

Delegated Officer Decision Report

NOT FOR PUBLICATION by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 and it is not in the public interest to disclose the information because it contains information relating to the financial or business affairs of any particular person including the Council.

Decision Maker and Portfolio area:	Rebekah Sutcliffe, Strategic Director of Communities and Reform
Date of Decision:	15 October 2021
Subject:	Enforcement Services Provision
Report Author:	Caroline Lee, Head of Revenues and Benefits
Ward (s):	All

Reason for the decision:	<p>The purpose of the report is to seek approval for an exemption of contract procedure rules to extend provision of external enforcement services for 12 months from October 2021.</p> <p>The request is made under the Council's Constitution - Contract Procedure Rule 21.3 (j) – where an exemption for a particular period can be justified. The reason is due to the Government's Covid-19 legal restrictions which prevented enforcement activity for much of the period of the pandemic and the wider impact this had on the ability to collect debts. The Council also wishes to extend the contract temporarily to enable a wider review of the effectiveness of the in-house and external use of enforcement agents to determine an optimum model which would be reflected in any future open competition for these services.</p> <p>This exemption from the Council's contract procedure rules would allow for an extension of the contract for 1 year and would continue to augment the in-house enforcement agent service for Council Tax and Business Rates.</p>
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Summary:

Oldham Council is seeking to continue the use of two specialist contractors (appointed in 2019) to deliver enforcement services for the collection of Council Tax and Business Rates.

Prior to their appointment the Council carried out an OJEU compliant procurement route in accordance with Oldham Council's Contract Procedure Rules and EU regulations. A mini-competition under the Rotherham Framework (OJEU notice ref 2016/5 – 202-365931) was carried out to select two providers.

The outcome of the evaluation process was that Marston Holdings Ltd submitted the tender offering the most economically advantageous package in relation to service delivery and cost and is the default supplier. Rundle and Co Ltd scored second of the four bidders has been retained to provide extra capacity as required.

The report seeks an exemption to the Council's Contract Procedure Rules. This will then enable the contract for external enforcement services to be extended for a period of one year from October 2021. The award of the contract will be subject to a separate delegated Cabinet member decision.

What are the alternative option(s) to be considered? Please give the reason(s) for recommendation(s):

Option 1 – To extend the External Enforcement Contract for 12 months under the Council's Constitution - Contract Procedure Rule 21.3 (j) – where an exemption for a particular period can be justified.

The request is made under the Council's Constitution - Contract Procedure Rule 21.3 (j) – where an exemption for a particular period can be justified. The reason is due to the Government's Covid-19 legal restrictions which prevented enforcement activity for much of the period of the pandemic and the wider impact this had on the ability to collect debts. The Council also wishes to extend the contract temporarily to enable a wider review of the effectiveness of the in-house and external use of enforcement agents to determine an optimum model which would be reflected in any future open competition for these services.

Option 2 – Not to approve an exemption to the Council’s Contract Procedure Rules which would leave the Council with no contracted external supplier to deliver the external enforcement service in the short term.

Recommendation(s):

To approve an exemption to the Council’s Constitution - Contract Procedure Rule 21.3 (j) where an exemption for a particular period can be justified. This will enable a separate decision to extend the External Enforcement Contract for 12 months from October 2021 to the end of September 2022.

Implications:

*What are the **financial** implications?*

The recommended option is to extend the External Enforcement contract for a further 12 months commencing October 2021 to September 2022.

There are no adverse financial implications to the contract extension as the external enforcement providers fees are based on the actual debt collected. The use of external enforcement providers will lead to the collection of previously irrecoverable Council Tax and Business Rates debts which would deliver income to the Collection Fund, along with a consequential decrease in the provision for bad debts

(Nicola Harrop – Finance Manager)

What are the **procurement** implications?

Commercial Unit accepts the rationale for the Council to agree to a 12month contract extension due to the COVID pandemic the reason is due to the Government’s Covid-19 legal restrictions which prevented enforcement activity for much of the period of the pandemic and the wider impact this had on the ability to collect debts (and the suppliers ability to generate the benefit from providing these services to us). There is provision in the Council’s Contract Procedure Rules to grant an exemption from the Rules Where an extension for a particular period can be justified, for example where a service review includes the intention to co-terminate relevant Contracts within a reasonable period (Rule 21.3 J). This will ensure continued provision of services for Oldham council and to align future commissioning activity with the tendering exercise. On this basis,

Commercial Unit acknowledges the requirement.
(Mohammad Sharif) 30/09/2021.)

*What are the **legal** implications?*

In view of the comments provided by Procurement Therefore there is an argument to say that the use of an exemption from the Council's Contract Procedure Rules in Rule 21.3 (j) is justified in the current circumstances to enable the Council to grant an extension to the contract for a period of one year.
(Sukie Kaur - Solicitor)

What are the **Human Resources** implications?

Not applicable

Equality and Diversity Impact Assessment attached or not required because (please give reason)

Not applicable

What are the **property** implications?

Not applicable

Risks:

The Council must to ensure it has an appropriate contract in place to allow for the continuation of external enforcement services which will enable the Council to maximise the collection of Council Tax and Business Rates. The approval of a delegated decision in this regard will ensure it complies with its own procedures.

Co-operative agenda

This is linked to the Council's corporate objective to deliver good value services to support a co-operative borough.

Has the relevant Legal Officer confirmed that the recommendations within this report are lawful and comply with the Council's Constitution?

Yes

Has the relevant Finance Officer confirmed that any expenditure referred to within this report is consistent with the Council's budget?

Yes

Are any of the recommendations within this report contrary to the Policy Framework of the Council?

No

Reason(s) for exemption from publication:

It is not in the public interest to publish this report as it contains information relating to the financial or business affairs of any particular person including the Council

Reason why this Is a Key Decision

It results in the local authority incurring expenditure or the making of savings which are, significant (over £250k) having regard to the Local Authority's budget for the service or function to which the decision relates and

is significant in terms of its effects on communities living or working in an area comprising two or more Wards or electoral divisions in the area of the local authority.

The Key Decision made as a result of this report will be published within **48 hours** and cannot be actioned until **five working days** have elapsed from the publication date of the decision, i.e. before 22 October 2021 unless exempt from call-in.

This item has been exempted from the Forward Plan in accordance with Rule 13.

The background papers to this report contain exempt information under Schedule 12A of the Local Government Act 1972.

Report Author Sign-off:	
Caroline Lee	Head of Revenues and Benefits
Date:	15 October 2021

1. Background

- 1.1 The collection of Council Tax and Business Rates (also known as National Non Domestic Rates) is a responsibility of Oldham Council. Since 2007, the operational delivery of the Revenues and Benefits service has been carried out by the Unity Partnership Ltd (a wholly owned Council company from July 2018).
- 1.2 The enforcement of the payment of Council Tax and Business Rates is necessary when the required statutory instalments are due and have not been paid by the taxpayer or ratepayer and the debt has been secured by way of a Liability Order in the Magistrates Court. Enforcement Agents (previously known as bailiffs) carry out this activity which includes contacting the debtor by telephone, letter and text, visiting the property to negotiate payment and ultimately in a small number of cases, seizure and sale of the debtor's goods to pay the debt.
- 1.3 The Unity Partnership Ltd employ in-house enforcement agents to carry out this role for the Council. However, external enforcement agents are also used to collect some Council Tax debt to augment the work of the in- house team, all out of area Council Tax debt and all Business Rates debt subject to enforcement.
- 1.4 In 2019, the Council wanted to augment the use of external enforcement across Council Tax to improve the collection of Council Tax arrears. e.g. where the in-house team had been un- successful and there was merit in using an external company to tackle these returned cases. Most Local Authorities do have a system of offering returned cases to other suppliers and this tends to result in additional collection of the debt. This is an approach considered by Local Authorities to represent good practice in enforcement. The intention was also to widen this activity further in the short to medium term to include further categories of in area Council Tax debt as determined by the service. With that in mind permission was sought by delegated cabinet member decision (11 April 2019) to carry out a wider procurement exercise which would build in the opportunity to flex the number and value of cases issued to external companies and evaluate its overall success.
- 1.5 An OJEU compliant procurement exercise was undertaken to select preferred suppliers. Council called off against the Rotherham Framework to run a mini-competition. The invitation to tender (ITT) was published on the Chest e-procurement website on 26th July 2019. The ITT was split into one lot covering all out of area Council Tax cases, all Business Rates cases and to enable further Council Tax in area cases to be issued to maximise collection. The Contract was offered for one year.
- 1.6 The outcome of the evaluation process was that Marston Holdings submitted the tender offering the most economically advantageous package in terms of service quality and cost. The second selected supplier was Rundle & Co Ltd.
- 1.7 This agreed contract was for one year to 30 September 2020 with the potential fee income foregone (from the Council to the two external suppliers) not planned to exceed gross fee charges of £400k for the 12 months of the contract. At the time of agreeing the 12-month contract in 2019, it was anticipated that this period would have given sufficient time to evaluate the performance of the selected external

enforcement agents and associated in-house enforcement activity prior to re-tendering the contract over a longer period from October 2020.

- 1.8 In March 2020, the government imposed a stay-at-home order, otherwise known as lockdown. This order banned all non-essential travel and contact with people and shutting almost all schools, business, venues, facilities, amenities and places of worship. The Council suspended all reminder, summons and enforcement activity at this point, a decision replicated by many other Local Authorities in the country including those in Greater Manchester.
- 1.9 Enforcement activity was also compounded by the initial cancellation by the Magistrates Courts cancelled of planned liability order hearings following lockdown and the limited number of telephone Liability Order hearings to replace face to face Liability Order hearings since September 2020.
- 1.10 The Government introduced The Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020¹ on 24 April 2020 and this prevented Enforcement Agent visits to properties by law whilst Covid-19 restrictions were in place.
- 1.11 This meant the Local Authorities could not enforce the collection of Council tax or Business either through the in-house enforcement team or via external enforcement providers.
- 1.12 Although the Magistrate's Court has started to hold telephone Liability Order courts from 30 September 2020 and the restrictions on the use of enforcement ended on 26 August 2020 in line with the The Taking Control of Goods and Certification of Enforcement Agents (Amendment) (No. 2) (Coronavirus) Regulations 2020², these restrictions and the wider context for collection of debts during the pandemic have meant that the Council cannot reasonably assess the impact of the contract nor could the external enforcement service providers consider that they have been given a fair opportunity to fulfill the agreed contract. In addition, the anticipated value of the contract for these providers and the ability to demonstrate excellent performance during the existing contract has been severely limited by the pandemic and was outside of the providers' control.
- 1.13 The Council further wishes to carry out a review of its Council Tax collection activity over the coming months and this will include an analysis of the efficacy of the in-house and external enforcement operations. Following this review, an open competition reflecting the revised agreed model for Oldham will be carried out. An extension of the contract will allow for sufficient time to allow for this analysis, ensure alignment with core Council strategies such as the Anti-Poverty strategy and the necessary consultation with stakeholders and elected members to take place.
- 1.14 Given these constraints, it is proposed that the contract is extended for one year for the current providers to enable further time for the external enforcement service delivered by the two new providers to be properly evaluated prior to embarking on a further procurement exercise in 2021.

¹ <https://www.legislation.gov.uk/uksi/2020/451/contents/made>

² <https://www.legislation.gov.uk/uksi/2020/614/contents/made>

2. Proposals

- 2.1 Option 1 - To approve an extension for the External Enforcement Contract for 12 months under the Council's Constitution - Contract Procedure Rule 21.3 (j) – where an exemption for a particular period can be justified.
- 2.2 The reason is due to the Government's Covid-19 legal restrictions which prevented enforcement activity for much of the period of the pandemic and the wider impact this had on the ability to collect debts. The Council also wishes to extend the contract temporarily to enable a wider review of the effectiveness of the in-house and external use of enforcement agents to determine an optimum model which would be reflected in any future open competition for these services.
- 2.3 Option 2 - Not to provide for an exemption to the Council's Contract Procedure Rules to enable an extension to the contract which would leave the Council with no contracted external supplier to deliver the service. Having no formal contract in place would increase risk for the Council and negatively impact on Council Tax and Business Rates collection.

3 Conclusions:

- 3.1 It is recommended that Option 1 is approved and that an exemption granted from the Council's Contract Procedure Rules under the Council's Constitution - Contract Procedure Rule 21.3 (j) – where an exemption for a particular period can be justified.
- 3.3 The request is made under the Council's Constitution - Contract Procedure Rule 21.3 (j) – where an exemption for a particular period can be justified. The reason is due to the Government's Covid-19 legal restrictions which prevented enforcement activity for much of the period of the pandemic and the wider impact this had on the ability to collect debts. The Council also wishes to extend the contract temporarily to enable a wider review of the effectiveness of the in-house and external use of enforcement agents to determine an optimum model which would be reflected in any future open competition for these services.

Signed: 

Rebekah Sutcliffe Strategic Director of Communities and Reform

Date: 18/10/2021