

Meeting:	Cabinet
Date:	16 th February 2006
Subject:	Retrospective Waiver of Contract Procedure Rules in relation to contracts with Allpay.net Ltd and Phoenix Commercial Collections Ltd
Responsible Officer:	Executive Director Business Development
Contact Officer:	Steve Moxon, Group Manager Exchequer Services, Business Connections
Portfolio Holder:	Strategic Overview and External Affairs
Key Decision:	No
Status:	Part 1

Section 1: Summary

Decision Required

That retrospective waivers of paragraph 3.2 of the Council's Contract Procedure Rules be granted for two contracts with Allpay.net Ltd and Phoenix Commercial Collections Ltd respectively, (this includes the authority to pay all invoices relevant to the contracts and incurred from the commencement dates set out in paragraph 2.1 of this report).

That authority to novate the contract from Phoenix Commercial Collections Ltd to Phocol Ltd is granted with effect from 1st December 2004 until 30th November 2005, (this includes the authority for payment of all invoices relevant to Phocol Ltd and incurred from the date of Novation).

That authority to novate the contract from Phocol Ltd back to Phoenix Commercial Collections Ltd is granted with effect from 1st December 2005 (this includes the authority for payment of all invoices relevant to Phoenix Commercial Collections Ltd and incurred from the date of Novation).

Reason for report

This report seeks retrospective waivers of paragraph 3.2 of the Council's Contract Procedure Rules (CPR) in relation to contracts with the following suppliers:

- a) Phocol Ltd, formerly trading as Phoenix Commercial Collections Ltd, – in respect of Bailiff Services for Council Tax and Business Rates;
- b) Phoenix Commercial Collections Ltd, formerly trading as Phocol Ltd – in respect of Bailiff Services for Council Tax and Business Rates; and
- b) Allpay.net Ltd - in respect of Council Tax and Rent payments received through Paypoint, Payzone, and Girobank.

Both service functions are currently operating under implied contracts. The Bailiff service has been operational since 3rd October 2002 and the Allpay service commenced on 18th March 2005.

Whilst there is no evidence that the competition requirements set out in paragraph 3.2 of the Council's Contract Procedure Rules have been adhered to in the above instances, the implied contracts are legally enforceable.

The Council must pay the sums due under the contracts on the legal basis that there is an implied contract to do so.

Benefits

The Bailiff service enforces payment of Council Tax and Business Rates. It is a legal requirement that, prior to the commencement of committal action, the Council must have attempted to seize goods belonging to the debtor as security for any debt owed. Without the employment of a Bailiff service, this legal requirement cannot be met. It is also often the case that despite the Council issuing a number of prior statutory notices to debtors, first contact is only received when a Bailiff either attends the property or issues a Bailiff letter to the debtor.

The Allpay service provides a greater choice for making payments of Council Tax and Council rents by extending the number of outlets where payment may be made. The transaction charges for adopting this method payment are lower than the transaction charges formerly paid.

Cost of Proposals

The costs of the proposals are contained within existing service budgets as the services are already provided.

Risks

The key risks that may be associated with a Bailiff service are as follows:

- Damage to property or possessions of the debtor or a member of their household,
- Removing goods without legal authority,
- Injury or death to Bailiff personnel,
- Loss or theft of cash,
- Injury or death of the Debtor or a member of their household,
- Unlawful trespass,

The key risks that may be associated with the Allpay service are as follows:

- Loss or theft of monies,
- Failure to pay the Council monies due at the contractually agreed time,
- Loss of interest or the debiting of excessive bank charges.

Implications if recommendations rejected

Whilst there is no evidence that the Council's Contract Procedure Rules have been adhered to in the above instances, the contracts are enforceable and the Council must pay for services provided to it.

It is no defence that the Council's Contract Procedure Rules may not have been complied with

Section 2: Report

2.1 Brief History

Bailiff Services

The Council sought tenders for the provision of a Bailiff Service in 2002 and Phoenix Commercial Collections Ltd was awarded the contract. The officer managing the procurement process at that time is no longer employed by the Council and written documentation demonstrating compliance with the Council's Contract Procedure Rules in appointing the contractor cannot be located. Also a contract with Phoenix Commercial Collections Ltd has not been signed and sealed.

Following a recent change of the Bailiff company name to Phocol Ltd, the process of "Novation" revealed that the above situations had arisen although invoices have continually been paid since 2002/3.

On 1st December 2004, a new Bailiff company, Phocol Ltd was formed from a merger of Phoenix Commercial Collections Ltd and another Bailiff company named Collect Services Ltd. Since that time, the Council's Bailiff service has continued to be provided by Phocol Ltd and financial checks

of draft accounts for their two wholly owned subsidiary companies up to the date of the merger have been considered as acceptable in the absence of audited accounts for Phocol Ltd. Since Phocol Ltd was initially established, a subsequent Board decision has been taken to revert back to using the previous company names from 1st December 2005, as they both continued to exist as wholly owned subsidiaries anyway with separate company registrations.

The fees charged previously by Phoenix Commercial Collections Ltd. Phocol Ltd and now Phoenix Commercial Collections Ltd are met directly by the people from whom debts are being recovered.

Allpay Services

On 18th March 2005 the Council began to receive services from Allpay.net Ltd to provide payment cards to Council Tax Payers that formerly paid their Council Tax through the Post Office and some Council tenants. The service arrangement extended the outlets available for customers making payment to include those displaying the Paypoint and Payzone signs and significantly reduced payment transaction costs. The Allpay service was also intended to mitigate some of the potential issues arising from the closure of local Post Offices, which was of significant concern to the Council at that time.

The Council's Contract Procedure Rules state that tenders should have been received from at least four candidates for this contract. However, tenders were not sought, as it was understood by the officers concerned that Allpay was the only organisation in the market place with a payment card facility for customer use at all three outlets referred to above.

Contract documentation was not completed in March 2005. This was due to the relatively short timescale available to introduce the new payment card system to coincide with annual Council Tax bills and Council rent notifications.

Subsequent negotiations between the Council and Allpay have taken place to secure terms and conditions that were more favourable to the Council than those originally proposed by Allpay. This process has recently been concluded. The value of this contract is estimated to be £150,000 over three years.

In the interim, invoices for Allpay services received have been paid.

2.2 Options considered
Not applicable

2.3 Consultation
There has been no specific consultation concerning the above two contracts.

2.4 Financial Implications

This is a report on behalf of the Executive Director (Business Development) and deals with matters concerning financial authorities and delegation. There is no direct impact on budgets as the financial provision for the Services concerned has already been established and in the case of previous years, utilised.

2.5 Legal Implications

A waiver of the Council's Contract Procedure Rules is not permitted within the Rules as currently drafted as contracts have already been entered into, although not formally signed and sealed. In these circumstances, Cabinet approval is generally needed in order to regularise the position in relation to the two named contracts.

Whilst the Council's Contract Procedure Rules may not have been followed in either or both of these contracts, the contracts are legally enforceable.

2.6 Equalities Impact

The Allpay service impacts upon Council Tax Payers and Harrow Council Rent Payers. Harrow Council tenants that previously had plastic payment cards and Council Tax Payers that paid at a Post Office were all issued with a new plastic payment card extending both choice and the number of outlets where payments could be made to include those displaying the Paypoint and Payzone signs.

The Bailiff service impacts upon Council Tax Payers and Business Rate Payers that are in arrears with their payments. The Bailiffs are required to act within the Council's code of conduct relevant to their activities and seek the Council Officer's advice where it appears to them that the debtor is a vulnerable person.

2.7 Section 17 Crime and Disorder Act 1998 Considerations

Bailiffs are required by law to be certificated in order to levy distress for the purposes of Council Tax and Business Rates. Additional to this, the Council operates a code of collection for which Bailiffs are required to comply.

Section 3: Supporting Information/Background Documents

None.