

Notice of KEY Executive Decision

Subject Heading:	Use of the LBLA Barristers Framework Agreement as and when services are required
Cabinet Member:	Leader of the Council
SLT Lead:	Jane West
Report Author and contact details:	Joanna Swinton-Bland oneSource Legal Services 1000 Dockside Road Newham Phone: 020 3373 3744 Email: jo.swintonbland@onesource.co.uk
Policy context:	Commission services in a way that provides the best possible value for money.
Financial summary:	Estimated spend over 3 years + 1 (based on previous usage) is £841,000
Reason decision is Key	Expenditure or saving (including anticipated income) of £500,000 or more
Date notice given of intended decision:	3 rd March 2020
Relevant OSC:	Overview and Scrutiny Board
Is it an urgent decision?	No
Is this decision exempt from being called-in?	No

The subject matter of this report deals with the following Council Objectives

Communities making
Havering
Places making
Havering



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Opportunities making
Havering
Connections making
Havering

[x]

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Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

That approval be given to call-off services from the London Boroughs' Legal Alliance (LBLA) Barristers Framework as and when required for a period of 3 years from January 2020.

AUTHORITY UNDER WHICH DECISION IS MADE

Part 3 of the Constitution and Section 3.3 (Powers of Members of the Senior Leadership Team)

Contract powers: (a) To approve commencement of a tendering process for all contracts above a total contract value £500,000.

STATEMENT OF THE REASONS FOR THE DECISION

The London Borough of Havering is a member of the London Boroughs' Legal Alliance which is a network of 22 London boroughs' legal services. The LBLA procures framework agreements for solicitors and barristers services obtaining significant costs savings. The services are provided on a call off basis so the Council is not obliged to instruct barristers and solicitors on the Framework (but Legal Services' policy in practice is only to use framework barristers due to the cost savings, save with the Director or Deputy Director's approval).

Estimated savings achieved under the current Framework for the period from 1 January 2016 to 31 December 2019 for Havering are estimated to be £258,641 against a total spend of £841,449.

The Framework also comes with additional value added benefits described below.

The Framework commenced on 1 January 2020 and will continue for a period of three years, subject to the City Corporation's option to extend the Framework for a further period of one year. Cabinet approval is sought to join the agreement. Chambers are currently providing the services at the Framework rates in anticipation of the Council joining.

The services from barristers are divided between the following lots with the chambers identified in Appendix A appointed to each Lot:

- Lot 1 - Adult Social Services
- Lot 2 - Children's Services
- Lot 3 - Governance & Public Law
- Lot 4 - Criminal Litigation & Prosecutions
- Lot 5 - Housing
- Lot 6 - Planning
- Lot 7 - Property
- Lot 8 - Civil Litigation

Within each lot, there are 5 bands of barristers based on experience with different levels of costs as well as fixed prices for certain work. This provides greater certainty when estimating legal costs of cases and the pricing offered by bidders represents significant discounts on their standard pricing, both in terms of fixed fees for hearings and hourly rates. Discounts range from 5% to 75%. There is a requirement for all successful bidders to apply fixed and / or

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capped fees for all instructions unless there are exceptional reasons why this is not appropriate, in which case they are required to explain their reasons and to obtain the instructing authority's prior consent.

The use of the Framework will deliver value for money when the Council has to use external barristers; for specialist expert advice and advocacy in court. Legal Services often undertakes its own advocacy but our solicitors do not have rights of audience in the High Court and it is often more cost effective to use junior counsel.

Compliance with the Framework is monitored by a specialist company engaged by the LBLA that checks bills from Chambers, deals with disputes and provides overall spend on the Framework, broken down by lot. This information also provides valuable management information for planning and managing future spend. The Council's annual spend on counsel over the past 4 years:

2016/17 - £126k

2017/18 - £295k

2018/19 - £174k

2019/20 - £246k (forecast)

Costs can vary with the complexity and number of cases in any one year but the Framework provides savings based on rates where counsel is needed. The largest areas of spend are child protection and housing litigation.

In addition, Legal Services is developing a corporate approach to reduce the overall of volume and cost of spend on external legal services with barristers and solicitors to the Council. Use of the Framework will assist this.

In addition to cashable savings, the bidders have agreed to provide a range of Value Added and Social Value Benefits. Mandatory requirements are a minimum of 1 training session for each Lot to which they are appointed, Monthly Management Information and 20 minutes free advice for each potential new instruction. Bidders have also offered a range of additional free benefits which include additional training sessions and seminars, legal updates, legal research facilities, access to Chambers' conference rooms, secondments, legal surgeries, Pro Bono legal advice, supporting local charities, providing work experience to state school children and those from ethnic backgrounds.

OTHER OPTIONS CONSIDERED AND REJECTED

The Council may:

Undertake an individual procurement exercise for the provision of services by barristers. This is not recommended as it is unlikely to benefit from the

Procure barristers on a "case by case" basis so far as this is compliant with the Council's procurement rules. This is not recommended as the Council would not receive any discount

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save through individual negotiation on cases. (NB the LBLA framework is a “call off” contract and so the Council may instruct “non-Framework” barristers where this is appropriate or desirable such as a specialism not covered by the Framework).

Join a different Framework. There are no competitive alternatives and the Council has paid for free access to the Framework through its membership of the LBLA.

PRE-DECISION CONSULTATION

N/A

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name:

Designation:

Signature:

Date:

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS

The Council has a “general power of competence” under Part 1 Chapter 1 of the Localism Act 2011 which gives it the same power to act as that of an individual, subject to other statutory provisions limiting or restricting its use. The recommendation in this report is compatible with the above statutory power.

The Services covered by this report are exempt from the Public Contracts Regulations 2015 under Regulation 10(d). A procurement process was conducted by the City of London Corporation in accordance with Regulations 74–76 and the Light Touch Regime. The Procurement process conducted by the City of London Corporation appears to be a fully compliant procedure.

The Contract Award Notice (OJEU Ref: 2019/S 136-335408) was dispatched on 17 July 2019 and Participating Councils have until 31 December 2023 (subject to the Framework Agreement being executed for a further year) to call-off from this Framework.

There is no form of exclusivity or volume that is guaranteed under the Framework Agreement and the Council will be entitled to enter into other contracts with Chambers /Barristers outside of this Framework.

FINANCIAL IMPLICATIONS AND RISKS

The cost of the legal service will be met from existing revenue budgets allocated to cost centres for each financial year. There should be regular monitoring to ensure that spend is within budget and savings are being achieved. The spend and saving figures within the report have been supplied by London Boroughs' Legal Alliance. Finance have been unable to verify these from our records.

There is no direct cost as Legal Services' budget pays for the membership of the LBLA that includes the cost of Framework agreements. The purpose of the Framework is to regulate and reduce the cost of external legal services to the Council.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

There do not appear to be any HR implications or risks arising directly that impact on the Councils workforce.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010

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requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

HEALTH AND WELLBEING IMPLICATIONS AND RISKS

There do not appear to be any Health and Wellbeing implications or risks arising directly that impact on the Councils workforce.

BACKGROUND PAPERS

None

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed

Name:

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Committee Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on 10/3/2020

Signed 

Appendix A

Participating Chambers

Lot Adult Social Services	Chambers Cornerstone 9 Gough Square 39 Essex Chambers Doughty Street Field Court Sergeants' Inn	Lot Childrens Services	Chambers 4 Brick Court 9 Gough Square 33 Bedford Row 42 Bedford Row Five Pump Court 2 Dr. Johnson's Buildings Coram Field Court Garden Court New Court The 36 Group
Governance & Public Law	11 KBW Cornerstone Field Court Landmark Sergeants' Inn	Criminal Litigation	5 St Andrews Hill 187 Fleet Street Cornerstone Drystone Foundry The 36 Group
Housing	42 Bedford Row Cornerstone Field Court Five Paper Lamb Landmark	Planning	Landmark Cornerstone Francis Taylor Building 39 Essex Chambers 12 CP
Property	Cornerstone Ely Place Five Paper The 36 Group	Civil Litigation	42 Bedford Row Cornerstone Ely Place Field Court Sergeants' Inn The 36 Group

