

Commissioning and Procurement Executive Committee – 9 July 2024

Subject:	Debt Recovery Enforcement Agent services		
Corporate Director:	Ross Brown - Finance and Resources		
Executive Member:	Cllr Linda Woodings - Finance and Resources		
Report author and contact details:	Chris Pembleton, Business Manager, Revenues, Customer Services Chris.pembleton@nottinghamcity.gov.uk		
Other colleagues who have provided input:	Richard Bines – Legal Sam Taylor – Finance Lorraine Hodgson – Procurement		
Key Decision	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Subject to call-in
			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Reasons:	<input type="checkbox"/> Expenditure	<input checked="" type="checkbox"/> Income	<input type="checkbox"/> Savings of £750,000 or more
taking account of the overall impact of the decision			<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital		
Total value of the decision: £5.64m*			
<p>*£5.64m is based on actual charges/fees raised by the current panel of three enforcement agents on the actual volumes of debt cases placed with them by the council and extrapolated for the term of the proposed contract.</p> <p>Each service area has confirmed projected volumes to be placed per annum and there is no significant change to the volumes forecasted.</p> <p>It should also be noted that the Ministry of Justice is currently reviewing the ‘fees’ with a proposal to introduce a 5% increase on the current fee structure. This could increase the opportunity value to £5.92m, subject to any implementation date though it is thought likely to be during the contract period.</p>			
Section 151 Officer expenditure approval			
Has the spend been approved by the Section 151 Officer? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/a			
Spend Control Board approval reference number:			
Commissioner Consideration			
Has this report been shared with the Commissioners’ Office? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Any comments the Commissioners wish to provide are listed in section 6 below.			
Wards affected: All			
Date of consultation with Executive Member: June 2024			
Relevant Council Plan Key Outcome:			
Green, Clean and Connected Communities	<input type="checkbox"/>		
Keeping Nottingham Working	<input type="checkbox"/>		
Carbon Neutral by 2028	<input type="checkbox"/>		
Safer Nottingham	<input type="checkbox"/>		
Child-Friendly Nottingham	<input type="checkbox"/>		
Living Well in our Communities	<input type="checkbox"/>		
Keeping Nottingham Moving	<input type="checkbox"/>		
Improve the City Centre	<input type="checkbox"/>		
Better Housing	<input type="checkbox"/>		
Serving People Well	<input checked="" type="checkbox"/>		

Summary of issues (including benefits to citizens/service users):

Historically the Council has procured the services of debt enforcement agents for the recovery of unpaid Council Tax, National Non-Domestic Rates (NNDR), Business Improvement District levy, Commercial Rents, and Civil Enforcement of Penalty Charge Notices (PCN).

The services are currently delivered at no cost to NCC by Equita, Bristow and Sutor and Marston Recovery. The contract ended 31 March 2024 and was extended for 12 months to allow a procurement exercise to be completed, so procurement approval is required.

Councils have a legal duty to ensure the prompt and cost-effective billing, collection and recovery of all sums due. Effective debt collection is critical to ensuring that the Council is able to provide effective delivery of essential services. However, debt collection should be ethical, fair and proportionate.

All three existing enforcement agents have vulnerability teams dedicated to support and posting vulnerability to relevant third sector support agencies. In Nottingham City Council's case we also have an additional step called 'Pre-Compliance' whereby enforcement agents send an initial letter to the debtor to engage. This is additional to the statutory requirements and is at no cost to either NCC or the debtor. It allows for the identification of vulnerability at an early stage and for the account to be returned to NCC having not cost the debtor any 'costs'.

In addition, if the debtor contacts NCC and not the enforcement agents then NCC has processes in place to put an account on hold, whilst issues are addressed and or support is put in place. This may result in the account being returned to NCC. All enforcement agents also have as required relevant processes in place for debtors entering into 'Breathing Space' and relevant processes to monitor the outcome of any onward insolvency plans. Enforcement Agents also pre-screen account 'propensity to pay' modelling and adapt strategies accordingly. Sometimes vulnerability is only identified at a visit in which case, same as above realistic payment arrangements / hold can be put in place or the account returned to NCC.

Our aim to reduce the need for placement to enforcement agents and we do this by having multiple reminders in the process to engage and resolve issues our citizens may have. If vulnerability is identified prior to reaching the 'compliance stage' (as shown in the table below) then the account is returned to the council at no cost to the citizen.

Fees are applied to a customer's account by the enforcement agents if the debt is placed with them. These fees vary dependant on when a debtor makes an arrangement or pays the debt. A collected income of c.£5m per annum by the enforcement agents could be at risk if this service is not utilised.

If this service was not in place the loss of income from its various activities could be lost and this would impact the Medium-Term Financial Plan (MTFP) and bad debt provisions for associated areas.

The Council now needs to re-procure the provision of debt enforcement agent services for the recovery of unpaid debts identified above to additionally include recovery of unpaid debts for Waste Services. Waste management currently use Bristow and Sutor and are currently charged 20% commission on any debt recovery. This contract has also expired and by combining with the larger procurement exercise a better rate can be achieved through the bidding process.

It is proposed that the contract length be up to 5 years. This provides greater stability for the council as systems need to be coordinated between each of the successful bidders. In addition, debtors often have multiple debts across multiple years and having consistency with our enforcement agents helps citizens set-up longer term payment arrangements which is better

value for both citizen and the council.

Contractors who are awarded a contract will be required to recover the category of debt in line with associated legislation. (Taking Control of Goods (Fees) Regulations 2014, Tribunals, Courts and Enforcement Act 2007 and Traffic Management Act 2004.

This is a concession opportunity as the Council is presenting the potential suppliers of the service with an opportunity to exploit the debt service and receive a benefit / payment for the service i.e., an enforcement fee from a third party i.e., the citizen rather than from the Council paying for the service directly.

It is the supplier that takes on the risk as it is not guaranteed whether recovery will be possible and of any payments of fees being adequate to cover the concessionaries true cost of enforcement in operating the service.

There is no cost to the council as the 'Fees' are directly charged and collected from the debtor as set out in legislation (Taking Control of Goods (Fees) Regulations 2014 ("the Fee Regulations")). There are currently three enforcement agent companies delivering these services as part of an existing panel. Annual value of debt recovered is projected to be £5m per annum.

The Concession Contract Regulation 2016 apply to concession contracts, the value of which is estimated to be not less than the threshold mentioned in regulation 9 of the CCR 2016 and which is calculated in the manner set out in regulation 9. With effect from 1 January 2024 the value is £5,372,609 inclusive of VAT.

In general, the value comprises an objective estimate by the Council of the total turnover of the concessionaire/ supplier generated over the duration of the contract in consideration, for the debt enforcement agent services and any supplies incidental to such services, inclusive of VAT.

The Council's objective assessment of the value is £5.64 million (with a possible rise to £5.92 million) (incl of VAT) and so it is acknowledged that this is a concession opportunity where the Concession Contract Regulations 2016 must be complied with.

The estimated value must be calculated using an objective method specified in the concession documents. Regulation 9(7) sets out the other matters to be taken into account when calculating the estimated value.

The value of the contract is based on the estimated opportunity being provided to generate enforcement fees under the Fees Regulations which are applied to and collected from the debtor directly.

The total opportunity to generate fees is estimated to be £5.64m, (rising to £5.92m if the Ministry of Justice implement a proposed 5% increase to the existing fee structure) these costs would be directly charged to the debtors account and recovered over the term of the contract. A cost equivalent to the VAT incurred on enforcement agent fees and disbursements may be recovered from a judgment debtor if the judgment creditor is not VAT registered.

The method used to value the contract is based on the latest 12 months fees generated the existing panel of enforcement agents, benchmarking those volumes of cases with what is projected to be placed under a new contract for the proposed term of 5 years and adding VAT.

The Fee Values are:

<i>Fee Stage</i>	<i>Fixed Fee</i>	<i>Percentage fee (Regulation 7): percentage of sum to be recovered exceeding £1500</i>
Compliance Stage	£75.00	0%
Enforcement Stage	£235.00	7.5%
Sale or Disposal Stage	£110.00	7.5%

As the fees charged are not guaranteed to be charged to any debtor, actual figures have been used in the calculation of the contract value.

All Enforcement agents utilised under the contract will be signed up to the Civil Enforcement Association (CIVEA) to ensure the highest operating standards. CIVEA is the principal trade association representing civil enforcement agencies employing around 1500 certificated enforcement agents in England and Wales. As well as the Enforcement Conduct Board. The Enforcement Conduct Board is the independent oversight body for the debt enforcement sector in England and Wales.

The public value of effective enforcement goes well beyond the collection of revenue, as enforcement action can be an important trigger for people to seek much needed debt advice and support, and the profession has strict safeguards in place, to ensure that the vulnerable are provided with the right protection.

CIVEA's members seek to secure payment from those who won't pay, not those who can't pay and their best practice measures to identify and support vulnerable people reflect this aim.

In combination, the CIVEA and the Fees Regulations ensure:

- A clear, three-stage enforcement process: Ensuring debtors are aware of how the process will develop if left unresolved, with a fee structure which incentivises debtors to make payment in the compliance stage, before a door-step visit;
- An extended compliance stage before goods can be seized: Providing debtors with a minimum of seven clear days, allowing additional time to make payment and breathing space to seek advice;
- A transparent, fixed, and capped system of fees for all debts, taxes and fines: Ensuring that debtors are aware of how much they will be paying at each stage of the enforcement process;
- An enhanced and compulsory certification process for enforcement agents: Including mandatory training and competency requirements, to ensure all enforcement agents meet the required standard and have the expertise required to handle vulnerable debtors;
- A simplified process for taking control of goods: For those cases that do escalate, the new regulations have streamlined the process for goods to be seized, with a clear and transparent list of items that can and cannot be taken.

Exempt information: None.

Recommendations:

- 1 To approve undertaking a procurement process to secure a concession contract for the supply of debt enforcement agent services for a 5-year period (2024/25 to 28/29).

2 To delegate authority to the Corporate Director of Finance and Resources to award and enter a concession contract with the successful concessionaire following completion of the tender process.

1. **Reasons for recommendations**

- 1.1 The services are required to collect revenue for the non-payment of debt when all internal processes to collect the debt have been exhausted.
- 1.2 The existing concession has expired, and the Council still has a requirement for these services.

2. **Background (including outcomes of consultation)**

- 2.1 Nottingham City Council is responsible for collecting Council Tax, NNDR, BIDs and Commercial Rents in the Nottingham area. There are 146,860 dwellings subject to Council Tax and more than 11,000 businesses that pay NNDR.
- 2.2 Nottingham City Council is also responsible for collecting Traffic Debt regarding motorists who have failed to pay PCNs, issued for contravening relevant parking regulations.
- 2.3 Waste management are also looking to procure debt recovery services so this will be considered as part of the tendering exercise. It is also planned to extend the services provided to other debt recovery functions across the council.

3. **Other options considered in making recommendations**

- 3.1 Do nothing - this was not considered a realistic option as the Council will suffer a loss of revenue, in the form of debt recovered of c.£5m per year.
- 3.2 In house delivery the council doesn't have the internal resources or specialist knowledge to deliver the function in house. So, this option was considered and rejected.

4. **Consideration of Risk**

- 4.1 To not procure this service will be a detriment to income the council is required to collect either through council tax or business rates. Traffic PCN notices could not be enforced and so risks the revenue recovered by enforcement activities.
- 4.2 Risk to income from existing payment arrangements with current providers being cancelled and accounts returned to the council.
- 4.3 Risk that returning accounts are placed with new providers, new enforcement fees will be applied to the citizen by the new enforcement agent, set out by legislation. Mitigation would be to retain existing panel of providers.
- 4.4 The current contract expired on the 31 March 2024 and has been extended for 12 months to allow for procurement to conclude.

5. **Best Value Considerations**

- 5.1 Best value is achieved by outsourcing to specialist enforcement agents using existing legislation for the recovery of debts covered within the tender. The costs are not charged to the council, but directly to only those citizens that have their case/account placed with an enforcement agent.
- 5.2 The council doesn't have the internal resources or specialist knowledge to deliver the function in house.

6. **Commissioner comments**

- 6.1 The Commissioners are content with this report and have no specific comments to add. (24/06/2024)

7. **Finance colleague comments (including implications and value for money/VAT)**

- 7.1 It appears as though for the purposes of valuing the contract the opportunity being provided to the suppliers, is the figure that is considered to be the value of the contract. This suggest that all costs would be met. The risk is being taken by the enforcement agents and not the council, so the exposure low as it cannot be passed to the Council.

Sam Taylor, Interim Principal Management Accountant - 15.05.2024

8. **Legal colleague comments**

- 8.1 This report seeks a decision to approve a full procurement process to secure a concession contract for the supply of debt enforcement agent services for 5 years' duration.
- 8.2 The contractual opportunity will be regarded as a true concession where it involves the transfer to the concessionaire of an operating risk in exploiting the services encompassing demand or supply risk, or both, over the term proposed. The risk transferred to the concessionaire must be likely to mean real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible. The concessionaire is deemed to assume operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in providing the services which are the subject-matter of the concession contract.
- 8.3 The Concession Contract Regulations 2015 (the Regulations") apply to concession contracts that are within the scope and which meet the value threshold expressed in the Regulations. The Regulations are concerned with contracts for services that are for the benefit of the Council or its residents, in furtherance of the strategic objectives of the Council, or which satisfy the Council's statutory obligations. Recent case law, *Dukes Bailiffs Limited v Breck land Council* [2023] EWHC 1569, has confirmed that a Local authority in contracting out enforcement of debts, does so in the form of a 'service concession contract' where the conditions outlined in para 8.2 above are satisfied.

- 8.4 Calculation of the value of a concession opportunity under the CCR 2016, is based on the total turnover of the concessionaire generated over the duration of the contract (inclusive of VAT) as estimated by the Council, in consideration for services which are the object of the concession contract and the supplies incidental to such services. The estimated value must be calculated using an objective method and specified in the concession procurement documents.
- 8.5 The value of the decision in this instance meets the threshold on the basis of the information contained in the report and as such the procurement must be conducted in accordance with the Concession Contract Regulations 2016.
- 8.6 The Taking Control of Goods (Fees) Regulations 2014 (“the Fees Regulations”) set out the fees and disbursements that enforcement agents may recover from judgment debtors when enforcing debts. The Regulations were designed to provide fairness, clarity and transparency to allow judgment debtors to check that they had been charged the correct fees. The Fees Regulations have been amended to clarify that a cost equivalent to the VAT incurred on enforcement agent fees and disbursements may be recovered from a judgment debtor if the judgment creditor is not VAT registered. These fees are paid by the debtor.
- 8.7 To comply with the Concession Contract Regulations 2016 the Council must ensure it treats economic operators equally and without discrimination and acts in a transparent and proportionate manner throughout its procurement process. This will minimise the risk and prospects of a successful challenge to the process. To that end a concession contracts should not be of unlimited duration and should not exceed the time that the contractor could reasonably be expected to take to recoup the investments made in the provision of the service (both initially and during the life of the contract).
- 8.8 In addition to the above the Council's own constitution Contract Procedure Rules must be followed.
- 8.9 The drafting of the relevant concession contract and associated procurement documentation of this nature will require specialist external legal advice, due to the complex nature of the contracts and broad nature of the debt and applicable legislation to be encapsulated within the concession. The contract will contain adequate provisos in relation to termination, modification, possible sub-contracting, liability and onward management of debt being enforced by the concessioner at the end of the contract term.
- 8.10 In so far as the existing contractual relationship is concerned the Council must ensure that it acts/ gives notice in accordance with the relevant termination provisions specified in the existing contract and transitions any existing cases to any new concessionaire in accordance with exiting contractual terms.

Richard Bines, Solicitor, Contract and Commercial Team - 15.05.2024

9. **Other relevant comments**

Procurement

- 9.1 This re-tender is to procure through an open and compliant tender process for the provision of Debt Recovery Enforcement Agents. The concession contract will be for the use by Council Tax, National Non-Domestic Rates (NNDR), Business

Improvement District levy, Commercial Rents, and Civil Enforcement of Penalty Charge Notices. Waste Management will also be incorporated into the contract. The enforcement agents will recover outstanding debts on behalf of the council services noted above. Annual debt recovered is estimated to be £5 million. It is planned that the services provided to the council could be extended to other debt recovery functions across the council.

- 9.2 The value of the contract is based on estimated fee's collected by the debt recovery agents around £5.64 million over the life of the contract, dependent on the actual debt collected. The current contract has been extended until 30 September 2024 so the new contract will begin from 01 October 2024 for 5 years.

Lorraine Hodgson, Procurement Officer -15.05.2024

10. Crime and Disorder Implications (If Applicable)

10.1 N/A

11. Social value considerations (If Applicable)

11.1 A consideration will be made for the creation of local jobs and the local supply chain.

12. Regard to the NHS Constitution (If Applicable)

12.1 N/A

13. Equality Impact Assessment (EIA)

13.1 An EIA is not required.

14. Data Protection Impact Assessment (DPIA)

14.1 A DPIA will be undertaken as required and due regard will be given to any implications identified in it.

15. Carbon Impact Assessment (CIA)

15.1 A CIA is not required.

16. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

16.1 None.

17. Published documents referred to in this report

17.1 None.