.

The procurement rules state that the criteria public bodies use to score bids, and the weighting attached to each of the criteria, must be set out in the tender documents. Procurement processes must be fair and transparent.

We advised our client that the Council should be asked

- not to sign contracts with the winning bidders; and
- to re-run the procurement process.

As the Council would not agree to this, we advised that an injunction should be obtained to prevent the Council signing a contract with the winning bidders from the unfair process. A Judge was found on a Saturday and, after arguments were presented, granted our client an emergency injunction to restrain the Council from signing contracts.

Having had an injunction served against it, the Council then agreed to re-run the interviews in a fair and transparent manner and pay our clients costs of bringing the proceedings.

If you feel that a procurement process is unfair and would like an initial discussion about the available options, please feel free to contact Richard Brooks or Mark Cook on 0121 212 7490 or email [richard.brooks@anthonycollins.com](mailto:richard.brooks@anthonycollins.com) or [mark.cook@anthonycollins.com](mailto:mark.cook@anthonycollins.com) .

Anthony Collins Solicitors LLP

11 May 2009

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#### **UKHCA Briefing for Members on Challenging Unfair Tender Processes**

This case study is accompanied by a UKHCA Briefing on challenging unfair tender processes, available only to UKHCA members. To download, go to [www.ukhca.co.uk/members/downloads.aspx](http://www.ukhca.co.uk/members/downloads.aspx) , with username and password.

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