

Executive Decision Report

Decision maker and date of Leadership Team meeting or (in the case of individual Lead Member decisions) the earliest date the decision will be taken	<p>Leadership Team 20 February 2019</p> <p>Forward Plan reference: 05334/18/K/A</p> <p>Portfolio: Cllr Elizabeth Campbell, Leader of the Council</p>	 <p>THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA</p>
Report title	LEGAL COSTS TO CONTINUE ASSISTING THE PUBLIC INQUIRY AND POLICE INVESTIGATION	
Reporting officer	Tasnim Shawkat, Director of Law	
Key decision	Yes	
Access to information classification	Public	

1. EXECUTIVE SUMMARY

- 1.1 The Grenfell Tower fire was a tragedy that must never happen again. The Council's legal team of in-house and external lawyers recognise and are working to the commitments the Council has made in adopting the Hillsborough Charter. This requires openness and transparency and not being defensive in relation to external scrutiny.
- 1.2 In line with the Council's commitments the legal team is assisting the Inquiry to expose the lessons of Grenfell so that not only can they be applied by this Council but they can be applied by every council, building owner, private landlord, and those who have responsibility for housing in this country.
- 1.3 On 22 March 2018 the Leadership Team gave approval to increase the spending for specialist legal advice and associated IT package in respect of the Grenfell Tower Public Inquiry and criminal investigation by the Metropolitan Police from £2.5million to £5 million.
- 1.4 At the meeting on 22 March 2018 members of the public, who attended the meeting, expressed concern about the level of costs on IT and legal fees. The Leader noted the concern about the costs but emphasised the Council's responsibility as a public authority to assist and make all the necessary information available to the Public Inquiry and the Police investigation to ensure full transparency and co-operation.
- 1.5 Supporting any inquiry or investigation necessitates incurring legal costs. The scale of the Grenfell Tower tragedy is unprecedented and has required significant expenditure on lawyers as well as the IT package to capture and process documents. It should be noted that both the Public Inquiry legal team and the Metropolitan Police Service have acknowledged the cooperation of the Kensington and Chelsea legal team in positive terms.
- 1.6 The Legal Team have approached their work with openness and transparency. The team has provided disclosure of documents and witness statements, in response to requests from the Public Inquiry and proactively provided additional information to help the Public Inquiry's legal team.
- 1.7 Most importantly the legal team has sought external challenge and feedback as to how effectively it is complying with the Charter requirements.
- 1.8 This report is to update Members and to explain the expenditure on legal fees to date and in the future. The report contains details that show how the money is being spent and how value for money is being achieved.

2 RECOMMENDATIONS

- 2.1 To note that spending to date on specialist legal advice to advise the Council on and assist with the criminal investigation and the Public Inquiry following the Grenfell Tower tragedy is £3,618,553.73 as at 31 December 2018.

- 2.2 To note that spending to date on the specialist IT package, and ongoing support, required to assist with obtaining, securing, categorising and disclosing Council-held data to assist the criminal investigation and the Public Inquiry is £ 923,709.91 as at 31 December 2018.
- 2.3 To agree that spending in relation to the specialist legal advice and IT package with ongoing support in respect of the criminal investigation and the Public Inquiry within the Grenfell budget will from now on be approved by the Executive Director of Resources and Assets, who will monitor and report the spend on a quarterly basis through the budget monitoring reports.

3 REASONS FOR DECISION

- 3.1 External legal advice is required to assist the Council during the Public Inquiry and the Metropolitan Police investigation process, following the tragic fire at Grenfell Tower. Both matters are requiring intensive work from the Council's in-house lawyers, external solicitors and counsel. Additionally, a specialist IT package with ongoing support is required to ensure that the Council's data can be captured, searched, reviewed and disclosed to the Police and Public Inquiry in the most efficient and secure manner possible.

4 BACKGROUND

- 4.1 DWF LLP have been engaged to act as the Council's principal legal advisers in relation to all legal issues relating to the criminal investigation, the Public Inquiry and insurance.
- 4.2 In addition, the Director of Law has had to use her delegated powers to instruct, Weightmans Solicitors, with the necessary expertise in accordance with the Council's Contract Regulations. This was to assist with the police investigation and provide them with an independent single point of contact as well as to support witnesses during their interviews.
- 4.3 The Director of Law, Legal Services and all external solicitors have been retained to act for the Council as a corporate entity and all advice to officers and Members is given on this basis. No separate representation is provided to any individual officers or Councillors or groups within any of the political parties in the Council. Any Member or officer can seek independent legal representation, but such representation will not be funded by the Council. This will be kept under review in case there is any conflict of interest.
- 4.5 On the 31 December 2018, the fees (including Work in Progress) from DWF Solicitors, Weightmans Solicitors, counsel's fees and cost of the specialist IT package including ongoing support were £4,542,263.64.
- 4.6 In the table below we set out the cost reported at the meeting in March 2018 and the total cost to date.

	Spend as at 19 February 2018	Total spend as at 31 December 2018
DWF Regulatory Team	£737,104.40	£990,500.11
DWF Public Inquiry Team	£418,839.32	£1,535,484.96
Counsel Fees	£375,651.76	£1,031,200.70
Expenses (Disbursements)	£19,764.56	£37,831.82
Specialist IT package and support (Public Inquiry)	£145,312.40	£343,134.62
Specialist IT package and support (Regulatory)	£355,924.25	£580,575.29
Weightmans Solicitors Fees	£11,858.50	£23,536.14
Total	£2,064,455.19	£4,542,263.64

4.7 In the March 2018 report we reported the cost of legal advice in relation to insurance. This is not part of the legal team's work but for the sake of completeness it should be noted that that the cost of advice on insurance matters at the 31 December 2018 was £385,103.50.

4.8 The Council's Financial Plans include a budget provision of £20m over the next five years for 'corporate' costs associated with Grenfell. This includes all legal costs arising from the Public Inquiry but also other costs, such as insurance, the TaskForce and other costs associated with the criminal investigation.

5 PROPOSAL AND ISSUES

Objectives of the Legal Team for the Public Inquiry and criminal investigation

5.1 The objectives of both the Council's legal services team and the external lawyers are set in the context of the tragic events of 14 June 2017 which has resulted in one of the most in-depth and complex investigations undertaken in the UK. The objectives can be summarised as follows:

- To provide proactive support to the Public Inquiry in their work in fulfilling the Inquiry's Terms of Reference
- To assist and co-operate with the Metropolitan Police Service in their investigations into any criminal wrongdoing
- In furtherance of the two objectives above, to locate and disclose all relevant documents and other evidence required by the Public Inquiry and the Police
- To ensure that the Council has experienced and continuous representation during the proceedings to safeguard the Council's legal position in a cost-effective manner

- To support all Councillors and officers of RBKC through these difficult and complex processes, to help to learn the lessons and to implement any changes that are required
- To proactively monitor how the legal team's work accords with the Hillsborough Charter adopted by the Council by demonstrating, transparency and openness, and
- To advise and support Council services to implement recommendations from reports or recommendations from the Inquiry and other regulatory reviews.

Overview of the Public Inquiry Hearing Process

- 5.2 Phase 1 of the Inquiry is now complete with evidence having been heard from Inquiry appointed experts, London Fire Brigade personnel who were involved in tackling the fire on the night, the bereaved, survivors and residents (BSRs). The focus of Phase 1 of the Inquiry was limited to the factual narrative of the events of the night of 14 June 2017.
- 5.3 RBKC filed a written Opening Statement on Friday 18 May 2018 and made an oral Opening Statement on 7 June 2018. This is available on the Council's website. At the end of Phase 1 hearings RBKC submitted written closing statement on 6 December 2018 and delivered oral closing statement on 11 December 2018. These are also available on the Council's website.
- 5.4 The Phase 1 report from the Public Inquiry is due to be issued sometime during 2019. Phase 2 preparations have been ongoing throughout the period. Over 40 statements have been disclosed thus far. We consider it likely that there will be some requests for supplementary statements and/or statements from new witnesses will be made in the course of 2019. Taking witness statements, including gathering and appending relevant documents, to ensure that witnesses are supported to disclose all relevant information, is an intensive and time-consuming process.
- 5.5 The Council's legal team (including external solicitors and counsel) are coordinating the Public Inquiry witness statement taking process, which includes meeting with each witness at least once, supporting the drafting of statements following the meeting and ensuring all relevant supporting documents are made available to witnesses to enable them to provide their evidence. This has involved the collation of bundles of documents for each witness from documents we have already collected, so that relevant documents can be exhibited with witness statements.
- 5.6 The witness statements and other documents have been provided to the Public Inquiry as requested in several tranches and to meet their deadlines. At times extension of time for submitting witness statements have been sought to manage the work within the resources identified. In addition to that the Council's legal team have proactively prepared and submitted additional material such as chronologies to assist the Public Inquiry.

Work on Documents and disclosure

- 5.7 The Council has committed to an "ongoing duty of disclosure" of relevant documents with both the Police and Public Inquiry, meaning documents continue to be provided at regular intervals. The legal team have provided nearly 14 million documents to the Police for them to review as part of their investigation, so that they have access to all documents whether considered relevant or not.
- 5.8 However, for the Public Inquiry a detailed filtering and review process has been undertaken by the Council's legal services team and the external legal team, to provide relevant documents, which will assist the Inquiry's work. Over two million documents have been collected and processed to Relativity, and of these, approximately 444,000 documents have been manually reviewed by lawyers, and over 40,000 documents have been disclosed to the Public Inquiry. This process has saved the Public Inquiry cost and time. We hope this has helped the Public Inquiry to speed up the process or at least avoid further delays.
- 5.9 Such a thorough and extensive process could not have been carried out without use of the specialist IT package, Relativity, as detailed further below.
- 5.10 The Inquiry in turn continues to disclose documents to Core Participants to the Inquiry on a rolling basis. These documents are disclosed by the Inquiry using the same technology as used by the Council in reviewing and providing their own documents i.e. Relativity. As of the 30th August 2018 the Inquiry had disclosed 20,398 documents including expert reports, witness statements and exhibits from fire fighters and survivors of the fire, 999 transcripts and police photos and video footage. The documents are reviewed as they are disclosed by members of the legal team including Leading and Junior Counsel, DWF lawyers and the Council's legal services team.
- 5.11 The Inquiry have stated that they will disclose around 200,000 documents during the course of 2019 and that the documents will become increasingly relevant to RBKC as the Inquiry moves towards Phase 2. Ahead of being disclosed to other Core Participants, DWF check the PI's proposed redaction of any third party personal data or legally privileged data within each document. The disclosure review and redaction process is likely to become more resource intensive over the next few months.

Specialist IT package for document storage and disclosure

- 5.12 DWF have identified nearly 14 million items (individual documents) from RBKC systems which have to be processed to identify documents potentially relevant to the Public Inquiry and/or the criminal investigation. In view of vast number of documents, it was critical to identify the right technology and instruct a specialist IT to guarantee the integrity of the data and provide independence from the Council's normal systems.
- 5.13 DWF instructed a global professional service provider to capture the data, process it and host it on DWF's behalf, this was done as soon as possible after the tragedy. The service provider has expertise in such data extraction. RBKC's own IT team would not have been able to replicate such an extensive and complex process as

they do not have the expertise or resource level required. The data was taken, where possible, from source, meaning the data was captured in its raw form, without alteration. This has maintained the forensic integrity of the data from the point of capture and negated the risk of any mishandling or corruption of it. This process was set out to representatives from the Met Police who approved, and were grateful for, the methodology used.

- 5.14 The chosen system is called "Relativity" and its key features are its specialist platform for the searching, reviewing and disclosing of large amounts of data. It enables data from a variety of sources (RBKC emails, individual emails, hard copy scanned files, RBKC fileshare sites and RBKC departmental databases) to be stored and searched within a single location, removing the need to utilise multiple platforms. Document searching within Relativity allows:
- Rapid, repeatable searching across all files within the terms of reference of the Public Inquiry;
 - Searches to be stored, so there is transparency in workflow and process;
 - Complex search criteria to be developed ensuring irrelevant data is filtered out, reducing review workload;
 - The exclusion of items already reviewed/currently under review to reduce duplication; and
 - "Tagging" options enabling users to quickly filter data by relevance or a certain topic/area. Mirroring the Public Inquiry's own tagging structure, we have been able to review data in a manner consistent with the Inquiry's requests. This has proved invaluable.
- 5.15 One of the most significant advantages of using Relativity has been the fact the Public Inquiry's legal team have themselves been using the same software. This has enabled smooth document transfers to the Inquiry. Choosing not to use advanced, industry technology would have meant that DWF and RBKC would not have been able to support and assist the Public Inquiry as efficiently.
- 5.16 It should be stressed that Relativity has immense advantage over manual solutions, as has been suggested by some. Its role is to assist the searching, reviewing and tracking of review decisions with a view to ultimately disclosing the relevant data to the Public Inquiry or Police. Doing this manually, or through using Adobe, would add significantly to additional human time, lead to a heightened risk of error and ultimately be less efficient from a cost perspective.
- 5.17 The Director or Law has been advised by DWF that using Adobe, without any additional infrastructure, to carry out the review of 1.8 million items would probably involve the following process:

- Opening each and every source file (for which there are hundreds) and print all files to PDF. The service provider has collected nearly 120 mailboxes alone - opening each of these would take several days;
 - Ensure that the program being used could expand and print zip files - otherwise this will have to be done manually;
 - If the average PDF creation takes 2 seconds per file on average for a standard laptop (setting aside the fact that a laptop wouldn't be able to hold this amount of data), 13.8m items x 2 sec = ~319 days. An investment would therefore need to be made in a whole new server to hold the data.
 - Once this server is in place, basic keyword searches could then be run, but there would be no facility to perform deduplication or search on date ranges as everything is a PDF, meaning there would be no other way of reducing the data from 13.8 million items to 1.8 million without using this technology. The running of each keyword execution would likely take several days and have a number of disadvantages such as not picking up conceptually similar documents or spelling errors/variations.
- 5.18 Carrying out this process for such a large amount of data would be a wholly unsuitable and impractical undertaking. Even if the number of reviewers was increased ten-fold, documents would not to be reviewed with the efficiency as the Relativity review has been conducted to date. Notwithstanding the additional time and personnel, a manual review would require (which would in all likelihood outweigh the costs of Relativity), there would be significant concerns around auditability, repeatability and quality of the review.

Comparison of Legal Costs for core Participants

- 5.19 The Public Inquiry has published a protocol Relating to Legal Representation at Public Expense Value. This includes the hourly charging rates that will be paid for legal representatives for core participants who seek public funding from the Inquiry. These rates are similar to the rates that the Council is paying DWF and demonstrates that RBKC is acting responsibly and ensuring value for money.
- 5.20 It should also be noted that the Public Inquiry has agreed to pay the travel costs for legal representatives. By contrast RBKC does not pay Solicitors or Counsel for travel time or costs for travel or accommodation.
- 5.21 In addition value for money was ensured by using junior or trainee barristers (with appropriate supervision) to check documents, and solicitors based outside London where hourly rates were lower.
- 5.22 Furthermore, in relation to the reimbursement of the costs and time associated with ex-employees of RBKC working with the legal team to prepare their witness statements for the Public Inquiry, any such requests have been referred to the Public Inquiry for consideration under their expenses policy.

5.23 It should also be noted that all work that DWF have done in relation to the Hillsborough Charter e.g. meetings within the legal team and Hillsborough panel members have been on a pro bono basis.

Other areas of work and value added work

5.24 The Council's legal team have also been working on other areas and have called on the expertise of DWF and Counsel.

5.25 For example the team has assisted service departments with the scrutiny by the Equality and Human Rights Commission. This required legal advice, disclosure of information and attendance with officers of the Council at meetings with representatives from the EHRC.

5.26 The legal team has also been meeting regularly with the Law Society to share knowledge of the Council's decisions and published policies in relation to the Bereaved, Survivors and Residents e.g. in relation to housing allocation. This has enabled the representatives of the Law Society to share information with the Forum of Lawyers who represents BSRs. This work has been invaluable in keeping channels of communication open albeit indirectly and potentially avoided unnecessary legal challenges through misunderstandings.

5.27 The Council's legal team, DWF in particular, has been proactive in identifying and facilitating discussions on how RBKC responds to the Hackitt review and recent consultations. The Council's legal team and DWF have also been providing considerable assistance to MHCLG in so far as fire door testing.

5.28 Another important area of work has been with regard to proposed interim recommendations. DWF and Counsel have undertaken a significant amount of work putting forward recommendations to the Public Inquiry for improvements and responding to submissions made by those who represent the BSRs and other public-sector agencies such as MHCLG, LFB and the Mayor of London

5.29 Time has also been spent ensuring that potential witnesses understand the legal processes and their obligation to provide evidence of truth. At these briefing meetings the Council's commitment to the Hillsborough Charter has been explained to the witnesses. The briefings have also been used to provide information about HR support that is available. The clear aim of these briefings has been to ensure that our witnesses provide the best evidence possible to the Public Inquiry so that lessons can be learnt and a tragedy such as Grenfell Tower is never repeated anywhere.

6. OPTIONS AND ANALYSIS

6.1 The Director of Law has looked at options for the legal support needed. There are no other options identified at this time as it is necessary to retain the same legal advisers both to represent and advise the Council and assist the Public Inquiry and the Police

in this extremely complex inquiry/ investigation. Both the PI and Met Police investigations are inextricably linked. The documents we produce for each need to be consistent and factually sound.

- 6.2 The Council's legal team is committed to being as transparent and helpful to the Inquiry as possible. It supports the commitment of the council to the Hillsborough Charter. DWF are also heavily involved in working with Hillsborough panel members to ensure our entire legal function is reflecting the Charter commitments.
- 6.3 It is vital that RBKC supports the Public Inquiry and makes representations for it to function and find the truth not only for the victims and the bereaved, but for the whole UK as we all face up to issues of fire safety and safe housing. This takes a fundamentally proactive mind-set coupled with considerable time, requiring proper resources, all of which costs money.

7. CONSULTATION AND COMMUNITY ENGAGEMENT

- 7.1 The engagement with the community has been through the meeting of the Leadership Team in March 2018.. The Director of Law and the legal team are open to engagement with the community in relation to their work on the Public Inquiry.

8. HUMAN RESOURCES AND EQUALITIES IMPLICATIONS

- 8.1 There are no implications for this report.

9. LEGAL IMPLICATIONS

- 9.1 The Public Contracts Regulations 2015 (the Regulations) provides an exemption from procuring legal advice in these circumstances. Specifically, the procurement of advice is exempt where legal advice is given in preparation of: (i) judicial proceedings before the courts, tribunals or public authorities; or (ii) where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings.

Implications completed by: Kar-Yee Chan, Shared Legal Services

10. INSURANCE IMPLICATIONS

- 10.1 Given the intrinsic link to potential insurance liabilities arising from the fire these costs will be paid from the insurance reserves in the first instance although in so far as the legal costs relate to regulatory and/or are in contemplation of personal injury litigation may recovered from insurers subject to the limits of indemnity.

11. FINANCIAL, PROPERTY AND ANY OTHER RESOURCES IMPLICATIONS

- 11.1 The Group Finance Manager Corporate Services has been consulted and is satisfied that the key financial implications have been covered within the Report. Costs will be

met from the appropriate general fund budget provision that is part of the Council's base budget and was agreed as part of the budget process in 2018/19.

Tasnim Shawkat
Director of Law

Local Government Act 1972 (as amended) – Background papers used in the preparation of this report

None

Contact officer(s):

Formal clearance requirements for all key decision reports	[insert]
Cleared by Finance (officer's initials)	TE
Cleared by Director of Law (officer's initials)	[TS.KYC]
Cleared by Communications & Community Engagement (officer's initials)	[NT]