

**SOMERSET COUNTY COUNCIL
THE CABINET**

**NOTIFICATION OF A PROPOSED KEY DECISION TO BE TAKEN BY THE LEADER
OF THE COUNCIL**

Report title: Procurement claim and Southwest One ongoing disputes

Cabinet Member(s): Mr J Osman, Leader of the Council

Officer Contact Details: Donna Fitzgerald, Senior Responsible Officer
Email: dmfitzgerald@somerset.gov.uk **Tel.:** 01823 355243

Date of Publication of proposed Key Decision: Friday 19 October 2012

Date proposed Key Decision to be made: Monday 29 October 2012.

Date Decision comes into force: Tuesday 30 October

1. Cabinet Member Decision

To consider the proposed recommendations set out in the attached officer report and agree the way forward in accordance with actions set out in section 2 of this report in relation to the procurement claim and Southwest One (SWo) disputes.

2. Reason for Decision(s)

That the Leader of the Council authorises the Chief Executive, Deputy County Solicitor, Director of Finance & Performance and other relevant Somerset County Council (SCC) officers to serve and proceed with the Defence and any Counterclaim and to carry out all subsequent steps in the litigation process and any engagement in connection with the disputes.

To ensure that the SCC legal position is protected and that SCC can pursue all remedies available to it.

It is also recommended that the Leader of the Council and the Chairman of Scrutiny Committee agree urgency in respect of the above

3. Reason(s) for Urgency (where applicable)

Due to the timetable for the legal proceedings SCC officers need a mandate and consequently urgency is requested to adequately represent SCC's interests.

4. Details of any alternative options considered and rejected

As set out in 2 below (Page 5).

5. Any relevant Personal Interest that the Cabinet Member may have under the Council's Code of Conduct for members

None.

6. Details of any conflict(s) of interest declared by a Cabinet Member consulted about the proposals and any dispensation from Chief Executive

None.

7. Other background information considered by the Cabinet Member before making this decision

None.

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Officer Report– 29th October 2012**Procurement Dispute**

Cabinet Member: Mr J Osman, Leader of the Council

Division and Local Member: n/a

Lead Officer: Donna Fitzgerald, Senior Responsible Officer

Author: Donna Fitzgerald

Contact Details: 01823 355243

Please complete sign off boxes below prior to submission to Community Governance

Report Sign off	Seen by:	Name	Date
	Legal	Honor Clarke	19/10/12
	Corporate Finance	Kevin Nacey	19/10/12
	Human Resources	Richard Crouch	19/10/12
	Senior Responsible Officer	Donna Fitzgerald	19/10/12
	Cabinet Member	John Osman	19/10/12
Forward Plan Reference:	General Exception notice published 19 October 2012		
Summary:	This report sets out the way forward for Somerset County Council (SCC) in relation to the procurement claim and Southwest One (SWo) ongoing disputes.		
Recommendations:	<p>That the Leader of the Council authorises the Chief Executive, Deputy County Solicitor, Director of Finance & Performance and other relevant SCC officers to serve and proceed with the Defence and any Counterclaim to carry out all subsequent steps in the litigation process and any engagement in connection with the disputes.</p> <p>It is also recommended that the Leader of the Council and the Chairman of Scrutiny Committee agree urgency in respect of the above recommendation.</p>		
Reasons for Recommendations:	To ensure that the SCC legal position is protected and that SCC can pursue all remedies available to it.		
Links to Priorities and Impact on Service Plans:	Providing the best value for money for Council services.		
Financial, Legal and HR Implications:	The Deputy County Solicitor is authorised to institute defend or settle any legal proceedings and to lodge an appeal. This report seeks authorisation to be given to SCC officers to serve and proceed with the Defence and any Counterclaim, to carry out all subsequent steps in the litigation process and any engagement and commit to financial considerations (such as legal costs) in connection with the disputes.		

	Budget provision exists to support SCC's proposed approach.
Equalities Implications:	Equalities impact assessments will be carried out when necessary.
Risk Assessment:	Due to the contractually binding timetable for resolving disputes SCC officers need a mandate. Risks will be reported and managed through SCC's governance arrangements.
Scrutiny comments / recommendation (if any):	None.

1. Background

- 1.1.** We are in disagreement with SWo about the quality of the procurement service and what payments it is entitled to as a result of savings made by getting better deals through the joint venture. We had hoped we would be able to settle this through negotiations, but unfortunately that has not been the case.

SWo has issued a legal claim against SCC on this issue. It is paramount that we look after the best interests of Somerset's tax payers and we will defend SCC's position. Where standards of quality and performance are not being met, we will take action.

- 1.2.** On 3rd September 2012 SWo served court proceedings against SCC for the Procurement Dispute.
- 1.3.** The history of SWo poor performance is continuing; during 2012 the Client Team have been holding SWo to account; resulting in the serving of 8 contractual notices to SWo.
- 1.4.** Over the past 3 weeks SWo have commenced Disputes on several other matters, issuing further financial claims and disputing SCC's warning notices.
- 1.5.** With a number of escalating Disputes, we need to take action to:
- Conduct proceedings
 - Respond to these Disputes and restore a deteriorating relationship with a strategic supplier.
 - Seek to improve value for money and service performance and ensure it is fit for purpose.
 - Continue to assertively manage SWo to ensure it meets its contractual obligations.
 - Maintain Partner relationships
- 1.6.** The contractually binding timetable for resolving Disputes means this action is urgent. Officers need a mandate.

2. Options Considered and reasons for rejecting them

2.1. Option 1 - To admit the claims made by SWo.

This option is rejected because SCC disputes the Claim.

Option 2 - To submit a Defence and no Counterclaim.

A number of options have been discussed with the Legal Team but the detail is subject to legal privilege.

3. Consultations undertaken

3.1. Joint Members' Advisory Panel members have been kept informed.

4. Implications

4.1. Due to the contractually binding timetable for resolving disputes SCC officers need a mandate.

5. Background papers

5.1. None.

Note: The Leader or a Cabinet Member **must** have regard to officer advice before exercising delegated powers and follow the procedures for taking key decisions. All proposed key decisions shall be notified via this template by email to the Service Manager, Executive – Community Governance – Scott Wooldridge – (copied to Vicki May). Any local county councillor for any electoral division significantly affected should be consulted prior to the exercise of the delegated power and informed of any subsequent decision taken.

Key decisions to be taken by the Leader, a Cabinet Member or an Officer shall be notified to all Members of Council via the Council's website 5 working days before the decision is to be made. Any representations can be made to the decision maker and/or report author before the decision is to be made.

In accordance with Article 2.10(c) of the Scrutiny Committee Procedure Rules in the Council's Constitution, all key decisions are subject to the call-in for consideration by the Scrutiny Committee within 3 working days of the publication of decisions. Each call-in must specify what is being called-in, why it is being called-in, what information is required to help the Scrutiny Committee consider the call-in, if the implementation of the decision should be delayed until the scrutiny process is complete, and the preferred outcome. The only exception to this rule shall be 'urgent' decisions requiring immediate implementation – see urgency provision below.

Urgency can only be applied where delay in implementing a decision would be to the detriment of the interests of the Council. The case for urgency must be agreed by the Leader (or Deputy Leader in the absence of the Leader) and the Chairman of Scrutiny Committee prior to the decision being implemented.

All proposed decisions, decisions and supporting material shall be recorded on the Council's website and be available for public inspection at any time (unless the report contains exempt information under Schedule 12A of Local Government Act 1972).

Somerset County Council

Notice of key decision



The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 – Regulation 10

In accordance with the Council's Access to Information Procedure Rule 4, as set out in the Council's Constitution, notice is hereby given that the following Key Decision, which is not included in the current Cabinet Forward Plan, is to be considered by the Leader of the Council on 29 October 2012:

Procurement claim and Southwest One ongoing disputes

Contact Officer: Donna Fitzgerald, Senior Responsible Officer Tel: 01823 355243

Reasons

It is proposed to take a key decision on this matter on the date shown above. It would be impracticable to defer the decision until it has been included in a published version of the Forward Plan for the required 28 days.

Circulation:

Leader of the Council
Cabinet Members
Chairman of Scrutiny Committee
All county council members
Public notice board at County Hall, Taunton

19 October 2012

Honor Clarke
Deputy County Solicitor

For questions about this notice please contact Scott Wooldridge, Service Manager, Community Governance, County Hall, Taunton, TA1 4DY. Tel : 01823 356748 Email:SWooldridge@somerset.gov.uk
