

**RECORD OF CASEWORK COMMITTEE MEETING ON
FRIDAY 25 OCTOBER 2013**

Present: Eugene Rooney Casework Committee
Wendy Johnston Casework Committee
Paul Brush Casework Committee

Fiona Hepper Energy Division
Paul Dolaghan Energy Division
Sandra Thompson Energy Division

**CASEWORK SUBMISSION FOR THE APPOINTMENT OF ENERGY LEGAL
ADVISERS WITH EFFECT FROM 1 APRIL 2014****Introduction**

- 1 The Casework Committee meeting was convened to consider Energy Division's request for approval to appoint energy legal advisers with effect from 1 April 2014. No conflicts of interest were declared.

Issues Raised and Action Points Arising

- 2 Mr Rooney sought confirmation that the need for energy legal advice was ongoing and not for a discrete period, in which case it would raise the options of developing in-house expertise or recruitment of legal advisers to DSO or DETI. Mrs Hepper confirmed that this was the case, adding that alternatives had been explored in conjunction with Departmental Solicitor's Office (DSO) and it had been concluded, due to difficulties in relation to attracting and retaining a highly skilled resource in this area, that engagement of external advisers, working closely with both Divisional staff and DSO, was the most effective way of meeting this ongoing need. It was also confirmed that NIAUR, although they have a small in-house legal team, still put most legal work through their external advisers.
- 3 Miss Johnston and Mr Rooney queried the proposal not to advertise in the Official Journal of the EU (OJEU) and asked whether the Division was satisfied that the pool within the UK was sufficient to ensure achievement of value for money and availability of appropriate expertise. Recognising that potential tenders from the Republic of Ireland would be excluded, Mrs Hepper assured the Committee that many local legal firms were building up their energy teams to meet the increasing demands of government, industry and the Regulators and emphasised in particular the wealth of energy legal expertise in and around London. The Committee also raised the issue of the

high potential for conflict of interest with firms operating within UK. Mrs Hepper confirmed that this would be addressed in the contract.

- 4 The total values for the current and the proposed new contracts were then discussed. Mr Rooney pointed out the projected underspend on the current contract and asked that Energy Division ensure that any DFP approval for such a variation, as required under the terms of the original approval, was obtained. Stressing that the approved per annum figure of £400k was a maximum value, Mrs Hepper undertook to check the position and liaise with Accountability and Casework / DFP as considered necessary. The reclassification of expenditure from 'external consultancy' to 'managed service' with effect from 1 April 2012 (Year 2 of the current contract) was also noted. It was confirmed that the proposed lower value of the new contract (not to exceed £900k over the three year period) was Energy Division's best estimate based on current knowledge of what legal expertise would be required. It was also confirmed that, should an overspend be anticipated during the life of the contract, appropriate approvals would be sought. Mr Rooney also asked whether the budget requirement had been factored into the monitoring system and sought confirmation that Finance Branch were aware of the pre-commitment. It was stressed that there was no actual pre-commitment as no work was guaranteed under the contract. However an inescapable need is recognised and in-year bids will have to be submitted if necessary from Year 2 of any new contract (i.e. 2015/16).

Action: Energy Division to check approval terms of existing contract. Post meeting, Energy Division has forwarded interim PPE to Accountability and Casework who are checking position with DFP as to whether any further approval is required.

- 5 Mr Rooney enquired whether, in order to help ensure we secure the right expertise, the tender specification could detail separately work which it is known will be required, as distinct from more reactive or speculative requirements. It was agreed that the terms of reference would be as specific as possible in relation to known areas of work - such as the Energy Bill, the Renewable Heat Incentive Regulations and the Energy Efficiency Directive.

Action: Procurement documents to detail separately work which it is known will be required, as distinct from more reactive or speculative requirements.

- 6 Mr Rooney sought confirmation that DSO and DFP/ CPD would be involved in the tender evaluation process and queried the method of measurement of 'relationship building and methodology' as a qualitative criterion. Mrs Hepper confirmed involvement and advised that this criterion was as suggested by CPD and covered such issues as commitment/ assurances regarding accessibility and availability of suitably experienced senior staff

as and when required. The Committee inquired about the practical operation of appointment of more than one firm, in the event that one could not offer advice against the full range of energy issues. Mrs Hepper explained that for the current contract, while a pool of 3 contractors exists, Energy Division can only bypass the highest scoring company if they have a conflict of interest or do not have the resources or capacity to carry out a particular piece of work. There is also potential, within proposed terms of reference for the procurement, for firms to tender for specific areas of work which could allow the contract to be split between two or more firms.

7. Mr Rooney then asked how, in regard to project management arrangements, the Division would measure the soundness of advice received. Mrs Hepper advised that, in addition to judging based on outcomes, experience of staff within Energy Division and ongoing close liaison with DSO ensure that advice is challenged or queried if deemed necessary. Mr Rooney stressed the importance of establishing clear performance criteria to facilitate effective monitoring and to make it easier to terminate any future contract should that prove necessary due to poor performance. Energy Division noted that this was in place for the existing contract and would be a feature of any future contract.

Action: Energy Division to ensure that requirements are made clear in procurement documents.

Conclusion

8. Confirming that the Committee had no further questions and were prepared to approve the appointment of energy legal advisers, Mr Rooney requested that Energy Division ensure the minutes of the Casework Committee recorded the additional assurances provided at the meeting.
9. Mr Rooney concluded the meeting and thanked all for their attendance.

Sandra Thompson

29 October 2013