

Report to:	Cabinet	Date of Meeting:	28 July 2022
Subject:	Procurement for the Provision of Enforcement Agent Services		
Report of:	Executive Director of Corporate Resources and Customer Services	Wards Affected:	(All Wards);
Portfolio:	Cabinet Member - Regulatory, Compliance and Corporate Services		
Is this a Key Decision?	Y	Included in Forward Plan:	Yes
Exempt / Confidential Report:	No		

Summary:

The Council has, for many years, used the services of external enforcement agent companies as a last resort to recover various debts it is owed, such as for Council Tax, Business Rates, Housing Benefit overpayments, Sundry Debts and other income from fees and charges including penalty charge notices for parking fines.

Most people pay the Council on time, but some simply try to delay payment. However, the Council recognises that people and businesses in the community are facing challenges in the current economic climate, particularly in the light of rises in the cost of living, post COVID economic recovery and the Government's welfare reform changes. To help mitigate these issues support procedures remain under constant review within the debt collection process.

Before a debt is passed to an enforcement agent company to collect, the Council attempts to engage with the debtor to offer help and assistance at each stage in the collection and recovery process and, where possible, supporting them to make affordable arrangements based on their individual circumstances together with providing information about voluntary sector or business advice organisations that can give further practical support with debt and welfare advice. Regrettably for some, the refusal to engage or to seek independent advice can leave the Council with limited alternatives sometimes it becomes necessary to pass the debt to an enforcement agent company to enforce a Liability Order which has obtained from the Magistrates Courts.

The Council complies with all relevant Government legislation that governs the collection of debt and applies best practice to Council Tax debt collection, as recommended by the Local Government Association. The Council works in partnership with Sefton Citizens' Advice and contracted enforcement agents to ensure that people with Council Tax arrears are treated fairly.

The Council's existing contract which was entered into under the Rotherham Enforcement and Debt Collection Services Framework is due to expire on the 31

March 2023. Therefore, to ensure enforcement action can continue a procurement process for enforcement agent services is required.

This report seeks approval from Cabinet to commence a mini competition under the YPO Enforcement Agency Services Framework 953.

Recommendations:

- (1) That Cabinet approves the procurement process of a mini competition under the YPO Enforcement Agency Services Framework 953.
- (2) That Cabinet delegates the decision on which enforcement agent companies to award contracts to the Executive Director of Corporate Resources and Customer Services in consultation with the Cabinet Member for Regulatory, Compliance and Corporate Services.
- (3) That Cabinet authorises that those contracts are drawn up for a period of three years with effect from 1st April 2023, with the option to extend for one further year.
- (4) That Cabinet notes the preferred Lots as detailed below: -
 - Lot 1 – Enforcement Agent contracts for Parking Fines. This will include recycled cases (Phase 2). A maximum of three suppliers to be appointed.
 - Lot 2 - Enforcement Agent contracts for Council Tax and Business Rates Collection. This will include recycled cases (Phase 2). A maximum of three suppliers to be appointed. This Lot will also include collection of debt for the Southport Town Centre Business Improvement District.
 - Lot 3 – Debt Collection Services for Sundry Income, Housing Benefit Overpayments and Council Tax and Business Rates debts that have proved uncollectable by other means. This will be a separate Lot from the enforcement agents although suppliers may come from the same companies. A maximum of three suppliers to be appointed with a commission rate expected on collections. A zero commission was paid during the current contract.

Reasons for the Recommendations:

The YPO Enforcement Agency Services Framework 953 has been reviewed and assessed by the Procurement Team as the most suitable framework for this exercise and is fully compliant with the Public Contract Regulations 2015.

Existing contracts will expire on 31 March 2023. Enforcement agents are a vital additional resource for the collection of unpaid debt due to the Council. The amount collected on behalf of the Council between 1 April 2019 to 31 May 2022 was £4,407,112.93.

The contract period recommended is consistent with previous contracts, allows time for officers and new suppliers to establish efficient working arrangements, and for performance to be monitored effectively. Due to the nature of the debts being collected performance can only be effectively measured in years rather than weeks or months.

The total value of fees collected by enforcement agents in the same period was £1,520,520,63. Although the fees are statutory amounts paid directly to the enforcement agents by debtors, for procurement purposes the value of fees collected is considered to be the value of the contract.

The debt collection suppliers appointed on the current contract also provide enforcement agent services. It is considered that a zero commission does not provide sufficient incentive to maximise collections whereas the suppliers receive statutory fees on Council Tax, Business Rates and Parking Fine collections. It is considered that by separating the debt collection into a separate Lot, alternative suppliers that specialise in debt collection may bid for that element. This may in turn present opportunities to explore alternative debt collection options for Council Tax debt, in particular old debt that may otherwise be written off.

Alternative Options Considered and Rejected: (including any Risk Implications)

1. The option of not appointing a contractor was considered but dismissed. This was because the authority cannot risk not collecting a sizeable percentage of its annual income without the support of enforcement agents.
2. The Council could conduct a compliant procurement exercise, approaching the whole market directly. This option however would require a longer timescale as the tender opportunity would need to be advertised on the UK's e-notification service, Find a Tender (**FTS**). Further, the volume of bids submitted is unpredictable and so in addition to managing a longer advertising period, officers could easily find that evaluation of bids also takes a much longer period. This could prove problematic as the existing contracts expire on 31 March 2023 and would be an inefficient use of the Council's resources. Therefore, this option has been rejected.
3. Contracts can also be awarded under a concession agreement with direct awards to successful bidders. However, there is a limit to the value of the contracts that can be awarded as a concession based on the value over the lifetime of the contracts. It has been assessed that the potential value of the contracts would exceed the FTS threshold. A tender process would still be required by way of advertisement via FTS that would open the process to unlimited competition and would be inefficient use of Council's resources. This is also likely to extend the timescale to procure services which could negatively impact on the collections process.

What will it cost and how will it be financed?

(A) Revenue Costs

Enforcement Agent costs under current legislation are charged to the debtor and therefore are not a direct cost to the Council.

Debt collection can attract a commission rate based on the amount collected.

Suppliers can be expected to offer services at a commission of between 0% 25%. A typical commission rate would be expected to fall between 15% and 17.5%.

If the value of collections during the current contract was replicated a commission rate of 17.5% would result in revenue costs of approximately £20,000 over the proposed maximum four-year period of the new contract. However, if the value of collections were to increase the costs of commission to be paid would increase.

(B) Capital Costs – N/A

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets):	
Legal Implications: The Council’s Contract Procedure Rules provide that the Council may enter existing public-sector framework agreements where it is evident that such frameworks represent the optimum solution to the Council in terms of service and cost. The enforcement process for enforcement agents is governed by the Taking Control of Good (Fees) Regulations 2014.	
Equality Implications: The equality Implications have been identified and mitigated.	
Climate Emergency Implications: The recommendations within this report will	
Have a positive impact	N
Have a neutral impact	Y
Have a negative impact	N
The Author has undertaken the Climate Emergency training for report authors	Y
Although no climate implications are anticipated there remains potential for suppliers to outline new working practices that have a positive impact, for example increased digital access.	

Contribution to the Council's Core Purpose:

Protect the most vulnerable: Where a debtor falls into one of the vulnerability categories detailed in the Council’s Code of Practice, the enforcement agent company must report this back to the Council.
Facilitate confident and resilient communities: Supports the collection of revenue owed to the Council.
Commission, broker and provide core services: N/A

Place – leadership and influencer: N/A
Drivers of change and reform: N/A
Facilitate sustainable economic prosperity: N/A
Greater income for social investment: N/A
Cleaner Greener: N/A

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Executive Director of Corporate Resources and Customer Services (FD.6864/22.) and the Chief Legal and Democratic Officer (LD.5064/22) have been consulted and any comments have been incorporated into the report.

The Cabinet Member for Regulatory, Compliance and Corporate Services has been briefed on the proposed procurement process.

(B) External Consultations

Not applicable

Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting

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Appendices:

None

Background Papers:

There are no background papers available for inspection.

1. Introduction/Background

- 1.1 An enforcement agent service provision is an integral part of the overall collection process for Council Tax, Non-Domestic Rates, Sundry Debtors, Housing Benefit Overpayments, Parking Fines and Business Improvement

District Levy arrears and contributes to income collection levels for the Council.

- 1.2 Following approval by Cabinet on 6 September 2018 a mini competition tender was conducted under the Rotherham Council EU Compliant accessible framework for Enforcement and Debt Collection Services for the period 1 April 2019 to 31 March 2022 with the option of a one-year extension to 31 March 2023.
- 1.3 Cabinet agreed to delegate the decision to award contracts to the Executive Director of Corporate Resources and Customer Services.
- 1.4 The one-year extension was taken up and current contracts are due to expire on 31 March 2023.
- 1.5 Cabinet is again requested to approve the procurement of new contracts via the use of a framework agreement and to delegate the final decision to award contracts to the Executive Director of Corporate Resources and Customer Services in consultation with the Cabinet Member for regulatory, compliance and corporate services.

2. Current Contracts and Value:

2.1 Following completion of the mini- tender the current contracts were awarded as shown in 2.2 below.

2.2 The awards covered the period from the 1 April 2019 – 31 March 2023, including the optional one-year extension.

Lot 1 – Council Tax, Business Rates and Business Improvement District Enforcement Agent Services and Debt Collection.

- Marston's Holdings
- Jacobs
- Equita
- Newlyn

Lot 2 – Parking

- Marston's Holdings
- Jacobs
- Newlyn

2.3 The table below shows the value of Debt issued and collected from 1 April 2019 until 31 May 2022: -

Debt Type	Value of Debt Issued for Collection	Value of Debt Collected	Value of Costs collected
Council Tax	£17,549,492.11	£3,520,510.76	£1,064,524.11

Business Rates	£4,189,588.33	£617,152.06	£76,260.51
Sundry Debt and Housing Benefit Overpayment	£1,389,388.73	£95,757.03	£0.00
Parking Fines	£710,918.75	£173,693.08	£379,736.01
TOTAL	£23,839,387.92	£4,407,112.93	£1,520,520.63

- 2.4 It should be noted that during the lifetime of the current contract, the value of debt issued and collected has been impacted by the COVID19 pandemic that resulted in the suspension of enforcement activities including the availability of Court time. It is expected that throughout 2022 the value of debt requiring enforcement will return to pre-pandemic levels and consequently, the value of debts issued during the lifetime of the next contract, and the amounts collected, are expected to increase.
- 2.5 For the reasons stated in 2.4 above performance of the contracted suppliers is lower than would normally be expected, Pre-pandemic typical collection performance in respect of Council Tax and Business Rates would be expected to be in the range of 35-40% over the lifetime of the contract. New suppliers will be expected to increase returns during the lifetime of the new contracts.
- 2.6 The fees charged in respect of Parking Fines, Council Tax and Business Rates are statutory fees and are not determined by the value of debt. Therefore, value of fees collected in respect of parking fines as a percentage of debt is proportionately much higher. For example, an outstanding Parking Fine of £60 would attract the same initial compliance fee of £75 as a £2000 Business Rates debt. All fees are paid by the debtor, not by the Council.

3. Proposed Lots for 2022 Procurement

- 3.1 A review has taken place of the effectiveness and operational impact of the current contracts. Following that review it has been decided to amend the Lots to be procured for the new contract as set out in the paragraphs below.
- 3.2 Parking Services will continue to be offered to a maximum of three suppliers. Managing the flow of work between three suppliers is considered to be a reasonable impact on resource, and to offer sufficient competition between suppliers to maximise performance.
- 3.3 Council Tax and Business Rates will be offered to a maximum of three suppliers, reduced from four within the current contract. Managing workflows between four suppliers adds unnecessary administrative burden, particularly on the Business Rates team, while not offering any additional competitive incentive.
- 3.4 Debt Collection Services will be offered to a maximum of three suppliers for the same reasons outlined in 3.3 above. However, debt collection services will be separated to encourage specialist debt suppliers to bid for the work. Following the review, it has been determined that enforcement agents offer zero commission to increase the prospects of improving the chances of winning contracts. However, the value of debt collection to the winning bidders is also

zero and there is concern that this does not sufficiently incentivise the suppliers to pursue those debts as efficiently as Council Tax and Business Rates. It is accepted that bidders to this lot will expect a commission on the amounts collected. The evaluation panel will assess bidders on the value of that commission and the services offered.

4. Performance Management

- 4.1 The current contractual arrangements are working well. The commencement of the new contracts coincided with the introduction of the Taking Control of Goods (Fees) Regulations 2014 (TCOG) that govern the way enforcement agents can operate. The regulations have resulted in more debts being collected without the need for enforcement agents to call at the homes or businesses of debtors. This has had the positive effect of significantly reducing the number of complaints. 12 complaints have been received during the lifetime of the current contract which represents less than 0.05% of the total cases issued. In addition, the new regulations determine the level of costs that can be added at each stage, also reducing the number of complaints.
- 4.2 The Council has established close working practices with each supplier. Regular individual liaison meetings, attended by representatives from the enforcement agent company are held to monitor performance and to discuss any issues that may be arising to further improve working practices. This can include the conduct and behaviour of an enforcement agent if any complaints / issues have been raised with the Council. These arrangements will continue to be a requirement of the successful bidders for the new contracts.
- 4.3 The enforcement agent companies have been impacted by COVID restrictions and for a large period they were unable to attend premises. This impacted on collection levels. However, over the past months there has been a return to 'business as usual.' The contractors have all performed competently and, through effective monitoring, officers are confident that residents are being treated fairly by the arrangements in place. The regular monitoring meetings outlined in 4.2 will be established with the successful bidders for the new contracts.

5. Sefton Code of Practice for Enforcement Agent Companies

- 5.1 On 13 August 2018 the Council's Code of Practice for enforcement agent services in Sefton, which covers required performance expectations and customer service standards, was reviewed to ensure that it was meeting objectives, particularly about the requirements to deal with and assess vulnerability. The Code has been revised and, in all cases, where exceptional financial difficulty is identified the enforcement agent company or Sefton Council will offer a 28 day hold or "breathing space" on enforcement action if debtors can demonstrate that they are currently seeking debt advice from an accredited advice provider.

- 5.2 On completion of the procurement exercise, the Code of Practice will be reviewed again to ensure any new working arrangements and expectations are incorporated. Any review will be reported to elected Members for approval.

6. Enforcement Agent Legislation

6.1 Council Tax and Business Rates

The Taking Control of Goods Regulations 2013 came into effect on 1 April 2014. The regulations introduced a compliance stage whereby the enforcement agents became obliged to issue a notice to the debtor giving a minimum of 14 days to settle or arrange to pay the debt. The regulations also introduced changes to the fees paid to enforcement agents. Prior to the new regulations enforcement agents were free to determine their own fees in addition to any statutory fees. The new regulations simplified the fee structure by introducing a £75 fee at the compliance stage, and an additional fee of £235 if the case progressed to enforcement stage. The regulations and fee structure were introduced to encourage greater efforts to collect debts at the compliance stage and reduce the number of calls to debtor's homes. The Ministry of Justice is currently reviewing the impact of the regulations before determining whether further amendments to the regulations and/or fees is required. A date has not been set for the completion of that review.

6.2 Civil Parking Enforcement

Parking Services issue Penalty Charge Notices for contraventions of Parking Regulations, using powers contained within the following regulations:

- The Traffic Management Act 2004

7. Procurement - use of an existing framework

- 7.1 It is proposed that the procurement process will include a mini competition exercise conducted under the YPO Enforcement Agency Services Framework 953. This is an existing, proven framework that many local authorities have used to procure enforcement agent services.
- 7.2 The Council's Procurement team will support the mini competition, which will be published to suppliers signed up to the YPO Enforcement Agency Services framework, and managed electronically within the North-West Opportunities Portal, 'The Chest' to ensure auditability.
- 7.3 The proposed contracts will be for a 3-year period in the first instance, with an option of up to a one-year extension, subject to satisfactory levels of performance, which will be outlined in the tender specification and included in the contracts.

8 Award Criteria

- 8.1 The contracts will be awarded using a weighted scoring of:

Price value 30%

This includes commission charged on debt collection and details of any other fees to be charged to the Council or debtor, but not including statutory charges incurred by the debtor.

Quality of service 60%

The includes experience, quality and expertise demonstrated by the bidder. Approach to complaint handling including complaints upheld, processes in place to monitor outcomes and evidence of actions taken from the process. Enforcement agent coverage, innovation, and technology.

Social Value 10%

This includes how the bidder might offer the social, economic, or environmental benefits to the Sefton community and consider social provisions over and above the provision of enforcement agent services. This could include, for example, creating jobs, improving skills, increasing local volunteering opportunities, promoting the local economy or improving environmental conditions in the Council's administrative area.

- 8.2 The procurement process will be completed in February 2023, with contracts to be awarded in March 2023, with a start date of 1st April 2023.