

Executive Procurement Committee On 27 June 2006

Report Title: Progress Report on Council use of external Legal Providers

Report of: Head of Legal Services

1. Purpose

To report on the nature and level of legal work carried out for the Council by external providers and on the procedures in place for monitoring this work.

2. Recommendations

That the Procurement Committee note the report.



Report authorised by: Davina Fiore, Head of Legal Services

Contact officers: John Suddaby, Deputy Head of Legal Services

3. Executive summary

The report provides an update on:

- the level of legal work being carried out for the Council by external providers;
- whether the procedures for sanctioning this work are being followed
- what steps are being taken to maximise best value for the Council in the provision of specialist legal services.

4. Report

4.1 Purpose of Report

The Executive of 10 June 2003 agreed the policy and procedure to be followed where external provision of legal services for the Council is sought and as part of that asked for regular reports to be given to the Executive Procurement Committee, updating members on the situation. A copy of this earlier report is to be found at Appendix B. This report is the third such update and will seek to provide a picture of:

- what outsourcing of the legal function has taken place over the past 12 months.
- how the procedures agreed by the Executive are working
- what steps are being taken to maximise value for money for the Council in the provision of specialist legal services.

4.2 Outsourcing of the legal function carried out

Attached at Appendix A is a report showing the legal work outsourced over the last 12 months including ongoing outsourced legal work. The report at Appendix A shows, the value of the work, which Directorate has commissioned it and from which provider and whether the Legal Service has been involved in limited monitoring of this work. In summary, this report shows that the total cost to the Council of externalised legal work over the period February 2005 January 2006 is approximately £189,804. This does not include work carried out by Eversheds on Building Schools for the Future which is estimated at £80k. Nor does it include the value of child care work outsourced by Legal Services to Creightons and Partners and amounting to £42,945 for 2005/6 (see below).

Outsourcing by Legal Services

Legal Services has itself been responsible for outsourcing of the legal function in the following areas:

- the outsourcing of enforcement of statutory charges in respect of works in default carried out on a "no win no fee" basis. This work has continued and since the last report In the last financial year (Apr 05 – Mar 06) 10 cases were brought to successful outcome netting the Council £38,500,00
- the outsourcing of commercial rent arrears - brought back in-house after review by the Legal Service and the client service. In the last financial year (Apr 05 – Mar 06) Civil Litigation Team has recovered £461,679.00 commercial rent arrears. The installation of the new "Manhattan" computerised accounting system in Property Services should result in increased efficiency for Legal Service as it will enable a direct view only access to commercial rent accounts avoiding the need to rely on Rent Recovery Officers to provide constant updates.

- the outsourcing of childcare cases to Creighton and Partners to cope with the peak of post Climbie Inquiry care activity. No new cases have been sent to Creightons since September 2003 Creightons' expenditure over the last 12 months (March 05 to Feb 06 inclusive) totals £42,954.55. All cases but one are now finished.

4.3 Compliance with procedures

Legal Services continues to be consulted by some Directorates prior to outsourcing although in the absence of a formal procedure, performance here has been erratic. The presentation of proposals to the Procurement Project Board (see below at 5.) will be designed to produce a workable solution to the problem of procuring specialist legal services often at short notice while at the same time protecting the Council's corporate interest.

4.4 Identifying new areas of work

Discussions are ongoing at Client Liaison Meetings to identify areas where currently outsourced legal advice or casework could be carried out by the Legal Service.

Already the following areas/pieces of work have been identified in addition to those included in previous reports.

Creditor's Administration of Deceased Estates

As stated in the last report to the Procurement Committee, the Legal Service now has the in-house ability to administer deceased estates as part of the debt recovery process. Since December 2004 a total of £72,582 has been recovered by the Service.

Council Tax Debt

The Legal Service participates in the Debt Management Board and advocates that a more pro-active approach is taken to enforcing multiple liability orders against property owning debtors via insolvency or charging orders proceedings. Council Tax debt is also taken into consideration when the Legal Service takes proceedings for enforced sale of property and/or undertakes creditor's administration of deceased's estates. Council Tax do refer some larger debts to Legal Services for enforcement purposes. The Debt Management Board is reviewing how this can be developed.

4.5 Identifying areas of work more suitable for outsourcing

In consultation with Directorate clients, the Legal Service has included the following areas of work in the outsourcing programme

- **Environmental Health** - Works in default to abate nuisance in empty properties has been outsourced to a private firm of solicitors on a "no win, no fee" basis

- **Leasehold Service Charges** – where the Legal Service has obtained an order for enforced sale due to non-payment of a leasehold service charge debt, arrangements have recently been made with a private firm of solicitors and an auction house for them to take possession and deal with the disposal of the property with their costs being paid out of the proceeds of sale and monitored by the Legal Service.

4.6 Areas of work more suitable for the in-house client

Legal Service staff have helped train Environmental Services finance staff to register at the Land Registry statutory charges for the cost of works in default. Legal Service staff continue to provide support and advice where this is required.

5. Measures aimed at ensuring value for money

Representatives from Legal services and Procurement have met and a draft PID has been presented to the Procurement Project Board. Legal Services is investigating separately the advantages to be gained from adopting an approved list approach to the procurement of external legal resources and also looking at experience of recent partnerships between local authorities and private legal firms.

6. Director of Finance Comments

The budgetary implications of commissioning any legal work by Directorates whether internally or externally should be fully assessed before proceeding. In terms of the choice of internal or external providers, there will always be examples where using the expertise of external firms is advantageous to the authority either due to the very specialist nature of work or because of value for money as outlined in 4.5 above however this should be agreed after liaison between client and legal services. This will support achievement of value for money for Haringey and will help inform the work underway to challenge current legal procurement outlined in section 5.0.

7. Equalities Comments

Directorates should ensure that suppliers are committed to equalities and diversity through their equal opportunities policy and service provision. Suppliers need to be made aware of and understand Haringey's equal opportunities policy.

If suppliers have their own equal opportunities policy than this should be provided to us to ensure that it covers all relevant equalities areas. If it is discovered that the supplier/s are discriminating against someone while working for Haringey, they will be asked to put things right. The Council will also review its agreements with them.

Directorates should also look at outsourcing to a wide and varied range of providers such as Black and minority ethnic suppliers. In order to ensure equal access to services by all citizens on the basis of need, and to provide services in a manner that is sensitive to the individual whatever their background.

8. Comments of Head of Legal Services

There are no specific legal implications raised by the report.

9. Conclusion

The Committee is asked to note the report.

APPENDIX A

Position statement on Outsourced Legal Work – January 2005 to January 2008
(attached)

APPENDIX B

Report to the Executive Committee – 10th June 2003
(attached).

Appendix A

Position statement on Outsourced Legal Work – January 2005 to January 2006

Client Directorate	Description of Work	Firm Instructed	Date Started	Legal Services Involvement	New Costs since Last Report (Jan 05 – Jan 06) ex VAT
Information Technology	CORELOGIC contractual issues for eCare project	Bird & Bird	September 2004	No	£12,667
Information Technology	ITNET contractual issues and Change Control Note (CCN)	Bird & Bird	July 2004	No	£25,193.90
Information Technology	GCat Procurement issues regarding Sx3 E-Planning solution	Bird & Bird	January 2005	No	£6,552
Information Technology	TOREX RETAIL T&Cs for Leisure Management System	Bird & Bird	February 2005	No	£10,789
Information Technology	NORTHGATE Infrastructure Services Agreement	Bird & Bird	November 2005	Yes	£42,013.36
Information Technology	UK COUNCIL (Public-i) T&Cs for Webcasting Services	Bird & Bird	June 2005	No	£6,514

Appendix A

Position statement on Outsourced Legal Work – January 2005 to January 2006

Client Directorate	Description of Work	Firm Instructed	Date Started	Legal Services Involvement	New Costs since Last Report (Jan 05 – Jan 06) ex VAT
Information Technology	SIEBEL Escrow Agreement	Bird & Bird	June 2005	No	£1,885
Neighbourhoods/ Strategy	Liquidation of Broadwater Farm Community Centre	H.W. Fisher & Co.	Dec 2004	Legally directly involved in advice	£3,723.00
Housing	Kier London dispute settlement	Lovells	Jan 2005	yes	£49,529
Housing (Corporate Finance)	Legal advice for setting up the ALMO	Trowers & Hamlins	12 th May 2005	Involved in recruiting and liaising with consultants.	£30,939.04 (total expected cost for 05/06 financial year £50,000.00)
Childrens Service	Advice on BSF	Eversheds	Ongoing	no	Estimated at £80,000

Executive Committee*On 10 June 2003***Report of: Acting Head of Legal Services****1. Purpose**

To recommend a policy and procedure to be followed where external provision of legal services for the Council is sought.

2. Recommendations

That the Board endorse the policy and procedure outlined for onward transmission to the Executive.

Report authorised by: John Suddaby, Acting Head of Legal Services**Contact officers:** John Suddaby, Acting Head of Legal Services**3. Executive summary**

- A substantial amount of legal work is carried out by external providers, mainly by a few leading law firms
- There is a need to ensure that the relevant Council procedures:
 - conform with best practice
 - obtain best value for the Council
 - protect the Council's corporate interest
- Best value considerations require the Legal Service to consider:
 - whether Client Directorates could take over certain functions of the CLS;
 - whether the legal service with its new structure could take on work

traditionally undertaken by private firms in Haringey;

- whether any areas of legal work should be outsourced.

- The report seeks to establish the following principles underlying the external provision of legal services:

- the Council's standing orders are complied with;
- the Head of Legal Services is consulted;
- a central record is kept and reported to Procurement Sub-Committee twice a year;
- Legal are involved in the commissioning and monitoring of work.

4. Access to information:

Local Government (Access to Information) Act 1985

The following background papers were used in the preparation of this Report:

Legal Services Best Value Review Report 2002.

The background papers are located at Level 8, Alexandra House, 10 Station Road, London N22 7TR.

Further information may be obtained from John Suddaby Acting Head of Legal Services on 020-8489 3974

5. Report

5.1. Present situation

The budget of the Corporate Legal Service ("CLS") has been devolved to Client Directorates since April 2001. This is not a full devolution of the budget as Client Directorates do not have a choice as yet on whether they continue to use the CLS or external private firms/other local authorities. Until they are given this choice - planned for 2004/5, Client Directorates are expected to route their requests for legal services via the CLS. As part of the regulations guiding the devolution of the CLS's budget, it was specified that Client Directorates could only make use of external providers of legal services by agreement with the Borough Solicitor (or Head of Legal Services as the post has been called since the new structure came into effect on 1 July 2002).

5.2 Present Practice

A substantial amount of legal work is carried out by external providers, mainly by a few leading law firms. Important aspects of this situation include the following:

- no central record exists detailing all work carried out by external providers of legal services and the value of this work;
- CLS is not always consulted by a Client Directorate before the commissioning of work by an external provider although our liaison with Corporate Procurement is helping to improve this picture;
- much of the legal work carried out by external providers is in areas where the in-house legal service does not have the required expertise - either because the work is one-off or because it has proved impossible to retain staff with the required expertise in particular areas of work which attract very high salaries in the private sector;
- in the last year some work has been externalised at the suggestion of the CLS and where that has happened, the legal service has continued to provide a limited monitoring role - looking at costs and giving limited advice on options taking into account the corporate interest - examples include child care cases outsourced to Creightons and some debt recovery work;
- where work has been commissioned from external providers, this has not always been as a result of a competitive bidding process in accordance with Contract Standing Orders and compliance with EU procurement rules is not always monitored.

5.3 The need for change

The reasons why the present situation needs to change are as follows:

- the plan for clients to have full freedom in choosing who provides their legal services from 2004/5;
- the setting up of the Corporate Procurement Unit which will project manage large or strategic procurement exercises, the simplification of contract standing orders and the need for improved compliance with these;
- the need to monitor the standard and quality of the service provided by the external providers to ensure that the Council obtains best value in the legal services it uses;
- the need to ensure that the Council's corporate interest is protected in any increasing role for the private sector in the provision of legal services;
- the need to formalise CLS's role in the outsourcing of legal work.

5.4 Gaining 'Best Value' for the Council

The Legal Services Best Value review considered the present portfolio of work carried out by the in-house legal services. In responding to the need to challenge the present provision and to ensure its competitiveness the review report made certain recommendations which included CLS considering :

- whether Client Directorates could take over certain functions of the CLS;
- whether the legal service with its new structure could take on work traditionally undertaken by private firms in Haringey;
- whether any areas of legal work should be outsourced.

To a degree all the above areas have been addressed since the Best Value review was completed, for example:

- discussions have been continuing with the Housing Directorate's Home Ownership Team over the most effective division of responsibilities in taking action over service charge debts;
- debt recovery work relating to historic commercial rent arrears has been outsourced to Legal Recovery and Collections Ltd;
- a competitive process is underway to outsource legal action in respect of charges on leasehold property in default;
- Creightons, a firm composed of ex-local authority social services lawyers have taken on a significant caseload of child care cases and this will enable some objective comparisons to be made of the cost and quality of work undertaken in-house and externally;
- the restructuring of the CLS following the Best Value review provided for a new Partnerships and Regeneration Team headed by a newly appointed Principal Lawyer and it is anticipated that this may enable the in-house service to undertake work that in the past has had to be outsourced.

Seeking best value for the Council should also include consideration of devolution of certain quasi-legal and administrative tasks to Client Directorates and business units. This process should be conducted by discussions between the Directorates and the Head of Legal Services and the appropriate forum is the client liaison meeting which has been set up in all Directorates and which will meet regularly throughout the year. At present it is not proposed that aspects of legal work requiring the input of qualified legal staff, such as the issue of proceedings, should be undertaken by business units because this would:

- require a change to the Council's constitution and would tend to confuse lines of legal responsibility;
- be inconsistent with the rationale of a corporate legal function;
- raise questions of how the monitoring of professional standards and compliance with practice rules would be enforced .

5.5 Circumstances where outsourcing will be considered

It is recommended that the basis upon which the Council considers the outsourcing of legal work is formalised. This would include the following circumstances:

- where specialised legal work is involved which the CLS is unable to undertake because it does not have staff with the appropriate experience;
- where a sudden increase in the volume of work cannot be matched by recruiting and/or accommodating appropriately qualified temporary legal staff;
- where problems with the recruitment of permanent or temporary staff necessitate external provision;
- where legal work at an appropriate standard can be provided more economically by external provision.

5.6 Principles underlying external provision of legal services

The following principles should underlie all outsourcing of legal work with the exception of instructions to counsel where separate quality and cost monitoring procedures are provided for:

- it should be carried out in accordance with the Council's contract standing orders and procurement code of practice;
- all proposals to seek external provision of legal services should be the subject of consultation with the Head of Legal Services;
- a record of legal work carried out by external providers should be kept and reported on a six-monthly basis to the appropriate Council Committee (Procurement Sub-Committee) and to the Executive Member for Finance;
- CLS should be involved in the commissioning of legal work undertaken for the Council by external providers and be responsible for setting up the formal arrangements for monitoring this work.

5.7 Procedure for external provision of legal services

- There should be early consultation with the Head of Legal Services at a Director or head of business unit level.
- Proposals for external provision should be drawn up by the relevant Directorate in conjunction with CLS stating the basis upon which outsourcing is sought and the process to be followed for commissioning external providers.
- Agreement on the appropriate course of action, including whether or not to seek external provision and the decision on the external provider, should be reached between HOL and Client Service
- Where no agreement can be reached, a decision on the question will be taken by the Chief Executive.

5.8 Legal's involvement in outsourcing

CLS will be involved to different degrees in the external provision of legal services and this will be discussed and agreed between CLS and the client service concerned on a case by case basis.

CLS's involvement may include the following:

- offering advice as to which legal firms should be contacted for particular kinds of legal work;
- maintaining approved lists of external legal providers;
- advice and assistance on pre-tendering arrangements;
- light touch monitoring of the work of the external provider - to include advice on and checking of legal costs, but not to include oversight of the legal advice provided;
- where appropriate, advising on the corporate interest when reports written with external legal assistance are submitted for decision by the Council or delegated bodies.

Where there are existing arrangements for the provision of external legal advice, for example outside solicitors acting for the AP&P trust, the extent of CLS involvement and responsibility, if any, will need to be clarified.

5.9 Legal's involvement in procurement

CLS will expect to be consulted by a Directorate and be involved in the initial discussions relating to the procurement of an external legal resource. CLS will give advice in the normal way regarding the form of the contract with the external provider and compliance with Council and EC conditions. CLS will also be available to give advice/attend meetings held to negotiate the terms of an agreement with an external legal provider.

It is suggested that a due diligence check-list be agreed at the outset between the Council and the external legal provider and incorporated into the instructions or contract. This would identify:

- the issues which led to the contract with the consultants and clarify what matters are considered to be within the professional competence of the consultants;
- any risks involved;
- the opportunities for initiatives and technical constraints or requirements which the Council may reasonably expect to be identified by the consultant.

5.10 Light-touch monitoring of outsourced legal work

CLS will undertake a light-touch monitoring role in relation to legal work undertaken by external providers. This will include checking and advising the client Directorate on the charges for work done and on emerging issues affecting the corporate interest. Light-touch monitoring will be assisted by the adoption of a due diligence checklist as proposed above, which will enable the CLS to check that the contract is being performed on the terms agreed at suitable stages during the work and at the end of the work. Aside from these functions, the external provider will retain responsibility for the legal advice/work supplied.

5.11 Signing and Sealing

The due diligence checklist will provide one basis for identifying issues that may have to be attended to before an agreement reached following legal advice from an external provider can be signed or sealed following authorisation by the Council. It would be usual to have agreed in advance within the due diligence checklist the sign-off statement that the external legal provider would be required to make and which would accurately express the relative responsibilities and risks taken by the Council and by the external provider.

CLS would retain the responsibility for ensuring that the appropriate delegated decision-making powers have been complied with and that any areas of corporate risk are identified and resolved before the signing or sealing of an agreement.

5.11 Role of Monitoring Officer

- The above arrangements do not impinge upon the independent role of the Monitoring officer.
- Adherence to the arrangements set out will assist the performance of the Monitoring Officer's role.

In so far as significant outsourcing takes place this may have an impact upon the quality of the information available to the Monitoring Officer and particularly where the arrangements set out above are not followed.