

## Appendix 2

### VOLUME 7 - SOUTHWARK AND LAMBETH BARRISTERS FRAMEWORK OPERATIONAL PROCEDURE

*The draft operating procedure is circulated to bidders to provide relevant information on how the framework may run after it goes live. This is the first draft of the operating procedure which will be reviewed throughout the procurement process and will be finalised prior to contract award.*

#### 1. SECTION 1: THE FRAMEWORK AGREEMENT

- 1.1. The Councils of Southwark and Lambeth have conducted a joint procurement exercise to appoint Barristers' chambers to 8 panels covering the whole range of local authority legal work. The Panels will operate under a 4-year Framework Agreement. Between 5-10 Chambers have been appointed to each panel and it is the Councils' intention that those Chambers ('Panel Chambers') will take preference over other chambers not appointed to the Panels.
- 1.2. The Framework Agreement will go live on **the 21<sup>st</sup> November 2011**. The procedure set out in this document must be followed from this date.
- 1.3. Table 1 lists the panels this framework applies to:

Panel	Areas of law	Maximum number of chambers
	<b>1. Childcare</b> covering Adoption and Fostering, General Social Services Law including child protection	10
	<b>2. Housing</b> covering Landlord and Tenant and Homelessness and Allocations	10
	<b>3. Property</b> covering Commercial Property Law and Litigation, and Stamp Duty Land Tax	5
	<b>4. Planning and Infrastructure</b> covering Environmental Protection, Planning & Enforcement Appeals, Development Plans, Environmental Impact Assessment, Listed Buildings & Conservation. Highways and Infrastructure	5
	<b>5. Adult Community Care</b> covering General Social Services Law (including the provision of services/support to children/families with no recourse to public funds; under Part III of the Children Act 1989),, Mental Health, Court of Protection.	5
	<b>6. General litigation</b> covering	8

	<p>Criminal Litigation and prosecutions, including Proceeds of Crime</p> <p>Health and Safety and Regulatory Law</p> <p>Contracts disputes</p> <p>Licensing and gambling</p> <p>Civil Litigation other than litigation covered under another category</p>	
	<p><b>7. Employment</b> covering Employment, TUPE and Pensions</p>	8
	<p><b>8. Corporate Law</b> covering Freedom of Information, Data Protection</p> <p>General Local Government Law</p> <p>Judicial Review</p> <p>Local Government Finance</p> <p>Governance Issues</p> <p>EU Procurement</p> <p>Education</p> <p>Human Rights and Equalities</p>	10

1.4. The Panel Chambers will provide to the Councils, for the relevant panel areas;

- (i) services at the unit prices and hourly rates set out in the Pricing Schedules; to include advocacy before a range of courts and tribunals, written and oral legal advice and drafting of pleadings and other legal documents,
- (ii) internal placement at Council offices for urgent cover of 'overflow' work on an occasional and ad hoc basis, on terms to be agreed, but taking into account rates secured as part of the tender process
- (iii) ½ day free training in each panel area, per year of the framework agreement
- (iv) 'soft benefits' offered in Chambers' tender response
- (v) any other training services and soft benefits offered in Chambers' tender response

1.5. Pricing Schedules for each of the panels are attached at **APPENDIX 1** (to be added after contract award)

## 2. SECTION 2: USE OF THE FRAMEWORK AGREEMENT

2.1. All senior, principal lawyers and other authorised personnel in the Councils' Legal Services Departments and Authorised Agents of the Councils with conduct of matters covered by the panel areas, where professional judgement on a particular matter indicates instruction of a Barrister or expert advocate is required and the relevant Councils' policies, procedures and internal scheme of delegation allow, shall do so from the list of Panel Chambers set out in paragraph 3 below.

2.2. Instruction of Barristers shall be in accordance with the process set out in paragraph 3 below **unless** due to the unusual complexity, political or exceptional sensitivity or other exceptional circumstance, agreement is provided by the person authorised in

**APPENDIX 2** (to be added after contract award) to protect the interest of the Council to an alternative course of action.

- 2.3. For the avoidance of doubt the panel Framework Agreement only relates to those matters where legal issues fall within specified panel areas. Instruction of Barristers to undertake work outside the panel areas is not governed by the procedures in this document. However before proceeding with instructions for work of this nature the legal officer concerned must discuss with and obtain authorisation from the person authorised in **Appendix 2**.

### 3. SECTION 3: HOW TO USE THE FRAMEWORK

- 3.1. Selection of a Barrister/solicitor advocate should take place on the basis of the cheapest and most competitive for a particular piece of work in accordance with the table and procedure set out below (*The table with ranked, successful panel chambers will be added after contract award*):

- 3.2. Selection shall take place as follows:

3.2.1. From the framework panel, selection of a *barrister within the most junior band of years call*, who in the professional judgement of the Instructing Officer is able to represent the Council on the particular matter from *the most competitively ranked chambers* in panel area (see table above). For example in a routine litigation<sup>1</sup> matter (whether general, prosecution, employment, planning, housing or child protection) a Barrister with 1-3 years call should be selected over one with more years call.

3.2.2. If Barristers within the most junior band of years call from the most competitively ranked chambers are not available, the most competitively ranked chambers may wish to offer someone of more senior call for the rate applicable to a more junior Barrister; if so the Instructing Officer may proceed on this basis. If not then the Instructing Officer should then select a junior Barrister from the 2<sup>nd</sup> most competitively ranked chambers and so on.

3.2.3. For less routine matters<sup>2</sup>, where a particular matter, in the professional judgement of the Instructing Officer (or /his her supervisor) requires a Barrister of more senior call (e.g. over 3 years), selection shall be a suitable Barrister from *the most competitively ranked chambers* and if a Barrister from those chambers is not available from the second most competitively ranked chambers and so on.

3.2.4. It is the responsibility of the Instructing Officer to secure the most advantageous rate possible for the matter concerned and agree this with chambers on instruction i.e. consider whether the matter should be agreed on fixed fee or hourly rate basis.

3.2.5. If the matter appears to be unusually complex, politically or otherwise sensitive or exceptionally high risk and/or other exceptional issues are in play, the Instructing Officer should discuss with his/her supervisor with a view to considering seeking agreement for application of alternative selection of counsel in accordance with the provisions outlined in **Sections 2** and **4**. It is the responsibility of the Instructing Officer to ensure that his/her manager is provided with all the relevant information in a structured and concise manner.

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<sup>1</sup> 'Routine' is a matter of judgement for the fee earner concerned and his/her manager where appropriate and will include consideration of all the circumstances including the nature and complexity of the matter;

<sup>2</sup> Examples of less routine but not necessarily unusually complex include to be inserted

3.3. A summary of the commissioning procedure is outlined below – (a detailed flow chart will be attached as **Appendix 3** after contract award):

3.3.1. Instructing Officer:

3.3.1.1. scopes nature of work/matter and assesses complexity, risk, level of Barrister required

3.3.1.2. discusses with supervisor where appropriate

3.3.1.3. considers whether matter is appropriate for fixed fee or hourly rate – consider most advantageous rate for the Council

3.3.1.4. selects appropriate level of Barrister from most competitively ranked chambers on appropriate legal panel

3.3.1.5. confirms with Panel Chambers the Barrister is able and has capacity to carry out work against agreed fee rate (fixed or hourly as appropriate)

3.3.1.6. If most competitively ranked chambers do not have capacity to take on work at assessed level (or offer suitable alternative barrister at higher year of call for same rate as Barrister at assessed level) move to selecting Barrister from 2<sup>nd</sup> most competitively ranked chambers

3.3.1.7. follow the procedures/processes set out in **Section 5** below

#### 4. SECTION 4: The Exception Process

4.1. In exceptional circumstances instruction of a Barrister/solicitor advocate may take place outside of the process in Section 3 above; i.e. where due to the unusual complexity, political or exceptional sensitivity or other exceptional circumstance, for example poor performance of a Barrister/solicitor advocate, agreement is provided by the authorised person as set out in **Appendix 2** to an alternative course of action.

4.2. Alternative courses of action may be (in preferred order):

4.2.1. Instruction of a Barrister/solicitor advocate from a **framework panel chambers** outside of the strict process referred to above; where this option is agreed, it is the responsibility of the Instructing Officer concerned to use his or her best endeavours to agree the most favourable rate applicable to the Barrister from the chambers selected. It is envisaged that this option will be used in the majority of cases caught by the exception; it would enable, for example,

4.2.1.1. an Instructing Officer to select a Barrister from a particular chambers known to have a particular expertise in a particular complex area or issue even if that Barrister is not from a chambers with the most competitive ranking.

4.2.1.2. an Instructing Officer to select a Barrister from chambers other than the most competitively ranked, where the rate given for that particular piece of work is significantly higher than for other chambers within the same framework (on the basis that ranking will be established against pricing as a whole using the evaluation methodology).

- 4.2.1.3. Instruction of a Barrister/solicitor advocate from **chambers outside of the framework panel**; where this option is agreed it is the responsibility of the Instructing Officer concerned to use his or her best endeavours to agree the most competitive rate s/he can secure in the circumstances. It is envisaged that this option will be agreed rarely and in the most exceptional of circumstances.

## 5. SECTION 5: Management and Monitoring

- 5.1. Transitional provisions relating to Panels will be as follows: (Transition requirements for specific panels to be added in this section at a later stage).
- 5.2. On selection of Barrister Form B1 (Instruction form will be added as Appendix 4 following contract award) shall be completed by the Instructing Officer for sign off by the relevant Senior or Principal Lawyer.
- 5.3. Form B1 should also be used to record the performance of the Barrister where in the opinion of the Instructing Officer it is relevant to do so.
- 5.4. Instructing Officers shall ensure that the appropriate commissioning information is provided to chambers in advance of all instructions, except in urgent cases where information shall be provided to chambers as soon as possible thereafter.
- 5.5. Chambers shall be expected to deliver all fee notes including the information set out in the framework specification (section 9) to the commissioning Instructing Officer.
- 5.6. Disputed fee notes shall in the first instance be dealt with by the Instructing Officer for the matter. The Authorised Officer, or his/her nominee, shall attempt to deal with the dispute in the event of the Instructing Officer failing to reach a satisfactory resolution within a reasonable period of time. Severe disputes shall be dealt with through the contract procedure (to be agreed at a later stage).
- 5.7. Performance issues arising from use of the framework agreement shall be dealt with by the Authorised Officer as appropriate in each circumstance. Severe performance issues shall be dealt with through the contract procedure.
- 5.8. Authorised Officers shall meet every six months to review performance of the framework.

## 6. SECTION 6: Miscellaneous matters

- 6.1. No professional undertakings can be given on behalf of a Council by the Panel Chambers. There are no circumstances where the Panel Chambers can be deemed to have the Councils' consent to give any professional undertaking. Council officers are referred to the procedures in place for the giving of undertakings for the Council they are employed by.
- 6.2. Where appropriate, Councils may seek quotations from a number of Panel Chambers on a relevant Panel based on their tendered rates and prices for specific matters or cases in order to establish value for money before formally issuing instructions on any matters. The arrangements for submitting quotations will be a matter for the individual Councils.