

## **CABINET MEMBER DELEGATED DECISION, 10 SEPTEMBER 2020**

**Report title:** Extension of Insurance Legal Services framework

**Wards:** All

**Portfolio:** Cabinet member for Finance and Performance, Councillor Maria Kay

**Report Authorised by:** Strategic Director, Finance & Investment, Fiona McDermott

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### **Report summary**

This report requests approval for a further contract variation to the four existing suppliers on the Council's insurance legal services framework to allow the Council to continue to deal with the wide range of litigated claims that it receives and to effectively deal with the compensation Redress Scheme for survivors of historic child abuse.

In addition to the extension of the scheme the level of disbursements incurred by the council's solicitors in processing redress applications has been significantly higher than anticipated at the outset. Disbursements are pass through costs rather than the suppliers own charges and are for payments made to other parties by suppliers for items such as chronologies of social care records, applicant medical examinations and reports. To ensure continuity of service and to avoid any disruption to the processing of applications this report sets out proposals for a contract variation through to the end of the Redress Scheme whilst a re-procurement of the current framework takes place.

### **Finance summary**

The cost of this further variation of £6m is to take account the increased level of disbursements that have been incurred to date (£3m) and those further disbursements expected to be received through to the end of the scheme (£3m). This report also seeks to further extend the period of the framework by nineteen months through to 31 December 2022 to take account of the extension to the closing date approved by Cabinet in September 2019.

Costs under the framework are subject to variation depending upon the actual numbers of compensation claims and redress applications received. There is no minimum expenditure against this contract as it will only be called upon when necessary to deal with compensation/redress claims received.

## Recommendations

- (1) To approve a contract variation to increase the value of the existing insurance legal services framework by £6,000,000 taking the total cost under the framework to £16.2m to allow for the cost of disbursements incurred in handling civil litigation cases and redress claims, for the four suppliers listed below:

Kennedy's LLP;  
Browne Jacobson LLP;  
Berryman's Lace Mawer LLP; and,  
Clyde & Co LLP.

- (2) To approve an extension to the existing four suppliers under the insurance legal services framework to extend the period of the original contract for a further nineteen months from 31 May 2021 to 31 December 2022 to ensure a period of continuity during the operation of the historic abuse Redress Scheme.
- (3) To waive contract standing order requirement for competition.

## **1. CONTEXT**

- 1.1 The Council developed an insurance legal services framework comprising of a total of four procured law firms that can provide the council with legal advice in relation to civil compensation claims and to handle litigated claims on behalf of the council. The four law firms are:

Kennedys LLP  
Browne Jacobson LLP  
Berrymans Lace Mawer LLP  
Clyde & Co LLP

- 1.2 The framework does not guarantee any particular volume of work for suppliers, instead the council is able to call against suppliers as and when the need arises such as when litigated and/or complex compensation claims are received. The council has no control over the types and volumes of claims that are submitted against it, but it does have a legal obligation to comply with the Civil Procedure Rules (CPR) under which such claims are required to be dealt with.
- 1.3 Spend incurred under the contract is dependent upon a number of factors such as the volume, type and complexity of the cases dealt with and whether cases proceed to trial or not.
- 1.4 The insurance legal services framework was last re-procured via the EU Supply e tendering system in 2014 for a contract commencement date of 1 June 2015. The framework provides for a total of four law firms to support the council with legal advice and to deal with litigated and/or complex civil compensation claims that are made against the council. As part of this procurement the hourly rates for each of the four suppliers appointed were fixed for an initial three-year period from the commencement of the contract. For the remainder of the contract period hourly rates were subject to annual retail price index (RPI) adjustments. RPI adjustments will continue to be applied to the period of this extension.
- 1.5 In January 2018 a contract variation was approved to ensure that applications to the newly launched Lambeth Children's Homes Redress Scheme were able to be dealt with by the scheme solicitors Kennedys LLP, who are one of the law firms on the framework. Since this date the Council has approved a further two-year extension for the receipt of applications to the Redress Scheme.
- 1.6 The contract operates on a 'call off' basis as and when required and there is no minimum or guaranteed value of work under the contract.

## **2. PROPOSAL AND REASONS**

- 2.1 The cost of the framework for insurance legal services was initially estimated at £1.2m across all suppliers over the total period of the contract from June 2015 to May 2019. This total was based on an estimated spend for expected civil compensation claims at this time.

- 2.2 Shortly after the framework became operational in 2015 the Council faced an increased volume of non-recent child abuse claims and had made a commitment by 2017 to launching a redress scheme as a mechanism to offer redress.
- 2.3 The Redress Scheme opened to new applications in January 2018 and a variation to the insurance legal services framework was agreed the same month which extended the period by a further two years from June 2015 to May 2019 and increased the estimated cost under the framework by a further £9m to a total of £10.2m over the entire period.
- 2.4 Since January 2018 the spend against civil compensation claims and redress applications for the Council's own legal costs has been broadly as expected, however the value of disbursements incurred on redress applications has been significantly greater than anticipated. Disbursements are paid for by the scheme solicitors for matters on redress applications such as the appointment of medical experts to undertake examinations of applicants and the production of medical reports, and also for the preparation and chronology of applicants care records by independent social workers.
- 2.5 Disbursements usually form only a minimal part of the bill of costs received from solicitors undertaking work on civil compensation claims for the Council under the framework. The Redress Scheme was the first of its kind in the country and therefore there was no comparable data on typical disbursements under such a scheme at the start of the contract and there still isn't anything of relevance now. More applicants than expected have proceeded to medical examination and the care records in some instances are voluminous resulting in significantly increased disbursement costs.
- 2.6 The Council has no control over disbursements, and although providers under the framework pay these costs to the various suppliers and then re-charge these to the Council, these are not payments in respect of professional services that the providers themselves have provided directly to the Council.
- 2.7 The table below shows the actual spend since the contract start (against all four suppliers) and the value of disbursements included in respect of the Redress Scheme:

<b>Year</b>	<b>Civil claims handling (£)</b>	<b>Redress scheme (£)</b>	<b>Redress disbursements (£)</b>	<b>Total spend (£)</b>
2015/16	290,734	16,400	0	<b>307,134</b>
2016/17	310,309	171,180	0	<b>481,489</b>
2017/18	231,564	307,113	0	<b>538,677</b>
2018/19	175,042	1,219,496	378,436	<b>1,772,974</b>
2019/20	236,514	2,334,527	2,407,158	<b>4,978,199</b>
<b>Total</b>	<b>1,244,163</b>	<b>4,048,716</b>	<b>2,785,594</b>	<b>8,078,473</b>

- 2.8 The spend against disbursements for redress applications accounts for approximately 35% of the total cost, whereas normally disbursements in civil claims are minimal, forming around only 1-2% of overall costs. If left, then the spend against disbursements would result in there being insufficient value against the contract to meet the incurred costs of the law firms handling civil and redress claims.

- 2.9 The services of the law firms on the framework are essential. Not having recourse to such legal support is not an option and would leave the Council exposed to significant risk and increased costs. This is the case in respect of the Redress Scheme or civil litigation case.
- 2.10 The total expenditure under the framework to 31 March 2020 is £8.0m and it is now proposed to increase the value of the existing insurance legal services framework by a further £6,000,000 solely to cover the cost of those disbursements incurred to date and those expected through to the end of the Redress Scheme.
- 2.11 In September 2019 Cabinet agreed to extending the closing date for applications to the Redress Scheme by a further two-year period with a revised closing date of 1 January 2022. The current expiry date of this contract is 31 May 2021.
- 2.12 In addition to increasing the value of the contracts under the framework it is also therefore necessary to extend the term of these contracts to ensure that this covers the entire period that any redress scheme is operational. An extension of nineteen months is proposed which would create a new contract expiry date of 31 December 2022 (existing expiry date is 31 May 2021).
- 2.13 The revised period should allow for enough time for any residual applications still open within the Redress Scheme to be concluded after the closing date.
- 2.14 It is further proposed to commence a re-tendering process for the procurement of a new insurance legal services framework to start on 1 January 2023 (the end of the existing term). This re-tendering exercise will commence during the nineteen-month extension period.
- 2.15 The current supplier rates on the original framework have been subject to RPI increases. Rates would be subject to RPI increases for the nineteen months extension period.
- 2.16 It is necessary to negotiate with suppliers an extension to this contract due to both the extension of the deadline for applications to the Redress Scheme and the significant increase in the level of disbursements both of which were unforeseeable events. The extension to the Redress Scheme was because of ongoing delay to the date of Council's public hearings in the Independent Inquiry into Child Sexual Abuse (IICSA) and the level of disbursements has been increased due to circumstances outside of the control of the Council. The disbursements cannot be separated from the original contract without causing significant inconvenience and delay which would ultimately be to the detriment to redress applicants themselves and there is an urgency to ensure that those entitled to redress are able to be paid as promptly as possible.

### **3. FINANCE**

- 3.1 The cost of the original framework for insurance legal services was estimated to be in the region of £1.2m for the period from June 2015 to May 2019. A variation to the framework was approved in January 2018 to increase the estimated spend by a further £9m to £10.2m to take account of the influx of claims arising from the Lambeth Children's Homes Redress Scheme and to extend the period by a further two years through to May 2021. As at the

end of March 2020 the total spend against the framework has been £8.0m however some £2.8m of this spend to date has been solely in relation to disbursements (payments made to other parties by the council's solicitors for items such as chronologies of social care records, applicant medical examinations and reports). This level of disbursements has been significantly higher than originally estimated

- 3.2 The cost of this contract variation seeks to increase the length of the contract by a further nineteen months until 31 December 2022. The total cost for insurance legal services (including disbursements) is likely to be up to £16.2m over the total period (£10.2m + £6.0m) as costs are likely to increase for the remainder of the contract as work on the Redress Scheme applications continue to be dealt with. It should be noted that the actual costs may be subject to a wide variation depending upon the actual need as the Council has no control over the number of compensation claims made against it. There is no minimum expenditure against this contract as it will only be called upon when necessary to deal with compensation and redress claims received.

#### **4. LEGAL AND DEMOCRACY**

- 4.1 The Council has delegated the authority to enact this report's recommendations to the Cabinet Member for Finance and Performance, acting in consultation with the Leader of the Council. Before exercising that authority, this report should be reviewed by the Procurement Board.
- 4.2 The Contract Standing Orders includes provision for officers to waive the Contracts Standing Orders in circumstances such as urgency or where it is demonstrably in the Council's best interest to do so.
- 4.3 Legal services are categorised in schedule 3 the Public Contracts Regulations 2015 and as such are subject to the 'light touch' procurement regime. The Regulations allow contracting authorities to negotiate contract extensions where it is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, and / or where additional services are required from the contractor that through unforeseen circumstances were not included in the original contract. It must be the case that the additional services cannot be technically or economically separated from the original contract without great inconvenience to the contracting authority, or although separable, are strictly necessary for the completion of the original contract.
- 4.4 This proposed key decision was first entered in the Forward Plan on 08 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 The Council consulted with various internal customers that were end users of the framework for their views however there were no recommendations arising. Ongoing consultation with users takes place as part of contract monitoring.

## 6. RISK MANAGEMENT

6.1 The contractor(s) have in place all necessary insurance requirements to indemnify the council as part of existing contract requirements. Without this contract in place the council would be exposed to increased risk as it would still have an obligation to deal with those claims made against it in accordance with the relevant civil framework and under the Redress Scheme.

6.2 Due diligence checks are up to date and all the contractors maintain updated business continuity plans and have confirmed that these have been updated in respect of Brexit and Covid-19 considerations. There are no identified risks to this framework from these.

6.3 All the contractors maintain GDPR compliant data protection policies and utilise electronic encryption and secure document transfer services when processing personal data under the framework.

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

Item	Risk	Likelihood	Impact	Score	Mitigation / control measures
1	Solicitor provides inaccurate advice on handling strategy leading to financial loss.	2	4	8	Suppliers hold professional indemnity insurance. Regular claims review to discuss strategy and available options.
2	Solicitor/s dealing with cases leave organisation to join another firm.	3	2	6	If individual solicitor handling a case moves to another firm on the framework, the case can transfer to the other firm. All suppliers required to maintain continuity arrangements to deal with such eventualities.
3	Performance of solicitor deteriorates or is not of satisfactory quality	1	4	4	Regular contract monitoring takes place in the form of annual contract review and regular case management & performance discussions.

## Key

<b>Likelihood</b>	Very Likely	4	Likely	3	Unlikely	2	Very Unlikely	1
<b>Impact</b>	Major	8	Serious	4	Significant	2	Minor	1

## 7. EQUALITIES IMPACT ASSESSMENT

- 7.1 An equalities impact assessment was completed as part of the original decision and reviewed as part of the previous decision report of 8 February 2015. An updated equalities impact assessment has been reviewed considering the additional changes proposed and assessed as having no adverse impact.

## 8. COMMUNITY SAFETY

- 8.1 Not applicable.

## 9. ORGANISATIONAL IMPLICATIONS

### Environmental

- 9.1 There are no environmental implications arising directly from this contract. All the suppliers are committed to reducing environmental impact through recycling, reduction of carbon emissions and waste reduction. Most of the services provided under the contract are delivered electronically where possible, thereby minimising paper usage.

### Health

- 9.2 None.

### Corporate Parenting

- 9.3 None.

### Staffing and accommodation

- 9.4 None.

### Responsible Procurement

- 9.5 The procurement of the Insurance Legal Services framework was undertaken by means of an OJEU competitive dialogue in 2014/15e 2015.

### Good Quality Jobs with Fair Pay and Decent Working Conditions

- 9.6 The contract included a requirement to meet the London Living Wage.

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

- 9.7 Contractors offer apprenticeships within their organisations and in addition offer work experience opportunities, schools outreach programme, Pro-Bono legal work for community and charities and are encouraged to offer locally where practicable.

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

- 9.8 This contract is for the provision of services that are mainly delivered electronically. All suppliers are committed to reducing environmental impacts.

Other Offers (Innovation)

- 9.9 Provision of non-chargeable ad-hoc training and support on non-allocated cases to the insurance team and offers of community support days for Lambeth schools.

## 10. TIMETABLE FOR IMPLEMENTATION

- 10.1 The table below shows the timetable for implementation:

<b>Activity</b>	<b>Date</b>
Publication on Forward Plan	08.08.20
Publication on Decisions Online	02.09.20
Cabinet Member Decision	10.09.20
Call in Period	11.09.20 to 17.09.20
Execution of Contract Variation	18.09.20

- 10.2 This contract will be monitored through a formal contract review on an annual basis. Due to the nature of the services provided under this contract regular contract monitoring discussions are held with the contractor.

<b>Audit trail</b>				
<b>Consultation</b>				
<b>Name/Position</b>	<b>Lambeth directorate/division or partner</b>	<b>Date Sent</b>	<b>Date Received</b>	<b>Comments in para:</b>
Councillor Jack Hopkins	Leader of the Council	15.07.20	19.08.20	
Councillor Andrew Wilson	Cabinet member for Finance & Performance	29.05.20	04.06.20	
Councillor Maria Kay	Interim cabinet member for Finance & Property	04.06.20	12.08.20	
Fiona McDermott, Strategic Director, Finance & Investment	Finance & Property	29.05.20	01.06.20	
Christina Thompson, Director Finance & Property	Finance & Property	13.05.20	19.05.20	
Nisar Visram, Assistant Director Finance	Finance & Property	13.05.20	16.05.20	
Michael O'Hora, Senior Contracts Lawyer	Legal & Governance	01.05.20	04.05.20	4.1 – 4.4
David Rose, Democratic Services	Governance and Democracy	13.05.20	15.05.20	Throughout
Leena Khatri, Sustainability Technical Officer	Sustainability	23.06.20	24.06.20	
Prakash Bijwe, Senior Procurement Officer	Finance & Property	06.05.20	07.05.20	Throughout

<b>Report history</b>	
<b>Original discussion with Cabinet Member</b>	24.07.17
<b>Report deadline</b>	N/A
<b>Date final report sent</b>	N/A
<b>Report no.</b>	N/A
<b>Part II Exempt from Disclosure/confidential accompanying report?</b>	No
<b>Key decision report</b>	Yes
<b>Date first appeared on forward plan</b>	08.06.20
<b>Key decision reasons</b>	Expenditure, income or savings in excess of £500,000
<b>Background information</b>	<a href="#">Insurance Legal Services decision 2015</a> <a href="#">Insurance Legal Services decision - 2018</a>
<b>Appendices</b>	None

**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** Mark Nicolson

Head of Risk & Insurance

**I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council, and approve the above recommendations:**

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Post** Councillor Maria Kay

Cabinet member for Finance & Performance