

## Operational Decision Record

Publication Date 06/12/22	Decision Reference Number 4789
<b>Decision Title</b>	
Subsidy Control and data protection advice for Competition delivery	
<b>Decision Value</b>	
Up to a maximum £70k+VAT	
<b>Revenue or Capital Spend?</b>	
Revenue	
<b>Department</b>	
Environment and Sustainability	
<b>Contact Officer (Name, job title, and contact details)</b>	
Jack Hayhoe Net Zero Project Manager Midlands Net Zero Hub email: <a href="mailto:jack.hayhoe@nottinghamcity.gov.uk">jack.hayhoe@nottinghamcity.gov.uk</a> mob: 07864 973065	
<b>Decision Taken</b>	
<ul style="list-style-type: none"><li>• Approve an extension to the existing appointment of Browne Jacobson through the EM Law Share Framework as a continuation of previous instruction, with respect to advice for the LAD 2 and SWC Project.</li><li>• Approve the spend to instruct Browne Jacobson to review applicants on an agreed 'fixed fee per review' basis and any further clarifications to ensure subsidy control and GDPR compliance. The maximum cost of this is £70,000 exclusive of VAT.</li></ul>	
<b>Reasons for Decision and Background Information</b>	
<p>The Home Decarbonisation Skills Training Competition will fund training for people working, or who want to work, in the energy efficiency, building retrofit and low carbon heating sectors. The competition aims to increase supply chain capacity, both in terms of volume and skill level. £9.2 million will be available to training providers for programmes to deliver a suite of training solutions to support the energy efficiency, retrofit and low carbon heating sector. This is a BEIS funded scheme that is being run by Nottingham City Council through the Midlands Net Zero Hub team.</p>	

Within the MoU provided by BEIS we are required to:

“Undertake robust due diligence (including technical and financial, subsidy control rules etc.), fraud risk and financial viability assessment checks in line with Government Functional Standard for General Grants of selected projects before grant award;”

Within the guidance, applicants to the scheme are advised:

“Since 1 January 2021, public authorities must comply with the UK’s international commitments on subsidies in the UK-EU TCA, and other trade agreements, as well as the WTO rules on subsidies.”

To minimise the risk of any challenge with respect to the Competition funding and to ensure the use of the funding complies with the new Subsidy Control Regime, the Council requires specific Subsidy Control Advice on the proposed use of the funding.

Applicants receiving the funding from the Council will be required to be compliant with the relevant Subsidy Control obligations and any subsequent legislation for any specific projects undertaken. It is ultimately the responsibility of the Council in administering the funding to ensure it is used correctly and in accordance with BEIS requirements.

The delivery partners will also be required to work with their legal teams to assess the projects in line with the Subsidy Control regime. This assessment will need to be provided to the Council. The onus however, is on the council officer working on the project to assess each instance as per the new regime, Browne Jacobson will then check each assessment after the officers have completed them.

Browne Jacobson, on behalf of the Council, will then review the subsidy control elements of the application and data protection.

Due to the value of funding, the complex nature of Subsidy Control and required data protection advice, the quantity of potential applications and the role as accountable body the Council require legal assurance the projects comply.

### **Other Options Considered and why these were rejected**

Use internal legal support - this was rejected due to the volume of work, complexity of the schemes and limited guidance available.

No legal review undertaken - this was rejected due to the risk to Council if a project was non complainant and the potential of funding clawback.

### **Reasons why this decision is classified as operational**

This decision falls within the approved overall funding budget for DDM 4706 “Grant Support for Energy Efficiency Upskilling Competition”.

## **Additional Information**

Advice from:

### **Legal**

There are no significant legal issues arising from the proposals in this report. The proposed use of funding with Browne Jacobson will assist the Council in meeting the funding conditions imposed by BEIS.

Details of the advice provided by Browne Jacobson (and any documents or agreements created) need to be shared with relevant teams within Legal Services, namely the Contracts and Commercial team and the Information Governance team.

Legal Services will continue to work closely with the report author to manage and fully exploit the work being undertaken by Browne Jacobson.

Anthony Heath, Senior Solicitor, Contracts and Commercial, 24<sup>th</sup> November 2022.

### **Finance**

The initial decision in relation to the funding (DD4706) did not specifically cover this type of legal advice expenditure regarding utilising the EM law share framework and the named supplier in respect of the Home Decarbonisation Skills Training Competition.

The subsidy control advice sought is specific and there is not thought to be the expertise in-house or the capacity to deliver in the grant period. The advice sought will reduce the risk of grant non-compliance and the risk of grant clawback. The work outlined in this report is an extension to the existing appointment of Browne Jacobson through the EM Law Share Framework as a continuation of previous instruction, with respect to advice for the LAD 2 and Sustainable Warmth Competition projects

The estimated cost of the work is £0.07m and funded from the consultancy allocation within the £0.800m allocated to the MNZH to administer the competition

Alison Bennett-Senior Commercial Business Partner-Nov 22

### **Procurement**

There are no Procurement concerns with the decision being sought as use of the EM Law Share Framework is considered a compliant route to appoint external legal advice. Advice provided by Jonathan Whitmarsh, Lead Procurement Officer, 17th November 2022

## **Decision Maker (Name and Job Title)**

Michael Wayne Bexton

Director of Environment and Sustainability

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W. BOYD

**Scheme of Delegation Reference Number**

**Date Decision Taken**

25.11.2022