

LEGAL SERVICES BOARD

Request for Applications
for Appointment to Panel of Legal Advisers

1. INTRODUCTION

- 1.1 The Legal Services Board (the “**LSB**”) is the oversight regulator of the market for legal services in England and Wales. This document is inviting legal services providers to seek appointment to a panel to provide legal advice and support to ensure that the LSB’s work is carried out lawfully, efficiently and effectively.
- 1.2 In this document we outline the legal activities in relation to which the LSB may seek external legal support. We are a small organisation, funded by the legal profession. Accordingly, we are not able to offer any guarantee as to the precise volume of services we may require. In particular, our anticipated need for legal support on litigation related matters is dependent to a high degree on the behaviour of third parties.
- 1.3 The purpose of this document is to invite applicants to be assessed for suitability, competence, and value for money.¹ If appointed to the panel, the timing and anticipated costs of each specified service delivery will be agreed between the parties on a case by case basis. We are inviting applicants to respond to any or to all of the areas of work covered in this document. We have specified our expectations on process and on contractual terms in this document. We will, however, consider reasoned requests to depart from these processes and terms as part of our overall assessment of the suitability of applicants to supply the specified service.
- 1.4 This appointment exercise is intended to provide us with legal support for two years commencing on 1 January 2013.

¹ Although the LSB may, from time to time, need to seek services from advisers outside its panel, for example, in relation to particular specialisms or to meet unforeseen demands.

2. BACKGROUND

- 2.1 The LSB was created as an independent non-departmental public body by the Legal Services Act 2007 (the “**LSA**”). The LSB oversees the “approved regulators”² of six different “reserved legal activities”³. A person can only conduct one of the reserved legal activities if they are licensed to practise by an approved regulator. The LSA provides mechanisms for adding and removing both approved regulators and reserved legal activities.
- 2.2 The LSA requires the approved regulators to exercise their regulatory roles (importantly, independently of their representative functions) in order to ensure that the Regulatory Objectives⁴ and Professional Principles⁵ specified in the LSA are met and that all regulation is carried out in line with Better Regulation Principles⁶.
- 2.3 The LSB has a headcount of approximately 30 staff (including two solicitors in the roles of Legal Director (Nick Glockling) and a Legal Advisor (Jessica Clay) – the “LSB legal team”) and an annual budget of approximately £4.5m to cover all operating costs.
- 2.4 The LSA requires the approved regulators to raise funds by way of levies on the practising certificate fees of their licensees which are sufficient to pay for the operating costs of both the LSB and the Office of Legal Complaints (the “OLC”) – the board for the Legal Ombudsman⁷. These funds are collected by the LSB and remitted to HM Treasury. The LSB and the OLC are then funded to the level of these collected funds by their sponsor department, the Ministry of Justice (the “**MoJ**”). The net effect of this arrangement is that the LSB and the OLC are paid for by the profession and there is no net cost to the taxpayer.
- 2.5 Further details about the LSB and its business plan can be found at www.legalservicesboard.org.uk.

3. AUDIENCE FOR THIS DOCUMENT

- 3.1 This document is intended for all people who consider that they might be able to contribute reliably to the LSB’s legal needs and who can demonstrate technical competence, and expertise in the required work areas.
- 3.2 The LSB’s goal is to be able to select appropriate, competent and cost effective legal advisers.
- 3.3 While we welcome interest from applicants in respect of any one of the areas of work described below, our preference would be for applications to cover several or all of those areas.

²See s20 LSA.

³See s12 LSA.

⁴See s1 LSA.

⁵See s1 LSA

⁶See s3(3) LSA

⁷The OLC will also be part funded by fees paid by lawyers whose clients take complaints about them to the OLC.

4. AREAS OF WORK AND SUPPORT

4.1 The LSB anticipates that it will require external legal support in the form of advice and assistance, legislative drafting, and litigation support:

A: Advice and assistance – public law

The LSB is a statutory body performing a public function. To give effect to its statutory objectives, LSB staff require advice and assistance to interpret and apply: -

- the LSA and sector specific legislation, such as the Solicitors Act 1974, Administration of Justice Act 1985 as well as industry Codes of Conduct and professional rules and regulations;
- “public law” principles and practices more generally;
- the law of England and Wales and EU Law as they relate to the LSB.

The LSB legal team will expect to handle the majority of this work, but may seek advice in relation to projects which involve novel points of law or which are likely to prove particularly controversial or contentious. In these circumstances, it is likely that the LSB will seek advice in the form of an external critique of the legal team’s own analysis.

B: Advice and assistance – private law

In addition to advice in relation to its public functions, the LSB legal team has to advise on all of the usual areas affecting a small organisation. The LSB is a discrete legal entity that occupies its own premises, hires its own staff and manages its own procurement and service provision contracts.

The LSB legal team will expect to handle the majority of the work in these areas but is likely to need ongoing small inputs of legal advice on particular issues and specialisms which are not within the core, everyday competence of the internal legal team – this could include advice in relation to commercial contracts, procurement and employment matters.

C: Legislative drafting

The LSA provides for the LSB to make rules by Statutory Instrument (or to recommend draft Statutory Instruments to be made by MoJ). The volume of such instruments made (typically two or three per year) does not warrant the LSB retaining a full-time, in-house, dedicated draftsman. The LSB will, from time to time therefore, seek the services of a legislative draftsman with appropriate knowledge of Parliamentary procedure to whom it can supply detailed drafting instructions for the production of Statutory Instruments.

D: Litigation support

The environment in which the LSB operates is potentially contentious. Consequently, over time the LSB may need both to commence legal proceedings and/or to defend them. The LSB recognises that the most likely form of legal action to be commenced against it would be a claim for judicial review. In this context, the LSB will need to focus particularly on:

- seeking to ensure that it understands and controls its exposures to any such review both in its day to day operations and in its public comments and interactions; and

- having a team and a plan, detailing resources, costs and processes in place to address any serious threat of or actual attempt to judicially review (or bring any other form of court action against) the LSB.
- 4.2 The LSB legal team may also require external legal support in the form of a secondee from an external legal adviser. Any secondment would have to be tailored to the LSB's needs at the time and this could range from junior to more senior support.
- 4.3 Additionally, the LSB is interested to hear of any relevant training options that potential applicants could offer, whether this is in the form of training materials, legal updates or seminar briefings.

5. FUNDING

- 5.1 The LSB's legal budget comes from within the overall budget granted to it by way of the levy as indicated in the Background section above. Experience to date is that discrete pieces of work upon which external legal support has been sought are typically of a value below £5,000.
- 5.2 It is understandably difficult for the LSB to predict whether it will face any substantial legal challenges and if these were to arise, there may also be more complex and time-intensive pieces of litigation-based work in relation to which external legal support is sought. These pieces of work could accordingly be of a higher value as well as being administration-intensive. Alternatively, if the LSB legal team has to dedicate more of its own workforce to a specific litigious matter, this could result in the LSB requiring external legal support to manage its regular workflow.
- 5.2 Funding is limited and closely scrutinised. Consequently, the LSB has to show that the requirement for external legal advice to be sought and provided is demonstrably and transparently necessary, efficiently supplied (both in relation to the advice given and administrative processes such as invoicing) and should represent good value for money.

6. APPOINTMENT TO PANEL PROCESS

- 6.1 The purpose of this exercise is to identify preferred legal services providers ("**Providers**") from across all legal disciplines and structures for each of the anticipated required work areas outlined above (and documented in more detail below) which can be called upon if or when appropriate.
- 6.2 The LSB's preferred approach is to create a small panel of legal advisers, to ensure availability and to allow ongoing comparison between Providers. This means that exclusivity terms and volume based commitments will not be possible.
- 6.3 The individual pieces of advice the LSB commissions will be low value and so it is not necessary to run a formal public procurement exercise as such contracts are exempt from those processes under the Public Contracts Regulations 2006.

7. ANTICIPATED VOLUME OF WORK

- 7.1 The LSB anticipates that the overall volume of work will be relatively low. However, the LSB is alive to the fact that it could face legal challenges at any time and in these circumstances, the volume of work could fluctuate with very little notice. The LSB therefore recognises that volume-based economies will be challenging to realise.
- 7.2 However, the LSB also regards the work areas with which it is involved as being particularly unusual and potentially interesting and hopes that potential Providers would nonetheless be keen to assist with our work.
- 7.3 As guidance, where a Provider already has agreed rates in place with the Government Procurement Service (formerly Buying Solutions operating Catalyst framework agreements) then we would expect like for like rates to be no higher than the rates quoted in that scheme. Similarly, if a Provider is a member of the Attorney General's Panel of Counsel we would expect to be charged at the same rates.

8. ADMINISTRATION EXPECTATIONS

A: Principles

The LSB needs to strike a balance between demonstrably efficient and transparent cost control and administrative burden – especially on smaller matters. Some of the LSB's work may be relatively unusual both for the LSB legal team and for the Provider. Consequently, the LSB is keen that there is a clear, shared and documented understanding of what is required on each discrete piece of work, and that this is in place before any work commences.

In the event that urgent legal advice is required this will be addressed by, initially, agreeing small blocks of work to deal with the issue and then working out a proper overall project plan to completion.

Providers will need to have a competent time recording process (albeit possibly a simple one for small Providers) and be prepared to share the contents of this process with the LSB as part of the draft invoice review process. The LSB will look for an approach embodying these principles:

- any hourly based charging system will be based on 5 or 6 minute units;
- units of time spent on education of junior staff/correction of learning errors will normally be written off both the senior and the junior person's time recording as this will usually be an indication of an ineffective staffing selection;
- Providers will seek to minimise staff changes and to build proactively a knowledge base on the LSB and its work on an ongoing basis to reduce reading in costs/efforts. Consequently there will be no general reading in time charged for except where a new legal discipline is being considered for the first time;
- Providers will always delegate work to staff that are competent as well as being at the appropriate qualification level and most cost effective for that piece of work. Providers may elect to provide staff for a matter that are deemed to be beyond the required competency but if they choose to do so, then they will only charge for them at the level equivalent to "competent" staff;
- pure administration work (including preparing estimates, invoices etc) is part of overheads and should neither be charged for nor done by legally qualified staff.

In the event that a particular project is unavoidably administration heavy then administration grade staff may be quoted for and charged for on a strict cost recovery basis.

B: Communication style

All communications with the LSB should be in a “plain English” style. Where a substantial or very complex report or piece of advice is anticipated then the Provider should identify this fact to the LSB before doing the work and the format and content should be agreed beforehand to ensure that there is maximum efficiency in its preparation and usability.

C: Professional Indemnity Cover

The LSB’s Audit and Risk Committee normally requires sole contractors to carry £1,000,000 of professional indemnity cover and organisations to carry such levels of cover in excess of this as is commensurate with their size.

D: General Process

The LSB would typically expect to operate within the following basic process for most matters (specific exceptions are identified further below):

1: Email based request for quote from the LSB to the Provider itemising:

- issue;
- need;
- timing of work (in terms of phases of work and overall completion); and
- time within which a quote is needed.

2: Acknowledgement and provision of estimated time for delivery of itemised quote within one working day. Unless otherwise agreed, the normal expectation for a fully itemised quote to be issued is five working days. Shorter periods may be requested on urgent matters and extensions may be granted on complex matters at the LSB’s discretion.

3: Itemised quote including fully itemised draft “work plan”. This quote may be for work either done on a fixed fee or by way of a capped fee. Generally, the quote and draft work plan should be broken down into phases of activity with each phase itemised by:

- anticipated staff member(s) to do the work (with a relevant summary profile for each staff member who has not previously worked on a LSB matter);
- the reason why such staff member(s) are the most suitable person(s) for the work (typically we would expect this to be that they are at the most suitable level of competency for that piece of work and are cost effective);
- the amount of time that it is anticipated that it will take the person(s) to do the work; and
- the total cost of that phase.

This exercise should be done even on fixed fee work to demonstrate the value being offered.

Each phase of activity should normally comprise a discrete block of work at the end of which outputs can be assessed and next steps agreed or the matter

discontinued. In most cases a phase of activity should not exceed 10 hours of working time. However, the LSB legal team recognises that should the work plan relate to an exceptional or complex litigation-based matter, such as defending a judicial review challenge, phases of activity could be substantially different.

In litigation matters the key points at which a tactical decision should be made (such as a decision to discontinue, to bring proceedings or robustly defend a claim), should be identified together with the relevant reasons explained so that it is clear what cost, resources and tactical implications would be involved in each option that can be taken at that stage.

Anticipated rechargeable disbursements, including the use of subcontracted legal or non legal providers and court or other fees, must be itemised and agreed in advance of commitments being made to the third party.

For the avoidance of doubt, the timing, payment terms and method of settlement of such disbursements are solely the Provider's responsibility and the LSB terms will expressly exclude the rights of any such party to enforce against the LSB under the Contracts (Rights of Third Parties) Act 1999.

A Provider must ensure that any such subcontracted third parties will not lead it or the LSB into disrepute and should bear in mind that the LSB will make all primary and subcontract Provider details publicly available on request under its Freedom of Information Act 2000 obligations unless a good reason is put forward, within the limitations provided by any applicable legislation, prior to work being commenced with the Provider or subcontractor.

The Provider must ensure that any work done by itself or by its subcontractors or agents complies with the Data Protection Act 1998 and any applicable English government guidance on data protection and data sharing.

Quotes must include estimated unavoidable disbursements (such as train travel or court fees). The LSB will not expect to pay costs for office administration, stationery, fax, telephone charges, copy charges etc.

No expenses of any kind which are not included in an agreed quote or which are higher than those itemised in the agreed quote may be incurred without the LSB's prior approval.

- 4: Review and discussion of quote and issue of revised quote** if this is required.
- 5: Email confirmation of order by the LSB legal team** following which the selected Provider should send the final agreed work plan (now called a "work order" because it is in agreed form), confirmation of the agreed price and confirmation that the work order is to be performed under the terms of the framework agreement existing between the parties
- 6: Possible changes of scope.** Fixed fees or capped fees per project phase are exactly that. Providers are expected to understand fully their area of competence, to clarify points as needed and to identify clearly any assumptions about the work, knowledge of the parties, materials/data/staff access to be supplied by the LSB or others as part of their quote.

Consequently it is expected that changes in scope will only arise from factors that the parties could not reasonably have considered/foreseen at the time of making the quote and/or as a consequence of the LSB requesting changes to the scope of the work.

Communications between the parties in the course of a work phase will not give rise to a change in scope for which an alteration in the agreed quote can occur unless the Provider (i) identifies the change in scope at the time that the proposed change arises; (ii) estimates the cost of the incremental work; and (iii) the parties then agree in writing either that the extra work should be done or that the work should continue according to the original scope for the original agreed fee. A mechanism for doing this in an efficient way would be agreed with each Provider.

- 7: Invoicing.** Before commencing any work with the LSB, a Provider must agree with the LSB the pro-forma and content for their invoices, billing narratives and other supporting documents. All subsequently provided invoices will only be validly submitted and accepted if the invoice and the required supporting material conform exactly to such agreed requirements. Any submissions that do not comply will be rejected and will need to be resubmitted.

Accurate and timely invoicing is essential to the LSB and Providers must not create “surprises”. In return for cooperating with this need, the LSB will seek to pay all accepted final invoices within 10 working days of receipt and, will in all cases, pay accepted final invoices within 30 calendar days of receipt.

Each project will be identified at the outset as either being a “monthly billed project” or an “end of stage billed project”.

For “end of stage billed projects” the Provider may raise a draft invoice for the LSB’s approval only following mutual written agreement that the stage has been satisfactorily completed. For “monthly billed projects” the Provider may raise the draft invoice following the end of the month in question.

The Provider must ensure that all items relating to the phase of the project or the time period are included in the draft invoice as, unless otherwise expressly pre-agreed in writing, the LSB will only make one payment per month or per stage of the project.

The Provider must raise all invoices, except where expressly pre-agreed in writing, by the end of the calendar month following the month or stage completion to which the invoice relates. Failure to raise the invoice within this time period and/or to include all relevant material will result in a discount to the LSB on the amounts invoiced.

Draft invoices must include only such fees (including those for pre-agreed increased scope work) as have been agreed and such disbursements as have been agreed as above. The LSB will seek to review and approve or return or discuss the content of the draft invoice within 10 working days of its submission. When a draft invoice is approved then a final invoice may be submitted and, provided that it is exactly the same as the approved draft invoice, it will be accepted and paid.

- 8. Service Credits.** Where the Provider fails to deliver the agreed work product on time or to the right standard on the first occasion resulting in delay to the LSB and/or extra work having to be carried out by LSB staff and/or loss of credibility on the part of the LSB legal team in selecting the Provider then the LSB may require a reduction in the invoice commensurate with this extra work and based on the assumption that the LSB staff time absorbed is costed on a similar basis to the chargeable rate of the equivalent grade of staff member within the Provider.

Any such reductions would be without prejudice to any rights that the LSB may also have with regard to other direct consequences of the non performance and/or to any liabilities that may result from technical errors or omissions in the advice itself.

- 9. End of project debrief.** Both parties should be proactive in identifying and suggesting ways in which the working relationship on a project, and generally, can be improved on an ongoing basis.

In addition the LSB would normally expect to have a telephone, email or meeting-based debrief (format and level of detail depending on the size of the project and the quality of the execution) following each piece of work (or project phase on large long-running projects) through which both parties can give open feedback on their own learning from the project and guidance on how the other party could improve efficiency, quality of interaction, cost and timing control on subsequent projects.

10. Communication authority

Unless otherwise agreed expressly, in writing, with the LSB's Legal Director, only the LSB's Legal Director, Legal Advisor or the Chief Executive has the ability to commit the LSB and/or to make changes to the scope of the work requested. The Provider should identify clearly all of its staff who have the ability to commit it and on what topics those staff can make commitments.

9. APPLICATION PROCESS AND TIMETABLE

9.1 Process

- 9.1.1 All questions about the process must be communicated via email to michael.mackay@legalservicesboard.org.uk, an LSB Administrative Assistant. All submissions must be made in Microsoft Word or Adobe PDF format only, by email and using zip files for any documents if the total size of the email will exceed 2MB. Hard copies will not be accepted unless otherwise agreed in advance by the LSB.
- 9.1.2 Please ensure that your submissions take full account of our communication style preferences – we will use the quality of your presentation as one of the assessment factors.
- 9.1.3 Please note that, unless expressly agreed otherwise, all communications and materials provided (other than rates and personal details of staff not visible on your own published materials) may be made publicly available following the completion of the application process in order to comply with our Freedom of Information Act 2000 obligations. If you have good reason to feel that something should not be made publicly available then please discuss and agree this with us before submitting your application to us.
- 9.1.4 If you have not had an acknowledgement of receipt to any communication within two working days of despatch then please telephone 020 7271 0082.

9.2 Timetable

- 9.2.1 Application process opens: Monday 22 October 2012.
- 9.2.2 Questions and clarification period: Monday 22 October – Friday 2 November 2012 (at this stage the applicant should be comfortable that its communications with the LSB with respect to the process are now subject to the Freedom of Information Act 2000).

- 9.2.3 Deadline for submissions: midnight (BST) on Friday 16 November 2012 – late submissions will not be considered unless there is a genuine IT related reason for the lateness or prior written permission has been sought by the applicant and provided, either in writing or electronically, by the LSB.
- 9.2.4 Consideration of applications: Monday 19 November – Friday 7 December 2012 which may include requesting candidates to attend interview in person/by telephone or to answer follow up questions by email.
- 9.2.5 Announcement made to selected Providers: Wednesday 12 December 2012.
- 9.2.6 Agreed public communications/press releases: Friday 14 December 2012.

10. APPLICANT INFORMATION REQUIREMENTS

10.1 Applicants will be expected to provide the following information, for assessment and scoring:

10.1.1 In relation to each of the areas of work (set out in section 4 above) to which appointment to the panel of legal advisers is sought, applicants should identify their proposed team, set out the reasons for applying and describe their relevant experience providing examples of previous service delivery in a comparable area. Details should include experience of the specified activity, and of advising a public sector organisation and a Board of statutory appointees.

10.1.2 Details of proposed charging rates – these rates must be fixed until 31 December 2014 and must cover:

- the named individuals who you are proposing to work directly with the LSB;
- where applicable, the different levels of seniority in your organisation in case other members of your organisation become involved in work over the period;
- hourly rates, half day and day rates (which should reflect four and eight hours respectively and should be cheaper than the equivalent number of hours at an hourly rate);
- any other charging models that you are prepared to offer – explaining how they would work to the LSB's and to your benefit and the context in which you foresee that they might be used;
- a comparison with your Government Procurement Service rates if you are a panel member;
- a comparison with your Attorney General's Panel of Counsel rates if you are on that panel; and
- if you are a not for profit organisation please provide details of what costs you would be seeking to defray in order to do work for us and the basis upon which you have calculated them.

10.1.3 Identification of any anticipated conflicts of interest likely to arise from working for the LSB and an explanation as to how you propose to address them. The LSB understands that in relation to these areas of work in which external support may be required, there may be conflicts of interest that arise. Any such conflicts would need to be carefully managed but the LSB confirms that they will not necessarily rule out appointment to its panel of legal advisers.

10.1.4 Applicants should also confirm: –

- that if appointed to the panel of legal advisers, the applicant will seek to provide legal support to the LSB to meet the expectations set out herein;
- that the applicant understands the nature of our organisation (and its transparency obligation) and the obligations on us to observe the Freedom of Information Act 2000 and the Data Protection Act 1998 provisions relating to public organisations which will result in most information passed

between the applicant/selected Provider and the LSB being publicly disclosable – including the application;

- that the applicant knows of no factors that will or might cause the LSB to regret, be embarrassed by or be criticised for appointing the Provider to the panel of legal advisers and that any factors that will or might arise in future will be identified to the LSB promptly and will be further discussed;

10.1.5 Applicants should attach: -

- proof of professional indemnity insurance cover and copy Practising Certificates (where applicable) for all of your proposed team;
- any certifications of competence and high standards/relevant recognitions/awards e.g.. Lexcel, Lawyer Awards etc;
- where applicable, copy of the organisation's diversity policy, details of how it is applied in practice and any relevant diversity statistics (please note that we will publish such data); and
- operational details including staff contact details, organisation structure details, VAT number (if applicable).

10.1.6 Applicants should set out any proposed arrangements they have for offering relevant training sessions and material and/or hosting training events for LSB employees.

10.1.7 Applicants should provide details of their anticipated capacity to provide members of their team, at varying levels of qualification, for secondment to the LSB

10.2 The LSB will assess all applications in accordance with the matrix at Annex 1.

Annex 1 – Assessment Matrix

	Applicant Score/Comment
Clearly identified proposed team	
Reasons for applying to the LSB	
Experience of advising NDPBs/public sector organisations	
Experience of advising Boards	
<p>Demonstrable experience in areas of work:</p> <p>A. Advice and assistance – public law</p> <p>B. Advice and assistance – private law</p> <p>C. Legislative drafting</p> <p>D. Litigation support</p>	
<p>Proposed rates, including:</p> <ul style="list-style-type: none"> • named individuals who you are proposing to work directly with the LSB; • where applicable, the different levels of seniority in your organisation in case other members of your organisation become involved in work over the period; • hourly rates, half day and day rates (which should reflect four and eight hours respectively and should be cheaper than the equivalent number of hours at an hourly rate); • any other charging models that you are prepared to offer – explaining how they would work to the LSB's and to your benefit and the context in which you foresee that they might be used; • a comparison with your Government Procurement Service rates if you are a panel member; • a comparison with your Attorney General's Panel of Counsel rates if you are on that panel; • if you are a not for profit organisation please provide details of what costs you would be seeking to defray in order to do work for us and the basis upon which you have calculated them; 	
Identification of any anticipated conflicts of interest and explanation of proposed approach to manage them	

<p>Confirmation that:</p> <ul style="list-style-type: none"> • will seek to meet LSB's expectations/principles • understands transparency obligations • no factors that would embarrass LSB 	
<p>Provision of:</p> <ul style="list-style-type: none"> • Proof of professional indemnity cover/Practising Certificates • Certificates of competence • Diversity policy • Operational details 	
<p>Details of proposed arrangements for offering relevant training sessions and materials and/or hosting training events for LSB employees</p>	
<p>Details of anticipated capacity to provide members of team, at varying levels of qualification, for secondment to the LSB</p>	