

TERMS OF REFERENCE

APPOINTMENT OF PART TIME SENIOR LEGAL ADVISER TO THE ATTORNEY GENERAL'S CHAMBERS, MONTSERRAT

Background

1. Over the last few years, there has been significant growth in the number and potential size (in terms of damages claimed) of legal cases initiated against GOM. These range over a number of areas including land matters, contracts and personnel issues in the public service.
2. Preparing the GOM briefs and representing GOM in court create large burdens on the modestly staffed GOM Legal Department. An additional difficulty at present is that current staff in post are inexperienced in this kind of work.

Additional Capacity Requirement

3. As an interim measure, the Attorney General (AG) has requested that an experienced senior legal specialist be funded to work for the Legal Department on a part time basis for 18 months from November/December 2013. 9 months of support is the initially assessed requirement over the period though the contract should make it possible to vary this time input in response to the case load as it develops. Inputs will vary with the pattern of litigation and an important part of the consultancy will be to mentor Legal Department staff so that they can take a growing role in the proceedings.

Objectives

4. To assist the Attorney General and GOM to present evidence that will variously win cases as defendants and/or reduce awards of damages, costs and interest against Government.
5. As a consequence, to indirectly help GOM deter the growing practice of initiating litigation against Government in the hope of making money.

Outputs

6. These will be:
 - Improvements in GOM's track record in winning cases brought against it and/or reducing damages and other costs awarded in cases Government loses.
 - Evidence of a decline in the propensity of citizens to initiate legal proceedings against GOM.
 - Full-time Legal Department staff better able to prepare case evidence and stand for GOM in court.

Direction and Reporting

7. The Senior Legal Adviser will be directly responsible to the AG, who will design and approve the Adviser's work programme. The Adviser will report to the AG on a basis that is agreed between them. Copies of these reports will be made available to DFID OTD's Governance Adviser through the GOM Finance Department in the normal pattern for STTC supported posts.

Scope of Work

8. Delivery of the work programme will involve:

- Preparation and organisation of GOM evidence (normally but not always for the defence) to be presented in court¹.
- Representation of GOM in court proceedings in a lead or support role.
- Playing a part in out of court negotiations and settlements if these are undertaken and the Attorney General requires their participation.
- In service mentoring of Legal Department professional staff on a day to day basis.

Consultancy Requirements

9. The consultant will have extensive knowledge and successful experience of litigation in the Caribbean and in Montserrat and the ability to visit Montserrat to work with the AG and the Legal Department on a flexible basis as required. The appointee will also have the necessary qualifications and memberships to represent GOM in the High Court and Court of Appeal.

Budget

10. As well as the fees, accommodation/subsistence costs and transport costs of the appointee, accountable funds of up to EC\$12,000 should be provided to help in the preparation of evidence - where and if required – research commissioned, interviews, and possible expert opinions required on contentious points of law.

Contracting

11. Once GOM Cabinet approval has been secured for the appointment, a contract should be issued by the relevant directorate the Office of the Deputy Governor in the normal way.

¹ This may involve research and interviews in Montserrat and elsewhere as well as the commissioning of legal opinions from external experts if these are relevant. Funds will be made available for these activities if required.