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23 April 2015

Dear Sirs

### **Response to discussion paper on regulatory restrictions in practicing rules for in-house lawyers**

This response is made on behalf of North London Waste Authority (“NLWA”), a statutory waste disposal authority and a “local authority” for the purposes of the in-house practice rules. Further information about NLWA is available on its website [nlwa.gov.uk](http://nlwa.gov.uk)

#### **Background**

1. NLWA fulfils its statutory functions for waste disposal through a contract with its wholly owned subsidiary, LondonWaste Ltd (“LWL”). This contract was let on the basis of an “in-house” award by NLWA, as a contracting authority, in compliance with the criteria set out in the judgment of the Court of Justice of the European Union in C-107/98 *Teckal v Comune di Viano and Azienda Gas-Acqua Consorziale di Reggio Emilia* [1999] ECR. The *Teckal* test is now codified in Regulation 12 of the Public Contracts Regulations 2015.
2. NLWA has arrangements in place with some of its constituent boroughs<sup>1</sup> for the provision of services in accordance with section 1 of the Local Authorities (Goods and Services) Act 1970 and section 101 of the Local Government Act 1972. NLWA has arranged with the London Borough of Camden (“LB Camden”), one of its constituent boroughs, for the provision of in-house legal services from its employees that are authorised by the Bar Standards Board (“BSB”) and the Solicitors Regulation Authority (“SRA”). These authorised legal employees of LB Camden can be seconded to NLWA for the provision of in-house legal services.
3. LB Camden is a non-authorised employer and is empowered by statute to provide legal services to NLWA. NLWA is therefore a “connected” person to LB Camden under the BSB and SRA practice rules. LB Camden is potentially not connected to LWL under the SRA practice rules because it is not a shareholder or guarantor and does not have an employed solicitor as an officer of LWL.

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<sup>1</sup> Seven constituent boroughs are: LBs Barnet, Camden, Enfield, Islington, Hackney, Haringey, Waltham Forest,

4. Under the BSB rules, LB Camden is also potentially barred from providing legal services to LWL through a barrister.
5. In accordance with the legends used in the Legal Services Board discussion paper:
  - LB Camden could be “P”
  - NLWA could be “C”
  - LWL could be a person not connected to P and is not “C”

## **Responses to relevant Consultation Questions**

*Question 4: What is your experience of current arrangements for in-house lawyers?*

6. LB Camden is potentially restricted by the SRA practice rules with respect to the provision of legal services to LWL. As a *Teckal* company, LWL is effectively a departmental arm of NLWA. There are real practical and governance issues experienced as a result of the BSB and SRA practice rules' restrictions on in-house legal services. LWL is entirely publicly funded<sup>2</sup> but is unable to take advantage of the non-commercial rates for legal services offered by LB Camden to NLWA and is required to tender for separate legal services, at additional costs. Where projects are carried out jointly by NLWA and LWL, with common objectives, LWL is unable to benefit from non reserved legal services received from LB Camden on matters that concern LWL directly.
7. There have been occasions where legal advice provided to NLWA by LB Camden has not matched or joined up to legal advice provided to LWL by external advisers. This has resulted in additional costs to NLWA in arranging for the different legal advisers to communicate with each other to iron out differences of opinion.
8. NLWA considers that the BSB and SRA restrictions go unnecessarily beyond the requirements of s15 of the Legal Services Act 2007 (the “Act”). The Act would allow LB Camden, without the restrictions imposed by BSB and SRA, to provide unreserved legal services through authorised solicitors and barristers to LWL.
9. Local authorities are increasingly taking advantage of procurement exemptions to explore shared services and take advantage of reduced commissioning costs and service provision through economies of scale. Practice rules imposed by BSB and SRA that go beyond the requirements of the Act are a bar to achieving innovative and cost effective service delivery.
10. NLWA does not consider that there are any risks to the regulatory objectives of BSB and SRA in relaxing their respective practice rules to match the restrictions of the Act, within the context of in-house legal service provision to the *Teckal* company of a connected person. The legislative landscape is becoming increasingly more accommodating to shared public services and the codification of procurement exemptions like the *Teckal* exemption in the Public Contracts Regulations 2015 is an example of this.

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<sup>2</sup> Through a levy paid by the seven constituent boroughs under the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006

*Question 5: What, in your view could be improved?*

11. NLWA considers that the SRA and BSB practice rules should be scaled back to better reflect the restrictions in s15 of the Act on the provision of reserved activities. This would better match the statutory charging and trading powers of local authorities.
12. At the very least, the specific rules in relation to local government should expressly allow for the provision of unreserved activities to companies controlled by other public bodies or to companies controlled by connected persons.

I look forward to seeing the published findings of the LSB and can confirm that this response can be published on the LSB website.

Please contact me using the above details should you have any queries.

Yours faithfully



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