

Cost and Financing of Disciplinary and Grievances Matters

Extraordinary Cabinet	8 June 2021
Report Author	Chris Blundell, Director of Finance and Deputy Section 151 Officer
Portfolio Holder	Cllr Rob Yates, Portfolio Holder for Finance, Administration and Community Wealth Building
Status	For Decision
Classification:	Not Restricted
Key Decision	Yes
Reasons for Key	Expenditure not in budget and exceeding virement rules
Ward:	All

Executive Summary:

Retrospective Cabinet approval is required for legal costs of approximately £247,000 incurred to date associated with on-going disciplinary and grievance proceedings. Cabinet members are also asked to approve resources to facilitate the current plan for these proceedings, as future costs are estimated in the region of £450,000 to £486,000.

As an urgent decision outside the budget framework, the Chair of Overview and Scrutiny has been informed and has given consent for the matter to be dealt with by Cabinet. A report will be brought to the next meeting of Council on 15 July.

Recommendation(s):

1. That Cabinet approves the expenditure relating to these matters, in accordance with Rule 4 of the Budget and Policy Framework Procedure Rules
2. That a one-off 2020-21 supplementary General Fund revenue budget of £247,000 be retrospectively approved for external legal costs already incurred in relation to on-going disciplinary and grievance proceedings, to be funded from earmarked reserves;
3. That a one-off 2020-21 supplementary General Fund revenue budget of £486,000 be approved to create a financial provision for future anticipated external legal costs in relation to on-going disciplinary and grievance proceedings, to be funded from earmarked reserves; and
4. Cabinet members asked to note the current and forecast cost position.

Corporate Implications

Financial and Value for Money

The financial implications are detailed within this report.

Legal

Rule 4 of the Budget and Policy Framework Procedure Rules in the Constitution states that all decisions outside the budget and policy framework should be made by full Council. This matter is being brought to Cabinet as an urgent decision since the next meeting of Council is not until July. The Constitution states that Cabinet can deal with this decision as an urgent matter, subject to the agreement of the Chair of Overview and Scrutiny Committee.

Corporate

The matters behind this report are subject to ongoing proceedings dealt with by IDSC/GPC and other tribunals under the correct procedures.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.

This report may impact upon the above duties due to the substance of the matters being considered by the IDSC, GPC and other tribunals.

Corporate Priorities

This report relates to the following corporate priorities: -

- *Growth*
- *Environment*
- *Communities*

1. Introduction and Background

- 1.1. The purpose of this report is to seek retrospective budget approval for the costs incurred to date associated with on-going disciplinary and grievance proceedings and to approve the budget for further anticipated costs.
- 1.2. The report also has been prepared for Cabinet's consideration by the Director of Finance because, in his capacity as Deputy Section 151 Officer, he has concerns about the affordability of the costs expended and expected and it is appropriate for these concerns to be formally reported to members given the financial position of the authority.

2. The Current Situation

- 2.1. When the firm was appointed in March 2020 to provide governance support, costs were estimated at £40,000 in-line with the value of the initial purchase order. Subsequent advice provided to the Director of Finance from the Corporate Director of Governance in July 2020 provided an estimate of total costs being £50,000.
- 2.2. The third and most recent budget monitoring report for 2020-21 was presented to Cabinet on 14 January 2021. Within that report spending relating to external legal advice was forecast to result in a £86,000 overspend for the financial year 2020-21, there was no forecast of any costs beyond this timeframe within the report. This overspend solely related to the external legal advice procured for the matters referred to in this report.
- 2.3. However, these processes have become increasingly complex, with additional matters being considered by the IDSC. Additionally, other claims have been made. Concerns regarding increasing costs were first discussed by senior managers in mid April, although no figures were known at that time for estimated future costs. The external legal firm provided details of existing and future anticipated costs which are appropriate to bring before Cabinet. These costs were provided to the Director of Finance on 19 May 2021 by the Director of Law & Governance.
- 2.4. Consequently, the Director of Finance is now reporting to Cabinet that costs incurred to the end of May 2021 relating to the on-going disciplinary and grievance proceedings total £247,000 (of this £141,515 relates specifically to 2020-21).
- 2.5. Future potential costs are estimated to range between £450,000 to £486,000, resulting in total legal costs forecast to conclude these matters being between £697,000 and £733,000. These estimates have been produced by the legal firm that have been contracted to oversee and manage these processes and are based on the maximum time and processes necessary to bring matters to conclusion. The costs estimate includes the legal firm's costs, but also those of external investigators and Counsel.
- 2.6. Of costs incurred to date £114,000 relates to overall process management, £111,000 to internal processes under the council's control and £22,000 for external

employment tribunals. Future anticipated/potential costs are split between £78,000 to conclude our internal processes and £408,000 for external employment tribunals.

- 2.7. Cabinet will understand that members of the IDSC and GPC need to receive sufficient legal advice and support to facilitate fair and proper decision making and that it is the remit of those Committees and not Cabinet to determine the level of support they require. Therefore, members are asked to note the current and forecast cost position.
- 2.8. It should be noted that the forecasts represent the Council's costs only and therefore there is a risk that the Council's financial exposure could exceed this envelope. There is also a risk that costs may exceed these current estimates if the proceedings' durations extend beyond current expectations or if appeals are lodged.

3. Budget Approval

- 3.1. A budget has not yet been approved for this expenditure and as such is currently classified as an unfinanced overspend. The Financial Procedure Rules (FPRs) delegate authority to the Section 151 Officer to authorise budget adjustments of between £20,000 and £50,000, whereas Cabinet approval must be sought for all budgets approvals which are in excess of £50,000.
- 3.2. As these legal overspends relate to a number of different individual matters the £86,000 that was previously reported could have been disaggregated below the £50,000 limits specified in FPRs and therefore budget approval may have been given by the Section 151 Officer or his deputy. However, with spend now being incurred at a higher level, even with disaggregation, it is necessary to seek Cabinet approval of the budget for the spend for further anticipated expenditure.
- 3.3. The Council has controls in place to ensure that orders cannot be approved without a budget in place. Considering the initial estimates of costs, and that delegations permit his approval of budget adjustments upto £50,000, the Director of Finance approved the override of these budgetary controls to allow orders to be raised to engage and contract with the legal advisors.
- 3.4. The legal firm that is overseeing and managing these processes was selected because of their particular expertise in dealing with constitutional and local government employment issues and because the matter could not be managed in-house because of perceived conflicts of interest.
- 3.5. Contracts that exceed £100,000 should be subject to a formal tender process, this would have been undertaken at the outset if it were anticipated at that stage that costs would exceed this threshold. A CSO waiver was prepared in December 2020 to cover costs which exceeded the £100K threshold. This waiver was not approved, however, as it is Council policy not to approve such waivers retrospectively once a contract is in place.
- 3.6. It should be noted that it is necessary to involve an external firm of solicitors to ensure independent management of these processes.

- 3.7. All other suppliers, such as investigators or barristers have been procured in accordance with the CSOs or there are applicable exemptions in place.

4. Financing and Budget Context

- 4.1. The Council's finances are in a delicate position, even before the pandemic our reserves were relatively low and we had a history of not delivering savings or income targets. The impact of the Covid pandemic is expected to put further strain on the Council's finances, the full extent of this will not be known until the year-end position is finalised and this will be reported to Cabinet on 29 July 2021.
- 4.2. As such, at this time it is not possible to specify what the exact financing source of the £247,000 for costs to date will be, but inevitably will need to be financed from our limited earmarked reserves. This will be a challenging task to identify available funding, particularly in light of the requirement to allocate £3m of earmarked reserves within 2020-21 to address the financial impact of Covid.
- 4.3. To comply with relevant accounting standards it will be necessary to create a provision in the 2020-21 accounts to fully cover anticipated future expenditure. Therefore, anticipated total costs of £733,000 will need to be recognised and again financed from our reserves in 2020-21.

5. Options and Recommendations

- 5.1. A budget must be approved and financing identified for the costs incurred to date of £247,000. The suppliers have already been paid and therefore a budget needs to be approved and financing identified as explained previously. Furthermore, a provision will be created in the 2020-21 accounts for the anticipated future costs and as such the budget for these costs must be approved by Cabinet.
- 5.2. It is not the responsibility of Cabinet, but that of the IDSC and the GPC to determine the level of legal advice and support required to facilitate and conclude these proceedings. Therefore, Cabinet members are asked to note the costs position.

Contact Officer: *(Chris Blundell, Director of Finance)*

Reporting to: *(Tim Willis, Deputy Chief Executive and Section 151 Officer)*

Corporate Consultation

Finance: *Not Applicable*

Legal: *(Estelle Culligan, Director of Law and Democracy)*