

CABINET MEMBER DELEGATED DECISION 03 SEPTEMBER 2020

Report title: Barristers' Framework

Wards: All

Portfolio: Councillor Maria Kay, Cabinet Member for Finance and Performance

Report Authorised by: Alison McKane, Director of Legal and Governance

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Report summary

This report seeks approval to join the London Boroughs' Legal Alliance (LBLA) Barristers' Framework to enable the Council's Legal Services division to instruct external legal practitioners on behalf of various business units to undertake specialist legal advisory and litigation advocacy work which it either does not have the capacity, or specialist skills to undertake itself. The range of litigation and advisory work includes housing and general litigation, planning litigation and child-care proceedings.

Finance summary

The value of services purchased under the recommended framework is estimated at approximately £4m from 1 September 2020 to 31 December 2024. Expenditure will be borne by the business unit commissioning the services under each instruction from its budget and may be either revenue or capital depending on the nature of the instruction.

Membership of the LBLA framework is £6,382 per annum or a total of £25,528 over the four years. This will be paid from Legal Services' budget.

Recommendations

1. To approve the Council joining the London Boroughs' Legal Alliance (LBLA) as an associated member to enable use of their barrister framework to provide barrister services to the Council for the period 1 September 2020 to 31 December 2024 at an estimated value of £4m. Please note details of individual providers (chambers) in Appendix A.
2. To approve the Council entering into an access agreement with the City of London Corporation for participation in the LBLA framework and an agreement with Kennedy Cater Limited, who manage the framework at an estimated annual cost of £6,382 or a total fee of £25,528 over four years.

1. CONTEXT

- 1.1 The Council has a requirement for specialist legal advisory and litigation advocacy services which it either does not have the capacity or specialist skills to undertake itself. The range of litigation and advisory work includes housing and general litigation, planning litigation and child-care proceedings. Legal practitioners generally practise either as barristers or solicitors. The Council has a current solicitors' framework, which is not the subject of this report.
- 1.2 The Council currently operates a joint barristers' framework with the London Borough of Southwark. The current framework commenced on 1 September 2016 and is due to expire on 31 August 2020. As frameworks are generally not permitted to exceed four years' duration it cannot be extended.
- 1.3 In order to provide continuity of service and minimise procurement costs it is proposed that the Council joins an existing framework run by the LBLA.

2. PROPOSAL AND REASONS

- 2.1 The joint arrangement with Southwark dates back to 2012 but they have decided not to continue with it and have advised that they will access the LBLA framework. This has left Lambeth with a choice between commencing a new procurement process or finding a framework to use.
- 2.2 LBLA's frameworks are currently used by 20 London Boroughs, the City of London, the London Fire Commissioner and three local authorities outside of London. Their Barristers Framework has 26 Chambers (an organised grouping of self-employed barristers) across eight lots. The framework commenced on 1 January 2020 and runs to 31 December 2024. The eight lots cover all of the Council's anticipated requirements and include:
 - a. Adult Social Services;
 - b. Children's Services;
 - c. Governance and Public Law;
 - d. Criminal Litigation and Prosecutions;
 - e. Housing;
 - f. Planning;
 - g. Property; and,
 - h. Civil Litigation.
- 2.3 The recommendation is that the Council accesses the LBLA barristers' framework as it meets the full range of the Council's requirements and will allow the Council to make direct awards and where appropriate undertake a mini competition. In summary, the benefits of this framework are:
 - a. It provides a wide range of barristers with the required expertise;
 - b. It provides certainty as to the cost of instructing barristers;
 - c. It allows for cost savings through economies of scale, both in terms of shared procurement costs and potentially lower prices due to the increased volume of work; and,
 - d. It provides the means for monitoring and controlling expenditure.

This option is therefore recommended as the most advantageous for use by the council.

Contract Management

- 2.4 In order to join the LBLA framework the Council is required to pay an annual fee to Kennedy Cater, who manage the framework on behalf of LBLA. In return the following contract management services are provided:
- a. A comprehensive analysis of expenditure by category and barrister chambers for each authority;
 - b. Spot checking of invoices to ensure adherence to agreed rates;
 - c. Monthly reports provided on spend, including wider trends;
 - d. Ensuring database rates and personnel on the framework remain accurate;
 - e. Management of strategic relationship with barrister chambers; and,
 - f. Negotiations with barrister chambers to provide information where required.
- 2.5 The Council's Legal Services division will manage the contract through Kennedy Cater. The management services provided by Kennedy Cater will reduce the call on resources needed from the Council's legal teams in managing the service. The cost of membership is £6,382 per annum, or £25,528 over the maximum period of four years, and is deemed good value.

3. FINANCE

- 3.1 This report requests specialist barrister services via a framework and costs will be incurred as and when these services are required.
- 3.2 The value of services purchased under the recommended framework is estimated at approximately £4m from 1 September 2020 to 31 December 2024. This estimate is based on expenditure over the last 4 years. Expenditure for the financial year 2019-20 was £836,849, for instance, but expenditure varies from year to year. Expenditure is driven by volume and a reduction to unit costs is not anticipated. Fees are paid by the commissioning business unit so there is no dedicated budget for expenditure on barrister services.
- 3.3 There is a fee for participating in the framework, amounting to £25,528 over the 4 years. This will be met from existing legal services budgets.
- 3.4 There are no savings envisaged for this contract.

Benchmarking

- 3.4 Due to confidentiality issues, it has not been possible to obtain the full pricing schedule for the new framework. However, LBLA provided indicative fees which indicate a comparable level of fees to our current arrangements which gives us a level of assurance in terms of value for money. A further check on this relates to the operation of the framework internally, which requires all client departments using the framework via legal services to sign off on the spend before any particular barrister is engaged.

4. LEGAL AND DEMOCRACY

- 4.1 The authority to award the contracts set out in this report has been delegated to the Cabinet Member for Finance and Performance.
- 4.2 Legal services are categorised within Schedule 3 of the Public Contracts Regulations 2015, meaning the contracts for such services are governed by the 'Light Touch' procurement regime. Under the regime, contracting authorities are obliged to publish a notice in the Official Journal of

the European Union if the estimated value is over the threshold of £633,540. However, there is no requirement to publish a notice or to otherwise advertise the contract opportunity when calling-off a framework which has been procured in compliance with the regulations provided the Council is named, or is part of an identifiable group cited, in the contract notice published in respect of the framework. The council must adhere to the provisions of the framework in awarding contracts from it.

- 4.3 Comments will include Forward Plan, pre-decision publication arrangements.
- 4.4 This proposed key decision was entered in the Forward Plan on 3 August 2020 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. CONSULTATION AND CO-PRODUCTION

- 5.1 In coming to the decision to propose calling-off the LBLA framework, Legal Services officers have been in discussions with their counterparts in Southwark and have concluded that the framework offers a comprehensive service and fulfils the council's requirements.

Table 1 – Stakeholder Matrix:

Stakeholders	Interest	Action
Procurement Officer	All stages from Pre-Business Case to Award of Contract.	<ol style="list-style-type: none"> 1. Conduct pre-procurement engagement. 2. Consult on each stage of procurement (GW1, GW2, GW3). 3. Consult on execution of contract.
Cabinet Member	GW2 and GW3 To Approval of Contract	<ol style="list-style-type: none"> 1. Consulted on each stage of procurement (GW2, GW3).
Project Sponsor (Strategic Director)	Successful delivery of contract arrangements and securing Cabinet Member Buy-in.	<ol style="list-style-type: none"> 1. Met and discussed approach to Cabinet Member. 2. Kept Strategic Director updated on procurement.
Management Team	Quality of contract Strategic Objectives	<ol style="list-style-type: none"> 1. Consulted on arrangements for proposed contract.

6. RISK MANAGEMENT

- 6.1 The main risks that impede on the successful delivery of this procurement and contract are:

Item	Risk	Likelihood	Impact	Score	Control Measures
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1	The framework does not cover all areas of the council's work	2	1	2	The Council retains discretion to instruct other Chambers. The Council's due diligence indicates that all disciplines are covered by the framework.
2	Loss of control over choice of barristers	2	1	2	Each lot comprises several Chambers and each Chambers comprises many barristers at all levels of experience and seniority. The council retains discretion to instruct other Chambers within the bounds of its contract standing orders.
3	Dissatisfaction with the range and quality of barristers available	2	2	4	The LBLA framework includes a higher number of providers in high volume areas (such as the children's panel which has 11 Chambers). The council retains discretion to instruct other Chambers within the bounds of its contract standing orders.
4	Lambeth joining the framework will put extra demand on the same sets of Chambers	2	2	4	Legal Services will monitor this, but each lot appears to comprise a sufficient number of chambers and barristers. The LBLA framework includes a higher number of providers in high volume areas (such as the children's panel which has 11 Chambers).
5	Market factors cause Chambers to close	2	1	2	One Chambers has closed since the framework was let, and therefore there is a reduced capacity in two lots (Lots 7 and 8). However, as noted above the LBLA framework includes a higher number of providers in high volume areas which should mitigate this risk. This will continue to be monitored by the Council.

Key

Likelihood	Very Likely	4	Likely	3	Unlikely	2	Very Unlikely	1
Impact	Major	8	Serious	4	Significant	2	Minor	1

7. EQUALITIES IMPACT ASSESSMENT

- 7.1 Barristers are regulated by the Bar Standards Board, which requires that barristers' Chambers conduct regular reviews of their policy on equality and diversity and implementation of their policy. It also requires individual barristers (who are technically self-employed) to take reasonable steps to ensure that their Chambers comply. An equalities impact assessment was carried out and signed off by the Director of Legal and Governance on 23 July 2020.

8. COMMUNITY SAFETY

- 8.1 Section 17 of the Crime and Disorder Act 1998 imposes a duty on each local authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment). It is essential that the Council has mechanisms in place to ensure that it is properly resources to meet this duty.

9. ORGANISATIONAL IMPLICATIONS

Environmental

- 9.1 Not applicable.

Health

- 9.2 Not applicable.

Corporate Parenting

- 9.3 Not applicable.

Staffing and accommodation

- 9.4 Not applicable.

Responsible Procurement

Good Quality Jobs with Fair Pay and Decent Working Conditions

- 9.5 It is expected that barristers and their office staff will already be paid in excess of the London Living Wage, but the framework contracts between the City of London and the Chambers bind the Council, which therefore cannot stipulate additional conditions.

- 9.6 The Modern Slavery Act 2015 does not apply to this procurement because barristers are self-employed, and each Chambers only employs a few administrative staff. The Bar Standards Board (BSB) has extensive guidance and policies on money laundering, and whistleblowing. All barristers and chambers support staff are free to join a trade union.

Quality Apprenticeships, targeted Employment for Lambeth residents and Lambeth Priority Group

- 9.7 In 2018 the Bar Standards Board (BSB), which regulates barristers, announced that pupillage awards across England and Wales would be set in line with the salaries recommended by the Living Wage Foundation. In 2019 the Bar Standards Board created an apprentice route to qualification as a barrister.
- 9.8 Bidders were encouraged to provide benefits such as the provision of work experience, volunteering, (paid) internship and pupillage opportunities targeted to help improve social mobility – e.g. provision of support to schools by way of mentoring or talking to groups of pupils about careers in the law. Materials and approach should be made accessible to young people of all socio-economic groups.

9.9 Barristers also engage in pro-bono free advisory work.

9.10 There is no scope for extracting direct employment opportunities as this is a framework used by 26 other contracting authorities.

Reduce Emissions: Lambeth Council has a commitment to being Zero Carbon by 2030

9.11 The proposed procurement for works and goods lends itself to reducing emissions either through reducing vehicle emissions and CO2 emissions. Barristers are based close to the principal courts and typically walk to the courts or use public transport to travel to farther flung courts and tribunals.

9.12 Section 17 of the Bar Council's manual 'Practice Management for the Bar' deals with general chambers' administration, including premises and facilities, and has extensive guidance to its members on carbon reduction and general environmental responsibility.

Positive Health and Wellbeing

9.13 None of the Chambers have more than 250 staff and are therefore not subject to the London Healthy Workplace Charter or equivalent, signing of the Time for Change Employers Pledge and Suicide Prevention Strategies.

10. TIMETABLE FOR IMPLEMENTATION

10.1 The table below details the stages and deadlines for implementing the recommendations:

Activity	Proposed Date
Date published on Forward Plan	03.08.20
Publication on Decisions online	25.08.20
Cabinet Member Decision	03.09.20
End of call-in period	10.09.20
Execution of Contract	11.09.20
Commencement of Contract	11.09.20

AUDIT TRAIL				
Consultation				
Name and Position/Title	Lambeth Directorate	Date Sent	Date Received	Comments in paragraph:
Councillor Maria Kay	Cabinet Member for Finance and Performance	31.07.20	03.08.20	
Alison McKane, Director	Legal and Governance	15.07.20	30.07.20	
Hamant Bharadia, Assistant Director	Finance and Investment	29.07.20	30.07.20	3
Andrew Pavlou, Legal Services	Legal and Governance	15.07.20	30.07.20	4
David Rose, Democratic Services	Legal and Governance	29.07.20	04.08.20	All
Prakash Bijwe, Corporate Procurement	Finance and Investment	28.07.20	29.07.20	Throughout
Leena Khatri, Sustainability Officer	Sustainable Growth and Opportunity	12.08.20	13.08.20	9

REPORT HISTORY	
Original discussion with Cabinet Member	29.07.19
Report deadline	04.08.20
Date final report sent	04.08.20
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	03.08.20
Key decision reasons	Expenditure, income or savings in excess of £500,000.
Background information	London Boroughs' Legal Alliance (LBLA) Barristers' Framework 1 September 2016 Framework Public Contracts Regulations 2015 Crime and Disorder Act 1998 Modern Slavery Act Bar Standards Board (BSB) guidance and policies Bar Council's manual 'Practice Management for the Bar'
Appendices	Appendix A – LBLA framework lots Appendix B - Equalities Impact Assessment

APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board, and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Post: Andrew Pavlou,
Principal Lawyer, Governance

I approve the above recommendations:

Signature: _____ **Date:** _____

Post: Alison McKane,
Director of Legal and Governance

I and approve the above recommendations:

Signature: _____ **Date:** _____

Post: Councillor Maria Kay,
Cabinet Member for Finance and Performance

Any declarations of interest (or exemptions granted): None

Any conflicts of interest: None

Any dispensations: None

- Cornerstone
- Francis Taylor Buildings
- Landmark

Lot 7 – Property

- 5 Paper
- The 36 Group

- Cornerstone

Lot 8 – Civil Litigation

- The 36 Group
- 42 Bedford Row
- Cornerstone
- Field Court
- Serjeants' Inn