

**CABINET  
20 JULY 2021**

**\*PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: WAIVER OF ELEMENTS OF THE COUNCIL'S CONTRACT PROCUREMENT RULES FOR THE PROCESS FOR SELECTING TREASURY INVESTMENT FUNDS**

REPORT OF THE SERVICE DIRECTOR - RESOURCES

EXECUTIVE MEMBER: FINANCE AND IT

COUNCIL PRIORITY: BE A MORE WELCOMING, INCLUSIVE AND EFFICIENT COUNCIL

**1. EXECUTIVE SUMMARY**

- 1.1 The report seeks a waiver of the Council's Contract Procurement Rules relating to the standard process for seeking and selecting tenders in relation to long-term Treasury Investments (Multi-Asset Funds and Property Funds). The process to be followed will be a process that has been advised by our Treasury Advisors (Link). The potential value of the procurement could exceed the World Trade Organisation (WTO)'s Government Procurement Agreement (GPA) threshold and so approval is being sought from Cabinet.
- 1.2 Following the procurement process, Cabinet are asked to delegate the selection of the fund(s) to the Service Director: Resources in consultation with the Executive Member for Finance and IT. The decisions will be in accordance with the approved Investment Strategy.

**2. RECOMMENDATIONS**

- 2.1. That Cabinet agree a waiver of the Contract and Procurement Rules to allow the selection process for long-term Treasury Investments (Multi-Asset Funds and Property Funds) to follow the process that has been advised by the Council's Treasury Advisors.
- 2.2. That the decision on selecting the funds to be invested in, be delegated to the Service Director: Resources in consultation with the Executive Member for Finance and IT.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1. To follow a selection process that has been recommended by the Council's Treasury Advisors and they have found to be effective.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1. Following the Council's standard Contract Procurement Rules would require (as an example) the use of the Intend system. It is highly unlikely that Investment Fund Managers would use this process and this would therefore limit (or eliminate) the options available.

#### **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1 The Executive Member for Finance and IT has been kept informed.

#### **6. FORWARD PLAN**

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.
- 6.2 The selection of the Investments at the end of the process will be a key decision. This will be added for the Forward Plan.

#### **7. BACKGROUND**

- 7.1 The Council has determined in its Investment Strategy that it has sufficient long-term cash to invest in a Property Fund (or Funds) (up to £2m) and a Multi-Asset Fund (or Funds) (up to £2m). There are a number of funds on the market and it is important to get one that suits the Council's appetite for risk and requirements in relation to Ethical / Environmental/ Corporate/ Social responsibility.
- 7.2 The Council has procured Link Asset Services ('Link') to support the Fund selection process. The process that the Council is looking to use is the one that has been designed by Link, and used across their client base and is one that the Fund market is used to. Link are one of the two main treasury advisers in the Local Authority market. Link are the Council's general treasury adviser.
- 7.3 As part of an investment in a Fund the Council will have to pay various fees. These include:
- Entry/ Exit fees- these are particularly relevant for a Property Fund as they will invest the actual costs incurred (e.g. Stamp Duty) incurred by the Fund Manager in investing/ divesting money.
  - Ongoing transaction fees- these are particularly relevant for a Multi-Asset Fund as the fund will invest in other products (to diversify risk) that will incur management fees.
  - Fund Management Fee- likely to be in the region of 0.5-1% per year. For a £2m investment this would equal £10-20k per year. The Council would expect to retain the investment for at least 5 years. A higher fee may mean that the Manager is more active and generating higher returns, so it would not be appropriate to just target the lowest fee.
- 7.4 The two investment (Property and Multi-Asset) procurements would be two separate exercises and are likely to be with two different Investment Managers.

- 7.5 The selection of funds will be based on criteria that includes the following:
- Past investment performance (net of fess), although past performance is not a guarantee of future performance.
  - The extent to which the Fund targets annual returns versus capital growth, The Council will look to prioritise annual returns.
  - The extent to which the Funds satisfy requirements in relation to Ethical / Environmental/ Corporate/ Social responsibility
  - General confidence in the Funds future outlook. The extent to which they can justify their target investment areas.
- 7.6 Link will provide advice and guidance on all the above areas. It is not possible to say upfront what weighting will be applied. It is likely that some will just not feel right for the Council and be rejected. This is accepted by the Investment Fund market.

## **8. RELEVANT CONSIDERATIONS**

- 8.1 This waiver relates to using the following procurement process in selecting the Investment Funds, instead of the process detailed in the Contract and Procurement Rules. The same general process will be used for each Fund type:
- Supported by Link determine a questionnaire for potential Fund Managers to complete. This will include red flags in relation to Ethical / Environmental/ Corporate/ Social responsibility.
  - The questionnaires will be returned to Link, who will summarise the information and draw out the key details. Supported by Link, a short-list will be compiled with a written justification.
  - The short-listed Fund Managers will be invited to an interview. Again, supported by Link, this will allow for more detailed questions.
  - One (or more) Funds will be selected to invest in. A written justification will be compiled.
- 8.2 The above process is intended to be a fair and transparent process, but it is one that reflects what the Fund Managers market would expect to use.
- 8.3 As detailed in paragraph 7.3 the management fees for each Fund could be around £20k per year. This is intended to be a medium to long-term investment, so the Council could keep it for 10 years (or more). This could mean that the total cumulative fees to the Fund Manager could exceed the current World Trade/ Government Procurement Agreement ('GPA') threshold, which is currently £189,330 for sub-central services. This is why approval is being sought from Cabinet. It would be undesirable for the Council to end up in a position in the future to have to disinvest from a fund to keep the total fees that had been paid below a certain threshold. That could mean disinvesting at a time when market prices were low and suffering a capital loss (or reduced capital gains). The national procurement system is currently in a state of flux, and what levels will apply, and systems applicable is not fully known (see 9.4). Link's view is that the investment can be withdrawn at any time and the fee value therefore change accordingly. Therefore no guarantee can be provided at this stage by the Treasury Advisors as to compliance in terms of the procurement investment process. The delegation at 2.2 should, however, provide the Council with the necessary oversight and assurance on this issue.

## **9. LEGAL IMPLICATIONS**

- 9.1. The cumulative fees payable under this procurement is currently unknown as this will depend on how long the Council invests for. According to the CPRs, for procurements above the threshold, only few elements of the CPRs may be waived (rule 22.2) while for procurement values below the threshold, any individual rules in the CPRs may be waived (rule 22.3).
- 9.2. Both rules 22.2 and 22.3 of the CPRs allow the Service Director: Legal and Community and the Service Director: Resources to refer a waiver to Cabinet for approval where the value is either below the GPA threshold or above it.
- 9.3. For a waiver to be approved, officers must justify the need for a waiver in a report and rule 22.4 list five (5) justification points that may be relied on. In that respect, points (a) and (d) are considered to apply i.e.:
  - (a) the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of CPR is justifiable.
  - (d) where it is in the Council's overall interest.
- 9.3. If the cumulative fees payable under this procurement are eventually equal to or higher than the GPA threshold, the Public Contracts Regulation (PCR) 2015 may apply. Legal officers have been informed that a tender process will still be carried out for this procurement and the waiver requested is solely to depart from the Council's own procurement rules rather than the legislation if applicable.
- 9.4. The UK Government introduced The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020/1319 in November 2020, which has the effect of aligning England to the EU procurement law to the extent required under the Withdrawal Agreement. The UK became a party to the WTO GPA, which provides access to above threshold procurement contracts, such threshold as set out above in 8.3. The EU-UK Trade and Co-operation Agreement (TCA) was agreed between UK and EU negotiators on 24 December 2020. Its provisions are now binding under domestic law by virtue of the European Union (Future Relationship) Act 2020; there are, however, elements of discretionary approaches in relation to procurement and following the UK exit from the EU, government is in the process of introducing a new procurement regime. It is therefore legally sensible to seek Cabinet's approval at this stage for the waiver, in the knowledge that the Treasury Advisors are unable to confirm necessary compliance with a regime, as indicated in 8.3 above.

## **10. FINANCIAL IMPLICATIONS**

- 10.1. The financial and risk justifications for undertaking these investments was covered in the Investment Strategy that was approved by Council in February. This report does not incorporate any new costs that were not known about at that time.

## **11. RISK IMPLICATIONS**

- 11.1 The financial and risk justifications for undertaking these investments was covered in the Investment Strategy that was approved by Council in February. This report adds a new risk in relation to Investment Management Fees exceeding the GPA threshold over a long period of time. This risk is considered to be lower than the risk of being required to disinvest from a fund to keep fees under a threshold. The risk is also being managed through this report (i.e. openly reporting to Cabinet) and still following a selection process that is in line with industry practise. It should also be noted that in the realms of these Fund Investments, the value of the Council's planned investment is very small.

## **12. EQUALITIES IMPLICATIONS**

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. There are no equalities implications arising from this report.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1. The Social Value Act and "go local" requirements do not apply to this report. As detailed previously there is the potential for this contract to exceed the GPA threshold over time. But this is not considered to be the most likely outcome and therefore Social Value has not been directly considered. Ethical, Environmental and Social Responsibility factors will be considered in selecting these Investment Funds.

## **14. ENVIRONMENTAL IMPLICATIONS**

- 14.1. There are no known Environmental impacts or requirements that apply to this decision.

## **15. HUMAN RESOURCE IMPLICATIONS**

- 15.1 There are no HR implications arising from this report.

## **16. APPENDICES**

- 16.1 None

## **17. CONTACT OFFICERS**

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## **18. BACKGROUND PAPERS**

18.1 Investment Strategy- Council Meeting 11 February 2021, Item 6b

<https://srvmodgov01.north-herts.gov.uk/ieListDocuments.aspx?CId=136&MId=2391&Ver=4>