

# Decision Pathway – Report



**PURPOSE:** Key decision

**MEETING:** Cabinet

**DATE:** 09 April 2024

<b>TITLE</b>	Procurement of a Legal Dynamic Purchasing System and External Legal Services		
<b>Ward(s)</b>	All Wards		
<b>Author:</b> Nancy Rollason	<b>Job title:</b> Head of Legal Services		
<b>Cabinet lead:</b> Cllr Craig Cheney, Deputy Mayor: City Economy, Finance & Performance	<b>Executive Director lead:</b> Stephen Peacock, Chief Executive		
<b>Proposal origin:</b> BCC Staff			
<b>Decision maker:</b> Cabinet Member <b>Decision forum:</b> Cabinet			
<b>Purpose of Report:</b> To seek approval to procure and enter into a dynamic purchasing system (“DPS”) for legal services in partnership with Constellia and procure external legal services to the value of £5.7m on a range of matters requiring external legal advice over a 5 year period.			
<b>Legal Dynamic Purchasing System</b>			
<ol style="list-style-type: none"> <li>1. In 2023, the council awarded a contract for the procurement of professional services to Constellia. Constellia has approached the Council to ask if it would act as the contracting authority for a new legal services framework or DPS to be established by Constellia. The preference is for a DPS as, unlike with framework agreements, suppliers can join a DPS during the term of the arrangement enabling greater flexibility and diversity of work areas covered.</li> <li>2. Under the Public Contracts Regulations 2015 (“PCRs”), there are a number of compliant routes available to public bodies for the procurement of goods, works and services. These routes include framework agreements and dynamic purchasing systems which can be used to repeatedly call off services of a similar nature, such as legal services, on agreed terms and conditions, from one supplier or a panel of suppliers.</li> <li>3. Such framework agreements and DPS arrangements can only be established by organisations that constitute contracting authorities under the PCRs. The council is a contracting authority under the PCRs.</li> <li>4. The Legal Service would have a dual role in this arrangement. Firstly, it would act as the contracting authority for the purposes of the PCRs. Secondly, it would procure legal services under the arrangement (see paragraphs 9 to 13 for further details on this).</li> <li>5. Under frameworks and DPS arrangements, it is common practice for users to pay a rebate (usually a percentage of the fees incurred under the framework/DPS) to the party that established the arrangement. In return for acting as the contracting authority under the framework, a percentage of the rebate will be paid to the Council, generating income.</li> <li>6. It is anticipated that a considerable volume of legal services will be called off by various public bodies under</li> </ol>			

the arrangement due to the low number of legal services DPS schemes in the market and the involvement of COG Legal in the process. COG Legal will also be paid a percentage of the rebate in return for which COG Legal will use artificial intelligence to interrogate invoices from law firms to find any errors/grounds for possible reductions, usually resulting in a reduction or around 4% of the total. This will be attractive to public sector bodies wishing to procure legal services and minimise spend.

7. It is anticipated that Constellia will be responsible for management and marketing the DPS to the wider public sector, ensuring increased use of the DPS and generating additional revenue for the council.
8. Proactis (the council's procurement portal) may be used to run the procurement of the DPS.
9. The council's Legal Services team would be able to call off external legal advice when needed from the DPS. The council's Legal Services team provides legal services and advice to every department in the council. It has four team who offer legal advice on a wide variety of areas, as follows:
  - i. Commercial & Governance
  - ii. Property, Planning & Transport
  - iii. Litigation, Reglulatory and Community
  - iv. Child Protection
10. The council from time to time requires external legal advice for a number of reasons, including:
  - advice is needed on specialist areas not covered by the in-house legal team;
  - advice is needed on large and complex projects, often in a short space of time, for which the in-house team does not have sufficient spare capacity to meet the demand; and
  - litigation requiring barristers to provide legal opinions and represent the council at court hearings
11. It is expected that the amount of external legal advice required
  - from April 2024 to the date on which the legal services DPS is established (expected to take between 6 to 12 months) will be in the region of £900k; and
  - during the first 4 years of the DPS operating will be in the region of £4.8m.

This will be on a wide range of issues and a considerable number of matters will require external legal advice. Such advice often needs to be obtained quickly, usually (depending on value) by calling off from frameworks established by other contracting authorities in respect of which the council often pays a rebate. Once the DPS is established, it is anticipated that as much as possible of this spend will be called off from the DPS established by the council pursuant to this report. Prior to the DPS being established, such services will usually be procured from frameworks already established by other contracting authorities.

12. In accordance with the Legal Services' Service Provision Statement, external legal advice can only be commissioned by the Head of Legal Services, who ensures all appropriate safeguards are in place and applicable procurement procedures (depending on the value and type of legal services) are followed.
13. The cost of external legal advice is met either by the legal service if it is classed as 'Business as Usual', or the relevant client department in the Council that requires the advice if that is funded or the advice goes beyond what the Legal Service is resourced to provide. Funds from client departments may consist of revenue or capital.

**Cabinet Member / Officer Recommendations:**

That Cabinet:

1. Authorises the Director: Legal and Democratic Services in consultation with the Cabinet Member City Economy, Finance & Performance to take all steps required to establish a legal services framework agreement or dynamic purchasing system (DPS) for up to 4 years and enter into any appropriate contractual arrangements with Constellia to establish the framework/DPS.
2. Authorises the Director: Legal and Democratic Services in consultation with the Cabinet Member City Economy, Finance & Performance to take all steps required to procure external legal services up to a value of circa £5.7m on a range of matters requiring external legal advice over a 5-year period commencing April 2024.

**Corporate Strategy alignment:**

Procuring external legal services as set out in this report will align with the following Corporate Strategy objective:

Make it easier to get things done as ‘One Council’ by adopting more consistent standardised and well-communicated procedures and processes, with corporate support services that are the right size for the needs of the organisation

It will enable a consistent and standardised approach to be taken which will ensure such services meet the council’s needs and are provided on a cost-effective basis. The additional proceeds will provide additional funds for the legal services budget, assisting with ensuring the legal service has sufficient capacity to meet the needs of the council.

**City Benefits:** This benefits the City by generating additional income for its council and procuring appropriate and cost-effective legal advice for issues that affect its citizens

**Consultation Details:** Not applicable.

**Background Documents:** [Procurement and Contract Management Strategy, 2023–27](#)

<b>Revenue Cost</b>	£5.1m in total	<b>Source of Revenue Funding</b>	Legal Services/Client Department budgets
<b>Capital Cost</b>	£0.6m in total	<b>Source of Capital Funding</b>	Legal Services/Client Department budgets
<b>One off cost</b> <input type="checkbox"/>	<b>Ongoing cost</b> <input checked="" type="checkbox"/>	<b>Saving Proposal</b> <input type="checkbox"/>	<b>Income generation proposal</b> <input checked="" type="checkbox"/>

**Required information to be completed by Financial/Legal/ICT/ HR partners:**

**1. Finance Advice:**

This report seeks authority to procure and enter into a dynamic purchasing system (“DPS”) for legal services in partnership with Constellia and to procure external legal services to the value of circa £5.7m over 4-5 years on a range of matters requiring external legal advice.

It is expected that the total value of external legal services required will be £5.7m over 4-5 years as follows:

- £900k from April 2024 to the date on which the legal services DPS is established (expected to take between 6 to 12 months). 9 months has been assumed for the purpose of estimating costs. Of this, approximately £805,000 is expected to be revenue costs and £95,000 is expected to be capital costs.
- £4.8 million over the first four years of the DPS operating, with an estimated £4.3 million being revenue costs and £500,000 being capital costs.

The assumptions above are based on external legal fee expenditure actuals for 2022/23 and the full year forecast for 2023/24 which have been doubled to arrive at a four-year cost forecast (noting 2020/21 & 2021/22 actual spend figures were not used as the pandemic caused a temporary reduced spend position over this period). Whilst the revenue/capital split of the total legal fee costs is expected to vary, the estimates quoted in this report are based on

the profile over the past four years and assume c. 10% of the legal expenditure will be capital.

External legal service costs are currently funded from either Legal Services budgets or Client Department budgets. This report does not change that assumption, and Budget Managers will be expected to contain legal costs within their budget envelope.

**Finance Business Partner:** Kathryn Long, Finance Business Partner: Resources, 7 March 2024

**2. Legal Advice:** The council will not be obliged to comply with any procurement rules or regulations when acting as the contracting authority in relation to the DPS/framework agreement for legal services. The council only needs to comply with these when it is procuring goods, works and/or services for pecuniary interest. In this instance, it is the council that will be providing a service (to Constellia) in return for payments (the rebate).

The Council will have the power to act as the contracting authority in relation to this arrangement this under the Localism Act 2011, and although it will be receiving an income stream, it will not be trading so will not be required to set up a company to use this power.

The relevant officers will however need to ensure adequate mechanisms are in place to protect the council's interests under this arrangement. In particular, the council will be adequately protected against any claims made in relation to the compliance of the DPS/framework with any applicable procurement legislation.

In relation to the procurement of external legal services on behalf of the council, the relevant officers will need to ensure that where applicable (dependent on value and the type of services, e.g., whether for litigation or not) the council's procurement rules and/or the Public Contracts Regulations (and any successor legislation) are complied with.

**Legal Team Leader:** Sinead Willis, Commercial and Governance Team Leader, 21 February 2024

**3. Implications on IT:** I can see no implications on IT in regard to this activity.

**IT Team Leader:** Alex Simpson, Lead Enterprise Architect, 22 February 2024

**4. HR Advice:** There are no HR implications for the Council's employees on the understanding that this route will be used for work that cannot for whatever reason be delivered in-house. Consideration may need to be given to the position of current workers engaged in Legal Services who have been procured through other suppliers.

**HR Partner:** James Brereton, Head of Human Resources, 20 February 2024

<b>EDM Sign-off</b>	Tim O'Gara, Director: Legal and Democratic Services	28 February 2024
<b>Cabinet Member sign-off</b>	Cllr Craig Cheney, Deputy Mayor: City Economy, Finance & Performance	27 February 2024
<b>For Key Decisions - Mayor's Office sign-off</b>	Mayor's Office	4 March 2024

<b>Appendix A – Further essential background / detail on the proposal</b>	<b>NO</b>
<b>Appendix B – Details of consultation carried out - internal and external</b>	<b>NO</b>
<b>Appendix C – Summary of any engagement with scrutiny</b>	<b>NO</b>
<b>Appendix D – Risk assessment</b>	<b>NO</b>
<b>Appendix E – Equalities screening / impact assessment of proposal</b>	<b>YES</b>
<b>Appendix F – Eco-impact screening/ impact assessment of</b>	<b>YES</b>
<b>Appendix G – Financial Advice</b>	<b>NO</b>

<b>Appendix H – Legal Advice</b>	<b>NO</b>
<b>Appendix I – Exempt Information</b>	<b>NO</b>
<b>Appendix J – HR advice</b>	<b>NO</b>
<b>Appendix K – ICT</b>	<b>NO</b>
<b>Appendix L – Procurement</b>	<b>NO</b>