

Date of meeting	<i>15th December 2023</i>
By	<i>Sonia Likhari, Corporate Solicitor, Legal Services</i>
Title	<i>Extension of Legal Services Contract</i>
Project Sponsor	<i>Stephen Lawrence-Orumwense, Director of Legal Services</i>
Corporate Director	<i>Jane West, Corporate Director, Resources</i>
Lead Member	<i>Jason Cummings Cabinet Member for Finance</i>
Key Decision	0222RES (Previously 01RES)

1. Recommendations

The CCB, with the approval of the Cabinet Member for Finance, recommends that the Corporate Director, Resources

Approve a permitted extension of the contract for the provision of legal services with Browne Jacobson LLP for two years from 1st January 2023 at an estimated cost over the extension period of £1.5m, which is within the original award value.

2. Background & strategic context

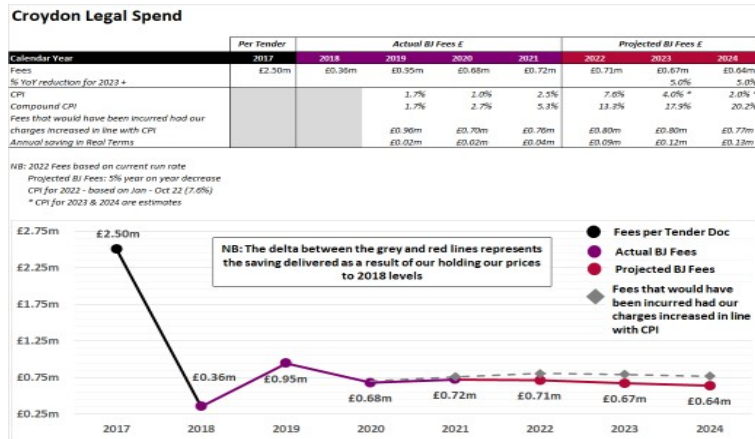
- 2.1 A tender was conducted and the contract for the delivery of legal services, for a maximum value of £17.5m over a period of 5+2 years from 1st January 2018, was awarded to Browne Jacobson (Browne) following a decision of Cabinet in October 2017 [KDN 1217CAB]. The contract encompasses four packages of work: Commercial; Civil Litigation, Property (incl planning) and Employment and contains the provision to extend for up to 2 years (included in the award approval)
- 2.2 A strategic review determined the need for a legal service which is embedded within the organisation at both strategic and advisory levels and offers accessibility, transparency and certainty over costs, as well as best value, would be achieved through the insourcing of certain areas of legal work alongside the competitive procurement of a single principal supplier of the remaining externalised legal work on a fixed term contract, to foster the spirit of strategic partnership.
- 2.3 A programme of recruitment was initiated to enable the expansion of services utilising the in-house team. This programme of internalisation has been achieved to a certain extent but has been impacted by corporate restrictions on recruitment which began to be take effect early in the life of the contract and have become progressively more stringent. Nonetheless spend through the contract has been significantly lowered in line with the procurement objectives and the strategy is to continue to reduce spend through measures including demand management.
- 2.4 The contract offers competitive rates as well as benefits providing additional value and savings. Contracted rates have remained fixed since contract commencement and will not be increased for the period of extension.
- 2.5 The appendix*, 'BJ contract case types and instructions' (Part B under the Local Government Act 1972 Schedule 12A(2) due to containing information likely to identify an individual) breaks down the number of instructions received by Legal Services, instructing departments, and how instructions have been allocated as between internal and external legal. The internal/external split is approximately 80/20. It should be noted that:
- Not all internal instructions were going through the legal portal in 2018.
 - There have been a number of departmental changes since the start of the Browne Jacobson contract.
 - A significant amount of internal legal work is carried out without formal instructions being received through the legal portal e.g. reviewing reports, matters which are not expected to exceed one hour, general queries, urgently requested advice.

2.6 Whilst the contract with Browne Jacobson was awarded on a partnering/sole supplier basis the contract does not confer exclusivity or minimum volumes. It is intended that Browne Jacobson will continue to be the principal recipient of externalised legal instructions during the extension period subject to continued demonstration of value for money and satisfactory performance. To further assure itself of value for money, the Council has joined the London Boroughs Legal Alliance (LBLA), which will (if required) enable the Council to access legal services from the law firms and barristers chambers appointed to the frameworks established by the LBLA. The panel includes Browne Jacobson. Any call off from the LBLA framework will take place in compliance with the Tenders and Contracts Regulations.

How the key contract deliverables are being achieved:

External supporting partnering with Browne Jacobson

The starting point was the £2.5m tender that was negotiated in 2017 based on annual spend of £1.75m operated via a legal panel. The chart demonstrates how the contract has been managed to reduce the external legal spend in subsequent years



Data source: Browne Jacobson

Have the key deliverables been achieved?

Costs

The table sets out the spend across the entire panel, prior to appointment of Browne Jacobson, and spend with Browne Jacobson since their appointment in 2018. Note that the figure in 2018 is low because this was a "run off" year during which we continued to spend through on-going projects through the previous panel 2019 can therefore be considered the first year which provided a service which was "like for like" relative to the previous panel services

The table:

assumes a 5% year on year reduction in fees in real-terms in future years. This is consistent with reduction on fees between 2019 and 2021 illustrates the compound effect, in real terms, of the fact that Browne Jacobson charges have not increased in line with inflation since 2019, and are not proposed to do so before the end of the contract. This leads to cumulative real terms savings of £290,000 across the contract, assuming CPI of 2% in coming years. The table shows a significant, and continuing, reduction in legal spend relative to the previous position in relation to legal spend under the panel. This demonstrates a considerable savings through the arrangement with Browne Jacobson, whilst maintaining and enhancing quality (see below)

In addition all fees are subject to a 2% early payment discount.

Quality and client satisfaction

Feedback has been overall positive, with comments focussing on the responsiveness, approachability, flexibility and genuine partnering approach.

(*information as of November 2022)

2.7 Performance and value delivered to date

Regular performance meetings are held with Browne Jacobson and any service issues have been picked up in a timely manner. There have been no major performance issues reported.

Contract KPIs include:

- Response to issues in 1 working day – where issues were raised in 2018/19, this KPI was achieved at a level of 98%+. Data from 2019 onwards show no issues raised.
- Allocation of instructions in 48 hours – often meet 100%
- Provision of key materials for knowledge bank – targets met
- Generation of income for LBC £12,500 target – mostly met: £14.1k in year 1, £10.4k in year 2, £19.5k in year 3, £19.3k in year 4
- Social Value – broaden access session pa and 2 initiatives with local start up businesses in rolling 2 years – broadening access session held in year 1, and further initiatives as mentioned below
- Service levels – met, no default notices issued

One of the desired outcomes from the contract was to reduce spend on external legal support services. The graph above shows we have managed to reduce expenditure over the contract term from a high of £2.5m in 2017 to £0.85m in 2021 and the trend is still decreasing.

Fixed fees throughout the contract term have saved an estimated £290k had an indexation rate of 2% CPI been applied. Note that as CPI has increased the council will further benefit from a cost avoidance for the 2 years of the extension period.

Added value has been provided wherein Browne Jacobson have delivered free training sessions to legal services and provide a free of charge legal consultation facility whereby Croydon has been able to access free legal advice in some cases from more specialised experts for example Pensions and TUPE experts have advised on contracts and contract dispute experts have been brought in to advise. This has saved the Council money in real terms as that time and advice was not charged.

The early payment scheme also applies - saving the council 2% on fees. (Figures available are for July 2020 - Dec 2022 and show £21,523.72 gainshare earned in that period.)

A programme of social value objectives has also been delivered including attending careers fairs and similar events at local schools/colleges, in particular those aimed at young people from non-traditional backgrounds.

2.8 Performance

Offer for the extension period

Negotiations took place with Browne Jacobson earlier this year, led by the former Interim Director of Legal Services and Head of Commercial and Property Law, to ensure that maximum benefit would be obtained from the proposed extension of the contract. Over the remaining (extended) period of the contract, in addition to maintaining a focus on reducing legal costs and demand management, Browne has committed to working free of charge with the Council's Legal Services (CLS) to reinvigorate aspects of their tendered offer designed to support and develop capacity, resilience and technical expertise within CLS, assist with transitional arrangements at the end of the contract and refresh social value initiatives. Proposals include:

- co-location – involving Browne's relationship partner or other senior person working alongside CLS as part of the team on a regular basis, providing hand-on support. This will also provide the ability to access additional legal advice from the on-site personnel at no additional charge
- helping to upskill the in-house legal services team through: secondment, developing training guides/manuals/templates, legal surgeries and training
- establishing customer satisfaction baseline for reporting, monitoring and benchmarking purposes.
- The social value offering has proposed mentoring to individuals (nominated by the Council or its partners) who may be interested in a career in law, or other specialisms within Browne Jacobson. For example, IT or business development.

3 Contract Providing for a Statutory Requirement

Legal services are essential for supporting statutory services across the Council

4 Financial implications

Please see para 2 above.

The contract was awarded initially for 5+2 years up to £17.5m (£2.5m annually).

Billed spend January 2018 to March 2022 is £2,708,707 which is significantly lower than the contract award.

The revised estimated value of services during the period of extension is:

2023 – 0.77m

2024 – 0.73m

The contract fees have not increased since contract start and there is no change to fees for the proposed extension period. This provides a real saving against inflation.

The overall budget for external legal fees covers all expenditure with legal service providers and includes the Browne Jacobson contract.

Legal Services does not have a specific budget code for the Browne Jacobson contract as the costs are allocated to the individual service area cost centres as and when they request legal advice. An account code has been set up and will be used for the proposed extension period. This will enable easier tracking of spend against the contract.

In accordance with the S115(6A) Local Government Finance Act 1988 grounds for 'new' expenditure, this project falls under the following criteria:

Essential Spend

The services meet essential spend criteria as they are required to support the provision of statutory services across the Council and prevent the situation which lead to the issue of a s114 report from becoming worse. The External Legal Fees budget is Council wide and not a budget held by Legal Services. Instructions to Browne must individually comply with essential spend criteria.

Budget Available	Yes/No	Yes	Cost Centre (Internal/External)	Internally charged directly across all Departments on subjective code 641620 – Legal Fees		
In-year Pressures on Budget	Yes/No	Yes - £130k savings target for External Legal Fees for 2022/23	Future Pressure on Existing MTFS Budget	No (unless 22/23 saving is not met)		
Details	Internal Capital Revenue		Period of funding	External Capital Revenue		Period of funding
Council Wide External Legal Fees Budget (General Fund)		£3,222,000	2022/23			
Council Wide External Legal Fees Budget (HRA)		£1,163,000	2022/23			

5. Supporting information

Required Input		Details
5.1	Procurement Process followed: Incl. details of the competition, advertisement, tenders received and any clarifications or issues.	This is a permitted extension of contract which was procured in compliance with PCR2015 and no additional procurement process is required to implement it.
5.2	Evaluation results: Incl. each providers scores in accordance with the published criteria. Winning providers VFM offer	Not applicable

5.3	Any compliance issues with PCR or TCR?	The proposed extension was contemplated at the time of the original award and is compliant with both PCR and TCR
5.4	Contract Management: Please detail how this will be delivered and by who?	The contract is managed by the Legal Services Practice Manager. Quarterly review meetings are held with the Provider. The last review meeting took place in September 2022.
5.5	Risks: Incl. how they will be managed	There are no identified risks associated with the permitted extension
5.6	Mobilisation plan How will it be managed?	The contract has been in operation since 2018 and there are no mobilisation requirements
5.7	Decommissioning plans: How will they be managed between providers?	CLS has experience of transitioning between external legal services providers over a number of years of contracting with legal firms. Previously these have been panel arrangements and it is expected that transitioning from a sole provider will be more straightforward to manage. The Council has discretion to require the provider to run down matters in progress beyond termination at the agreed contract rates.
5.8	TUPE: If applicable, how will it be managed?	TUPE is not applicable to implementation of the extension.
5.9	Interdependencies – If any: Incl. details of any arrangements i.e. Landlords, Consortiums, Assets connections and how they will be managed	The Provider has agreed to the extension. There are no other identified interdependencies
5.10	GDPR implications: Has an assessment been completed, do legal know to include in t&cs?	<i>Further information and support can be found at the link below:</i> https://intranet.croydon.gov.uk/resources/information-management/gdpr/gdpr-overview Although contract was entered into prior to the Data Protection Act 2018 a variation was agreed to incorporate relevant amendments in line with the new legislation.
5.11	Equalities: Please confirm how the proposed contract will support the EQIA?	An initial Equalities risk assessment was carried out at the time of the original award and indicated that the proposed award did not require that a full Equalities Analysis was required out as it was not expected to have a different or significant impact on persons who share a protected characteristic compared with those who do not. The position continues to be the case for a permitted extension
5.12	Social Value: Please confirm how the provider will deliver the 10%?	As part of the tender Browne put forward measurable social value commitments focussed on supporting routes into employment (both within the area of law and other disciplines e.g. IT, property, facilities) for Croydon residents and developing local enterprise. A number of initiatives have already been carried out and Browne is committed to reinvigorating the offer in discussion with the Council during the remainder of the contract.
5.13	London Living Wage (LLW): Please confirm the provider pays LLW?	This was confirmed as part of tender submission and is an ongoing contractual requirement
5.14	Premier Supplier Scheme (PSP):	The Provider is part of the PSP

Please confirm this is included in the requirements

6. Conclusion and reasons for recommendations

It is recommended that the Corporate Director, Resources approves the implementation of the two-year permitted extension to the legal services contract with Browne Jacobson at an estimated value of £1.5m in order to continue to support the provision of Council services at competitive rates and with value added benefits.

Options considered

Do nothing – not recommended

The contract would end on 31 December 2022. The contract continues to represent good value for money for the Council. The Council requires continuous access to expert, responsive legal advice across a range of areas to support its statutory and other services. The in-house team lacks capacity to meet this demand.

Seek an alternative supplier – not recommended

The current contract rates are highly competitive and compare favourably to most firms in the LBLA frameworks. The provider is familiar with the Council, its processes and current challenges and is committed to working in the spirit of partnership to helping the Council reduce costs, embed efficiencies and build resilience. The Council is now part of the LBLA, with access to a solicitor's framework which includes Browne Jacobson. The Council will continue to monitor the extent to which the arrangement represents best value through the term of the extension.

7. Outcome and approvals

Outcome	Date agreed	
<i>Insert outcome of Board discussion</i>	Service Director <i>(to confirm Corporate Director has approved the report)</i>	<i>Insert date reviewed report</i>
	Cabinet Member for Finance	
	Legal Kiri Bailey CCBReportsforlegal@croydon.gov.uk	13.06.22
	Head of Finance	20.6.22
	Human Resources (if applicable)	N/A
	C&P Head of Service	20.6.2022
	Lead Member <i>(for contract award over £500k)</i>	N/A
	Procurement Board	<i>Insert Ref No & date agreed</i>

8. Legal Considerations

The Executive Mayor has the power to exercise executive functions pursuant to s9E of the Local Government Act 2000 and has the power to delegate those functions.

At present the delegations in the Council's Tenders and Contracts Regulations have been superseded by the Executive Mayor's Scheme of Delegation following the introduction of the Mayoral Model and the specific delegations in the annual procurement plan approved by the Executive Mayor in Cabinet on 16th November 2022.

The Executive Mayor has delegated to The Corporate Director, Resources, authority to make the decision upon recommendation from the CCB with the approval of the Cabinet Member for Finance, pursuant to the annual procurement plan.

The Council is under a duty to comply with the Public Contracts Regulations 2015 (PCR). Procurement of the legal services contract was subject to the so called 'light touch' regime as described in Section 7 and schedule 3 the PCR. These provisions allow for flexible approaches to the procurement route and the Council adopted a route to market commensurate with the competitive dialogue procedure described in the PCR (Regulation 30). The contract was advertised and awarded for five years with the option to extend for two years. The exercise of said option is therefore compliant with PCR.

The Council is also under a general Duty of Best Value to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007).

By virtue of S115 (6) Local Government Finance Act 1988 (Act) where a report has been made under section 114(3) of the Act, during the prohibition period the Council may not enter into any new agreement which may involve the incurring of expenditure (at any time) by the authority unless the chief finance officer of the authority authorises it to do so.

The chief finance officer may only give authority for the purposes of subsection (6) above if they consider that the agreement concerned is likely to—

- (a) prevent the situation that led them to make the report from getting worse,
- (b) improve the situation, or
- (c) prevent the situation from recurring.

The services meet essential spend criteria as they are required to support the provision of statutory services across the Council and prevent the situation which lead to the issue of a s114 report from becoming worse.


Approved by Kiri Bailey, Head of Commercial and Property Law, on behalf of the Director of Legal Services

9. Chief Finance Officer comments on the financial implications

I have reviewed the report and can confirm that the financial impact of this procurement exercise is fully documented in the body of this report and that it can be met within existing resources.

Approved by Lesley Shields – Head of Finance ACE & Resources on behalf of the Chief Finance Officer

Approved by Jane West – Corporate Director of Resources and Section 151 Officer 21 December 2022



Appendix 1/1a/1b/1c – BJ Extension Contract Case Types and Instructions

[*Originally thought to be PARTB the appendix has been reviewed and appendix 1 and 1a is open, and 1b and 1c is exempt]