

Agenda item:

[No.]

Cabinet

On 8 September 2009

Report Title: **The Council's Corporate Insurance Arrangements**

Report of: **Chief Financial Officer**

Signed :



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Wards(s) affected: **All**

Report for: **Key Decision**

1. Purpose of the report

- 1.1. To advise Members of the Council's current situation in relation to its corporate insurance arrangements following the cessation of the London Authorities Mutual Limited (LAML).
- 1.2. To request Cabinet approval for the proposed procurement strategy and proposals to purchase and arrange interim insurance cover.

2. Introduction by Cabinet Member

- 2.1. I concur with the recommendations contained within section 4 of the report.

3. State link(s) with Council Plan Priorities and actions and/or other Strategies:

- 3.1. The Council priority to deliver excellent, customer focused, cost effective services by ensuring that the Council's risk management framework is in place and operating effectively. The council's corporate insurance arrangements form part of the overall risk management approach.
- 3.2. Risk management forms a key element within the revised Use of Resources assessment and will continue to be part of the CAA from 2009 onwards. The implementation of appropriate insurance arrangements will ensure that the

requirements of the CAA assessment are fulfilled.

4. Recommendations

- 4.1. Cabinet is requested to note the outcome of the legal challenge to the London Authorities Mutual Limited (LAML).
- 4.2. Note the claims brought against Haringey Council by Risk Management Partners.
- 4.3. Note that short term temporary insurance cover is in place to 30 September 2009.
- 4.4. Waive Contract Standing Orders and delegate to the Chief Financial Officer the authority to agree the detailed arrangements for the extension of temporary insurance cover from 1 October 2009 until the commencement of the replacement longer term contract.
- 4.5. Approve the long term procurement of Insurance Services via a purchasing Consortium.
- 4.6. Delegate to the Chief Financial Officer, in consultation with the Cabinet Member for Resources, the authority to agree the detailed arrangements for participation in a purchasing consortium and the procurement of replacement insurance cover, including the award of the contract(s).

5. Reason for recommendations

- 5.1. Following the cessation of LAML, the Council needs to obtain further interim and longer term insurance cover in order to ensure its risks and liabilities are appropriately managed.
- 5.2. It will not be possible to procure suitable replacement longer term insurance cover for 1 October 2009, based on the time requirements of EU procurement regulations, therefore an extension of the existing temporary cover, previously agreed via LAML and Charles Taylor Consulting, will be required.
- 5.3. Procurement of insurance services via a purchasing consortium with other London boroughs is considered to represent the most effective means of securing medium term value for money for the Council since the cessation of LAML.
- 5.4. The proposed timetable to implement the detailed arrangements of the purchasing consortium and longer term insurance cover means that approval via Procurement Committee would delay Haringey's participation in the process and could lead to increased costs of insurance cover.

6. Other options considered

6.1. Purchasing stand-alone insurance cover for the Council using agreed procurement processes. This was not considered appropriate because:

- The insurance market for local authority risks has historically had a limited number of competitors, which has resulted in reduced competition and higher rates; and
- The current economic conditions and credit crunch has resulted in falling investment returns for insurers and a resulting reduction in capacity to underwrite risk. The market is expected to harden which could result in higher premiums during 2009/10.

7. Summary

7.1. This report outlines recent developments regarding the cessation of operation by the London Authorities Mutual Limited (LAML) following the outcome of litigation, along with background, objectives and timeline for the placing of alternative insurance arrangements via a consortium purchasing arrangement.

7.2. The original decision to participate in LAML was brought before Cabinet (then known as the Executive) at its meeting of 31 October 2006. The procurement of corporate insurance cover is a key decision as the costs of such contract(s) would exceed £500k. If a standard procurement approach was being undertaken, the approval and award of any contracts would be within the remit of the Cabinet Procurement Committee.

7.3. This report is brought before the Cabinet in order to seek approval for a variation to standard procurement procedures and a waiver of current standing orders and Contract Procedure Rules. Under Contract Procedure Rules 7.02 (a), the Cabinet may approve the waiver.

8. Chief Financial Officer Comments

8.1. The additional costs of circa £200k (para 13.2) for the temporary insurance cover is the estimated total cost that the Council has and will incur until the proposed new permanent contract is in place. This will be met from the Council's insurance reserve and not passed on to services via increased premiums.

8.2. In terms of the proposed new permanent replacement insurance, although Croydon will act as the overall procuring authority, once the contracts are in place each individual authority will monitor their policies against the agreed terms and conditions enabling effective client monitoring to take place. Although not yet quantifiable, as outlined in paragraphs 13.3 & 20.3, it is expected that savings over the pre-LAML contract prices can be obtained which will enable the authority to deliver on an on-going basis the pre-agreed savings from the insurance contracts.

8.3. Paragraph 18 highlights the current position as regards RMP claims against the authority. At this stage it is not possible to quantify any potential financial impact as

the outcome is uncertain.

9. Head of Legal Services Comments

9.1. The legal issues are contained in the body of the report.

10. Head of Procurement Comments

- 10.1 Haringey Contract Standing Order 6.09 states:
These Contract Standing Orders shall not apply where the Council procures particular goods, services or works:
as part of a group of public sector bodies contracting with one or more contractors (consortium arrangement), provided the contract standing orders of one of the public sector bodies constituting the group and/ or where applicable the Public Contract Regulations 2006 have been followed,
- 10.2 Provision therefore exists within Council Standing Orders and Public Procurement Regulations to procure using consortia arrangements.
- 10.3 The legal challenge to LAML was unforeseen and as a consequence, interim insurance arrangements had to be put in place in order to underwrite risks pending procurement of longer term arrangements.
- 10.4 Public Contract Regulations define the timetable to be applied to procurement projects and the lead authority in this case, Croydon is progressing as quickly as possible within prescribed constraints.
- 10.5 It is in the Council's overall best interests to put in place interim insurance arrangements (rather than not have any insurance at all) and also to procure longer term insurance by means of a consortium (subject to being legally robust).

11. Equalities & Community Cohesion Comments

11.1. This report deals with the Council's corporate insurance arrangements and the purchase of insurance cover for all areas of the Council, which have an impact on various parts of the community. Improvements in managing insurance policies and risk management will therefore improve services the Council provides to all sections of the community.

12. Consultation

12.1. No external consultation was required or undertaken in the production of this report.

13. Service Financial Comments

- 13.1. The council currently has an investment of approximately £340,000 of capital in LAML. It is expected that this will be returned once LAML is wound up.
- 13.2. There will be additional costs to the council for the replacement temporary insurance cover. The additional costs have not been finalised, but are expected to be approximately £200,000. The costs will be met by the Council's Insurance reserve.
- 13.3. It is anticipated that savings will be achieved in the purchasing of permanent replacement insurance via a Consortium procurement approach that would not be achievable if Haringey undertook a sole procurement process.
- 13.4. LAML members achieved individual savings of £200k per annum in insurance premium costs through the economies of scale by purchasing as a group. These levels of expected savings may be lost if an approach using a consortium is not used.

14. Use of appendices/Tables and photographs

- 14.1. Not applicable

15. Local Government (Access to Information) Act 1985

- 15.1. For access to the background papers or any further information please contact Anne Woods on 0208 489 5973.

16. Background

- 16.1 Haringey, along with a number of other London boroughs (Croydon, Brent, Tower Hamlets, Camden, Harrow, Lambeth, Hammersmith and Fulham, Kingston) participated in the set up of the London Authorities Mutual Ltd (LAML) in 2007. Haringey's participation was agreed to by the Cabinet (then known as The Executive) in their meeting of 31 October 2006.
- 16.2 Legal advice was obtained on the legality of the setting up of LAML, including providing financial guarantees along with placing insurance with the mutual. The advice given by a senior Queens Counsel was that the set up of and participation in LAML including the giving of financial guarantees was lawful.
- 16.3 EU public procurement law generally requires that contracts are awarded by way of a competitive tender process. The council's insurance was placed with LAML without undertaking a tender using an exemption to these laws known as the Teckal exemption. Local authorities are not required to procure via a tender process where contracts are placed with internal departments. The Teckal exemption means that where contracts are placed with an external organisation where the same degree of

control is exerted as that over an internal department, they are not required to procure via a tender process. The Teckal exemption was therefore used as the basis of the approach to procure the corporate insurance programme without using a formal tender process.

16.4 The Council placed its main corporate insurance program with LAML from 1 April 2008 for a long term agreement period of three years on the expiry of the previous long term agreement with its previous insurers.

17. The Legal Case

17.1 A challenge was brought by Risk Management Partners (RMP), a local authority insurer, against the London Borough of Brent regarding their participation in LAML.

17.2 This challenge was brought in two areas. Firstly that Brent's participation in LAML was ultra vires (i.e. that it did not have the power to do this), and secondly that Brent had breached EU procurement rules in placing their insurance with LAML without undergoing a competitive tender.

17.3 Brent relied upon powers primarily under section 111 of the Local Government Act (LGA) (1972). Haringey and the other participants relied upon the more broad well-being powers under section 2 of the Local Government Act (2000).

17.4 The case was first heard in the High Court in 2008 with Brent's participation being ruled ultra vires, on the basis that they did not have sufficient powers under S111 LGA (1972), and that Brent did not properly exercise its powers under S2 LGA (2000). The courts further found that Brent was in breach of EU procurement rules.

17.5 This decision was appealed by both Brent and LAML, with the case being heard in March 2009. The Court of Appeal dismissed Brent's appeal regarding S111 LGA (1972), and further found that Brent did not have any powers to participate under S2 LGA (2000). The impact of this decision is that Haringey's participation in LAML under S2 LGA (2000) is also now deemed to be ultra vires.

17.6 Brent were refused permission by the Court of Appeal to refer the matter to the House of Lords. Brent has now made an application directly to the House of Lords seeking leave to lodge an appeal.

17.7 As a result of the Court of Appeal decision, LAML has ceased underwriting with effect from 8 June 2009 and will be wound up via a scheme of arrangement to be negotiated with the FSA. It is expected that a solvent run off will be achieved and that all former LAML members will recoup in full their initial capital investment.

18. Claims against Haringey

18.1 RMP have also submitted claims against Haringey Council and the other participants in LAML alleging that participation in LAML is ultra vires, and that the authorities are in breach of EU procurement rules.

18.2 The claims against Haringey and the other participants have been stayed pending the outcome of the application by Brent for leave to appeal to the House of Lords.

19. Temporary Insurance Cover

19.1 As LAML ceased underwriting as of 8 June 2009, temporary insurance cover has been arranged for the Council for an interim period of 9 June 2009 to 30 September 2009. This arrangement was approved by the Chief Financial Officer in accordance with extreme urgency waiver provision within Contract Standing Orders (ref. 7.03 (b)). The exception applies where unforeseeable events not attributable to the contracting authority create a situation of extreme urgency such that the time limits for the normal procurement processes cannot be met.

19.2 It was not an option to have any period of time without insurance cover and for this reason the Council applied the extreme urgency exception to enable temporary insurance cover to be obtained. Charles Taylor Consulting, who were employed by LAML, were instructed to arrange insurance cover for LAML members until such time as a purchasing consortium was able to run and complete a formal procurement process. The initial period of the temporary cover was for the period up to 30 September 2009, but with prices pre-agreed for an option to extend to 31 December 2009, and monthly thereafter up to 31 March 2010.

19.3 It will not be possible to procure suitable replacement insurance cover for 1 October 2009, based on the time requirements of EU procurement regulations, therefore an extension of the existing temporary cover will be required. It is recommended that the tendering provisions of Contract Procedure Rules and Standing Orders are waived and authority is delegated to the Chief Financial Officer to extend the short term contracts until the commencement of the replacement contracts. The grounds under the Contract Procedure Rules relied upon is 7.03 (e) "there are other circumstances that are genuinely exceptional."

19.4 As stated above, the temporary insurance cover has been arranged to allow for the cover to be extended from 1 October 2009 for any period of time up to 31 March 2010. However, it is anticipated that the proposed procurement approach will enable the consortium to obtain insurance cover which will be permanent, appropriately researched and marketed and hence much more competitively priced.

20. Consortium Purchasing

20.1 A number of boroughs are forming a Consortium for the purchasing of insurance from the commercial market. The core of the Consortium is made up of former LAML members. However there has been interest from several other boroughs that were not involved in LAML.

- 20.2 The formation of a Consortium is consistent with the Government's focus on aggregation of procurement to achieve reduction of costs. The formation of the Consortium will also enable those boroughs who take part to continue to work together collaboratively to progress risk management initiatives and agendas and to share knowledge and best practice.
- 20.3 The experience of a group of Fire and Rescue authorities in 2008 was that, by forming a Consortium, they were able to appeal to a wider selection of insurers and achieved a better response than had they procured separately. The improved response resulted in a greater number of insurers responding, as well as additional savings.
- 20.4 It is therefore considered likely that a better response will be received from the insurance market to local authority procurement on a Consortium basis, rather than each authority procuring insurance cover separately.
- 20.5 The insurance market for local authority risks has historically had a limited number of competitors, which has resulted in reduced competition and higher rates.
- 20.6 The current economic conditions and credit crunch has resulted in falling investment returns for insurers and a resulting reduction in capacity to underwrite risk. The market is expected to harden which could result in higher premiums.
- 20.7 The local authority market is increasingly being seen as a more attractive proposition due to its stability. Those authorities who have good understanding of their risks, along with robust management processes in place to manage risk, are increasingly being seen as an attractive proposition.

21. Formation of the Consortium

- 21.1 A working group has been formed to establish the Consortium. This group is made up of Insurance and Risk representatives from all boroughs who have indicated an interest in joining a Consortium.
- 21.2 Croydon are the lead authority who will run the procurement process and act on behalf of all participating authorities. A Memorandum of Understanding will be entered into whereby all of the boroughs participating in the Consortium will authorise the lead authority to act on their behalf regarding the procurement.
- 21.3 Legal advice is being obtained regarding the set up of the Consortium to ensure that the set up of the Consortium is legal and the procurement activities comply with EU procurement rules.
- 21.4 Procurement will be subject to the Standing Orders and procedures of the lead authority. Each participating authority will award its own contracts in compliance with their own Standing Orders.

21.5 The working group will assist the lead authority and will take part in the procurement, including the assessment of tender responses and selection of the preferred bidders.

22. Procurement

22.1 It is proposed that, via the Consortium, tenders for insurance cover are obtained for a two year long-term agreement contract with the option of extending the cover for a further one year plus one year.

22.2 In the main, this will be to provide appropriate levels of insurance cover, whilst ensuring required levels of service, a competitive price and continuous improvement in line with the Council's key priorities.

22.3 All procurement activities will be undertaken in compliance with the Public Contracts Regulations 2006 in order to secure best value for money. Procurement will be undertaken in compliance with Croydon's Standing Orders (as per paragraph 21.4 above). Tenders for the provision of insurance will be obtained with insertion of a contract notice by Croydon in the Official Journal of the European Union (OJEU).

22.4 As the contract value for the procurement of insurance will exceed £500,000, this project is subject to the Council's key decision limits.

22.5 The Consortium currently involves up to ten boroughs, therefore it is important that decisions regarding contract award can be taken quickly. Delegation of contract award powers to a Chief Officer is considered the most efficient way to ensure that decisions are made in a timely manner to ensure that the Consortium is able to function while still ensuring that procurement decisions are subject to a suitable level of scrutiny.

23. Timetable

23.1 The proposed timetable of key milestones is given below:

Milestone	Date
Commence procurement of broking services	July 2009
Appoint broker	Aug 2009
Commence procurement of insurance	Sept 2009
Evaluation of tenders by	Nov 2009
Obtain Chief Officer approval for contract award recommendation	Dec 2009
Contract commencement	January 2010

24. Evaluation Criteria

24.1 The award criteria will be based on EU procurement rules with contracts being awarded to the most economically advantageous tender. The tender evaluation model, which will include quality issues, will be developed by the working group and will be approved by the lead borough to ensure compliance with their procurement requirements.