

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 12 May 2020	<b>Meeting Name:</b> Overview and Scrutiny Committee
<b>Report title:</b>		Scrutiny Call-in: Contract Award – generalist community legal advice services 2020-2025  (Cabinet member decision – 8 April 2020)	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Head of Overview and Scrutiny (Acting)	

## RECOMMENDATIONS

1. That overview and scrutiny committee consider the call-in request set out at paragraph 8 of the report.
2. That having considered the call-in request, the overview and scrutiny committee decide on the appropriate course of action as outlined in paragraph 10 of the report (potential outcomes available to the call-in meeting).

## BACKGROUND INFORMATION

3. On 8 April 2020 the Deputy Leader and Cabinet Member for Culture, Leisure, Equalities and Communities considered a report (attached as Appendix A) on the contract award of generalist community legal advice services 2020-2025 and resolved:
  - That the contract award for generalist external community legal advice services, to Citizens Advice Southwark (CAS) for an estimated annual sum of £600,000 over a period of up to five years (three years plus option to extend for two years), from 1 May 2020 to 31 March 2025, making a total estimated contract sum of £3m, be approved.

## KEY ISSUES FOR CONSIDERATION

4. The overview and scrutiny committee can “call-in” any executive decision which has been made but not yet implemented by the following:
  - a) the cabinet
  - b) an individual member of the cabinet
  - c) a committee of the cabinet
  - d) an executive decision taken by an individual member
  - e) a key decision made by an officer with delegated authority.
5. This enables the overview and scrutiny committee to consider whether the decision is appropriate.
6. It is for the committee to decide what evidence to consider and take into account when considering the call-in. The committee should however be mindful of the

grounds for call-in and the specific decision(s) the call-in relates when considering whether the decision is appropriate.

7. The committee should also be mindful of the provisions contained in the Council constitution which enable interested parties to make representations to a decision maker ahead of a decision and the onus of the decision maker to have regard for representations received when taking a decision. The committee should therefore as far as practicable not introduce new issues or rehearse points that have previously been made to the decision maker.

### **Call-in request**

8. On 17 April 2020, Councillor Jane Salmon requested a call-in of the decision. The call-in request was supported by Councillors Humaira Ali and Victor Chamberlain. The call-in request is set out below:

I would like to call-in this decision because I believe there is evidence that the decision maker may not have taken the decision in accordance with the principles of decision making as set out in the constitution.

In particular, I believe that the decision to award the contract based upon the service specification included at Appendix 1 has not been made in accordance with principle c) of the principles of decision making listed in Article 1.3 of the council's constitution, which is "respect for human rights, law and probity".

Specifically, I consider that the Cabinet Member, as the decision maker, has failed to comply with their legal duties under the Equality Act 2010 to have due regard to advancing equality and limiting discrimination.

At paragraph 17 the report outlines that this contract award implements a 15% reduction on the annual budget for community legal advice services for 2019-20, of which 18% is from the generalist service covered by this report.

At paragraph 22 the report outlines that the contract is intended to "assist the council to meet its public sector equality duty (PSED) to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities."

At paragraph 23 the report outlines that the equalities impact assessment carried out, in relation to the effect of the budget cut implemented by this decision, outlined that there was a likelihood of a negative impact on a number of the Equality Act protected characteristics, including those who fall under more than one protected characteristic. This would mean that the council was failing to carry out its public sector equality duty, putting it in breach of the Equality Act 2010.

Paragraph 23 goes on to list a number of mitigating acts which the council proposes in relation to this equality impact assessment.

It is clear, however, that in the current crisis caused by the Coronavirus and Covid-19, the need for generalist legal advice services has increased and the nature of the advice services needed has become more acute.

The decision maker has sought to rely on an equality impact assessment carried out in December 2019. As a result of the current crisis, this assessment is now entirely out of date and, without an up to date assessment, and corresponding proposals for mitigating acts, it cannot be said that the decision maker had due regard to their legal duties under the Equality Act 2010 when making this decision.

It is highly likely that the impact on people, with Equality Act protected characteristics, of the budget cut implemented by this decision has become significantly higher, to such an extent that the proposed mitigating actions are no longer sufficient, putting the council in breach of the Equality Act 2010 as detailed above.

Failing to take these changing circumstances and increased risk of acting unlawfully into account means that this decision has not been made in accordance with the principle of respect for the law.

I believe that further scrutiny of this decision by the Overview and Scrutiny committee will encourage additional investigation of the likely impact of this decision on people with Equality Act protected characteristics in the current extraordinary circumstances, giving the council a chance to adapt the contract award for generalist legal advice services to ensure that the council is adequately meeting its public sector equality duties in this area.

### **Comments of the Head of Overview and Scrutiny (Acting)**

9. The reasons given for call-in are considered valid as the decision was taken based on an equalities impact assessment that had been undertaken prior to the Covid-19 pandemic. As such the cabinet member when taking the decision did not have up to date information on the likely impact the decision would have on the users of the service.

### **Potential outcomes available to the call-in meeting**

10. If, having considered the decision and all relevant advice, the overview and scrutiny committee may either:
  - a) refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns, or
  - b) refer the matter to council assembly if the decision is deemed to be outside the policy and budget framework, or
  - c) not refer the matter back to the decision making person or body but decide to undertake a subsequent scrutiny review of a policy or service issue, which shall not affect the implementation of the decision, or
  - d) not refer the matter back to the decision making person or body.
11. In an outcome of c) and d) above the decision shall take effect on the date of the scrutiny meeting. Notice of the decision will be issued to all councillors and published on the council's website.

## REASONS FOR URGENCY

12. The overview and scrutiny committee is required to consider a scrutiny call-in as soon as possible. This meeting has been arranged to consider the call-in.

## REASONS FOR LATENESS

13. It has taken longer than anticipated to prepare the report for scrutiny due to other work pressures.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
IDM Report and decision, Contract Award – generalist legal advice services 2020-2025 – (attached as an Appendix)		

## APPENDICES

No.	Title
Appendix A	Contract Award – generalist legal advice services 2020-2025 Report and decision

## AUDIT TRAIL

<b>Lead Officer</b>	Everton Roberts, Head of Overview and Scrutiny (Acting)	
<b>Report Author</b>	Everton Roberts	
<b>Version</b>	Final	
<b>Dated</b>	6 May 2020	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy	No	No
Strategic Director of Finance and Governance	No	No
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Scrutiny Team</b>	6 May 2020	