

Scope of Services

ITT Title: Legal Services Framework Agreement

ITT Reference: 22-022

1. INTRODUCTION

1.1 Summary of the Requirement

The Gambling Commission is seeking to award a Framework Agreement for provision of Legal Services with a view to appoint two or more law firms and, similarly two or more barristers' chambers to its standing panel, who are able to provide legal advice and support specifically in the areas of administrative and public law, regulatory law and gambling law advice (including advice on the conduct of the National Lottery under the third & fourth National Lottery licence) as well as more general legal advice and support.

1.2 Contract Value

It is difficult to predict the total value of work that will be let under this framework. Over the maximum life of the Framework Agreement (4 years) we anticipate spend could be in the region of £4m (inclusive of VAT at 20%) but overall spend could be significantly higher or lower depending on our actual requirements.

1.3 Duration

The contract start date will be **14 February 2023**

The initial contract end date will be **13 February 2026**

There is an option to extend the contract by a further year up to the maximum end date of **13 February 2027**.

1.4 Non-Exclusivity

Please note although the intention is to place the bulk of the Commissions via this Framework, there is no intention to make this Framework exclusive. The Commission reserves the right to appoint legal advisers outside this Framework depending on its needs.

2. BACKGROUND

About the Gambling Commission

The Gambling Commission was set up under the Gambling Act 2005 to regulate commercial gambling in Great Britain in partnership with Licensing Authorities. We also regulate the National Lottery under the National Lottery etc. Act 1993.

The Gambling Commission is a Non-Departmental Public Body, sponsored by the Department for Culture, Media and Sport. We operate at arm's length from government and offer independent advice. Our work is funded mainly by licence fees from the gambling industry

The Commission's main office is located in Birmingham city centre.

The Commission's aims and values

The Commission is an independent regulator. It regulates casinos, betting, bingo games, gaming machines and lotteries in Great Britain. Since November 2014 it also has had responsibility for the regulation of remote gambling where the point of consumption is within Great Britain. The Commission is also responsible for advising local and central government on issues related to gambling.

When exercising its functions under the Gambling Act 2005 the Commission is required to pursue the statutory licensing objectives, which are:

- to keep crime out of gambling
- to ensure that gambling is conducted fairly and openly, and
- to protect children and vulnerable people from being harmed or exploited by gambling

The Commission's aim is to permit gambling in so far as that is consistent with the statutory licensing objectives.

Since October 2013 the Gambling Commission has also been responsible for licensing and regulating the National Lottery. When exercising our functions under the National Lottery Acts, our statutory duties are to:

- ensure that the National Lottery, and every lottery that forms a part of it, is run with all due propriety
- ensure that the interests of every participant in the Lottery are protected
- subject to these two duties, to do our best in making sure that the proceeds of the National Lottery are as great as possible

The Commission's people share common values and these values form an integral part of the way that things are done. The Commission's four core values are to be:

Fair - we will be consistent, proportionate, evidence-based and free from bias, prejudice or discrimination in all that we do.

Accountable - we will be open about the way in which we work and reach decisions in the public interest, while safeguarding the personal and confidential data that we hold.

Professional - we will ensure that we have the right skills and knowledge-base and follow international regulatory best practice.

Constructive - we will work positively and courteously with our internal and external stakeholders to ensure that their needs and views are taken fully into account in all we do.

Regulation

Under the Gambling Act 2005, the Gambling Commission regulates all commercial gambling in Great Britain, apart from spread betting. This includes betting (for example on horseracing, football or other sporting events), as well as bingo, casinos, lotteries, pool betting and gaming machines. Since 2014 we have regulated remote gambling (for example by mobile phone, interactive TV or web-based) where the point of consumption is in Great Britain, as well as the more traditional terrestrial forms of gambling.

The Gambling Commission determines and issues operating licences to organisations and individuals who are providing facilities for gambling, and personal licences to certain individuals working in the gambling industry. The Commission also specifies conditions under which these

licences are granted, and also issues codes of practice for the provision and management of gambling facilities.

The Commission has legal powers to monitor licence holders and can levy fines or revoke licences. We can also investigate and prosecute illegal gambling under the Gambling Act. The Commission follows international best practice in all its activities. Regulation is risk-based, and our approach is transparent, proportionate and consistent.

Advice to the Government

The Gambling Commission is the government's principal advisory body for issues relating to gambling; it is formally tasked with advising the Secretary of State on the incidence and nature of gambling and its impact, and it is also responsible for advising local licensing authorities on how they exercise their functions under the Gambling Act, in particular the issue of premises licences.

3. SERVICE SPECIFICATION

3.1 The appointment of external legal advisers

The Commission's Legal requirements have been split into three lots:

Lot 1: Provision of Solicitor Services (UK Law)

Lot 2: Provision of Barrister Services (UK Law)

Lot 3: Provision of Solicitor Services (Scottish Law)

Under each lot, it is seeking to between 1 and 4 law firms/ barristers' chambers. Together they will comprise a standing panel that in conjunction can provide us with access to substantial expertise in UK administrative and public law and regulatory law expertise, and gambling law advice and support (including advice on the conduct of the National Lottery under the third National Lottery licence), plus in other areas of law. We are also seeking specialists in Scottish law.

Annex 3 is a capability matrix which law firms/ barristers' chambers are required to complete to indicate under which lot do they specialise together with details of their area of expertise. Paragraphs 3.4 and 3.5 below provide additional information on the expertise we need.

It should be noted that although we wish to appoint Barristers directly to act on our behalf, there may be occasions where we wish our appointed law firms under Lots 1 and 3 to appoint and instruct Legal Counsel on our behalf as well.

3.2 Information/ Data Security

The Commission will require legal advisers to confirm that any information provided to them will be treated confidentially and must not be disclosed to any third party without the Commission's permission. Legal advisers will be required to confirm that all data received will be kept secure in accordance with the data protection principle and to act in respect of any such data in accordance with any instructions given by the Commission.

3.3 Management, Monitoring & Reporting

To enable the Commission to effectively manage and monitor the outsourcing of aspects of its legal services, Legal advisers will be required to meet our Transparency Requirements.

The guiding principles behind these requirements, how we would establish the initial reporting baseline and initial list of transparency reports are set out below:

- **Guiding Principles**

Our ambition is to work in close partnership with the appointed law firms and barristers' chambers that comprise our Legal Panel to ensure we get the best service and outputs for the Commission in supporting its role as a regulator and meeting its public obligations.

The purpose of this Annex is to establish a baseline for what we expect from our appointed partners and then over the course of the contract work in partnership with our partners in a spirit of continuous improvement to ensure both the Core and Support Services are delivered efficiently and effectively as possible to the benefit of all parties.

We believe the key to any good working relationship is openness and transparency, this Transparency is underpinned by putting in place robust 'Transparency Reports' that support the overall contract management.

For clarity, we have defined 'Transparency Reports' as follows:

"Transparency Reports"	means the information relating to the Ordered Panel Services and performance of this Legal Services Contract which the Supplier is required to provide to the Customer in accordance with the reporting requirements in Schedule 1 below;
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- **Establishing the Reporting baseline**

1. Within one (1) Month from the Contract Commencement Date or an alternative date so specified by the Customer, the Supplier shall provide to the Customer for Approval (the Customer's decision to approve or not shall not be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements in Table 1 below.
2. If the Customer rejects any proposed Transparency Report, the Supplier shall submit a revised version of the relevant report for further Approval by the Customer within five (5) calendar days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Customer. If the Parties fail to agree on a draft Transparency Report the Customer shall determine what should be included.
3. The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency referred to in the Schedule below.

- **List of Transparency Reports**

Table 1: List of Transparency Reports		
TITLE /FORMAT	CONTENT	FREQUENCY
Key Sub-Contractors	Provide us with choice of Counsel in advance and fee estimate Provide us with sight of written instructions to Counsel Provide us with copies of any written advice from Counsel and/or a summary of any oral advice	As soon as available
Invoices	To specify: Correct Purchase Order number Correct Case Name Each work item clearly identified with supporting information to enable us to validate they we have been charged correctly (full disclosure by resources engaged in the work together with hours worked and supporting rates)	Weekly

3.4 Key expertise

Respondents must be able to offer substantial administrative and public law and regulatory law expertise, including some or all of the following:

- **Administrative and public law:** The Commission is a statutory body and its duties and powers are set out in primary and secondary legislation. The Commission must act in accordance with its received powers otherwise there is a risk of the Commission being successfully challenged by way of judicial review or, in relation to regulatory decisions, through appeals to the First-Tier Tribunal. Legal advisers must therefore have experience of advising public bodies on the exercise of their statutory powers and should be able to assist with judicial review claims and appeals to the First Tier Tribunal.
- **Regulatory law and advice to the Regulatory Panel:** The Commission has established a Regulatory Panel, comprised of Commissioners. The Panel will determine certain licence applications and will hear regulatory cases involving licensees. Legal advisers should be able to provide advice on regulatory law (including the Commission's policies and procedures) and may be asked to act as legal advisers to the Panel, if required.

Gambling law and practice: The Commission will need advice on gambling law and practice, including in relation to the third and fourth licence to run the National Lottery.¹ This may include advice on:

- Operating licences issued under Part 5 of the Gambling Act 2005.
- Personal licences issued under Part 6 of the Gambling Act 2005.
- The Gambling Commission's investigatory powers.
- The investigation and prosecution of offences under the Gambling Act 2005.
- Sharing information with other bodies.
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- Advice in relation to the drafting of amendments to, and the interpretation of, the National Lottery Section 5 licence or any Section 6 licence.
- Advice in relation to existing National Lottery games or proposed new games/game play mechanisms.
- Enforcement advice in relation to the enforcement of National Lottery licence conditions and the application of regulatory sanctions.
- Intellectual Property advice on trademark and copyright issues, draft transfers and licences of trademarks and copyright in relation to the National Lottery.

3.5 Additional areas of expertise

It would be helpful if respondents were able to offer advice and support in relation to some, or all, of the following:

- **Employment law and equality issues:** some employment matters will be managed in-house - however, it would be helpful for legal advisers to be able to provide additional advice and support in this area, if required.
- **Freedom of information and data protection:** it is likely that most FOI and data protection matters will be managed in-house, but it would be helpful for legal advisers to be able to provide additional advice and support in this area, if required.
- **Money laundering:** The Commission is a supervisory authority under the money laundering regulations and may need advice on such matters.
- **Public interest immunity:** The Commission receives information which may be the subject of public interest immunity.
- **Prosecutions:** The Commission has the power to prosecute offences under the Gambling Act 2005. It would therefore be helpful for legal advisers to be able to provide advice and support in this area, if required, including advising on the application of the Regulation of Investigatory Powers Act 2000 and the Proceeds of Crime Act 2002.
- **Civil litigation:** the Commission may from time to time be named as a defendant in civil proceedings in relation to matters arising from the exercise of its functions. It would therefore be helpful for legal advisers to be able to provide advice and support in this area, if required.

¹ Please note that this tender does not cover work relating to any competition to operate the National Lottery (the Fourth Licence)

- **Inquests:** The Commission may be named as a defendant or as an interested party in Inquest proceedings. It would be helpful for legal advisers represent the Commission in any proceedings.
- **Ad Hoc Advice:** There are a number of other areas where the Commission may need ad hoc advice. For example: intellectual property rights; competition law matters; contract law and procurement issues; and property law matters. It follows that it would be helpful if legal advisers had sufficient breadth and depth of expertise to handle some, or all, of such matters, if they cannot be handled in-house.

3.6 Managing potential conflicts of interest

The Commission recognises that some suitably experienced legal advisers may have clients that are regulated by the Commission. Where that is the case, but legal advisers still wish to be considered for appointment they should:

- Clearly identify which, if any areas described above, they would not feel able to provide advice on; and
- Be able to demonstrate that they are able to manage the risk of a possible conflict of interest arising if they have clients who are regulated by the Commission.

3.7 Call-Off Procedure

Details of how we will instruct work is contained in Annex 3 Call Off Award Procedure.

3.8 Customer Contacts

The customer contact is:

Name: [REDACTED]

Title: [REDACTED]

E-Mail: [REDACTED]@[gamblingcommission.gov.uk](mailto:[REDACTED]@gamblingcommission.gov.uk)

4. TENDER TIMESCALES

The anticipated timeline for this tender event is attached in Annex 1 – Tender Timescales.