


Commissioner Decision Report 13 January 2016	 TOWER HAMLETS
Report of: Zena Cooke - Corporate Director of Resources	Classification: Unrestricted
Main Stream Grants - Payments By Results	

Originating Officer(s)	Steve Hill – Head of Benefits Services Everett Haughton – Third Sector Programmes Manager
Wards affected	All wards
Key Decision?	Yes
Community Plan Theme	A Prosperous Community / A Safe and Cohesive Community / A Healthy and Supportive Community

Executive Summary

Proposals setting out the Payment By Results arrangements for the 2015/18 Main Stream Grant projects were agreed by Commissioners at their Decision in Public Meeting of 29 July 2015.

This report proposes amendments to the calculation of the Red, Amber, Green (RAG) rating and the payment arrangements for those organisations that proactively self-assess their performance and highlight concerns at the earliest opportunity to the council's third sector team, so that mitigating actions can be identified and implemented.

This has been proposed after considering a representation from the Tower Hamlets Council for Voluntary Service (THCVS) on behalf of voluntary and community sector organisations.

Recommendations:

The Commissioners are recommended to:

1. Agree the change to the RAG rating calculation as set out in paragraph 3.6
2. Agree to the amended payment arrangements as set out in paragraph 3.7

1. REASONS FOR THE DECISIONS

- 1.1 The proposal from THCVS on behalf of the third sector organisations represented by the THCVS has given rise to a review of the calculations of the Red, Amber and Green ratings applied to project performances. The new percentages will strike a balance between the level of performance and the consequences on the ability to improve performance of not meeting that level for those organisations that pro-actively self-assess their performance.
- 1.2 The amendment in the payment arrangements for projects classed as Red will still act as an incentive to ensure a good level of performance but will help to mitigate the potentially adverse financial consequences. It will require self-assessment by organisations and the early notification of difficulties being faced by organisations delivering projects.
- 1.3 Organisations receiving grant funding from the council are expected to pro-actively monitor and manage their performance and to consider mitigating actions when any concerns are identified. Those organisations that ensure they provide early notification of any concerns rather than waiting for concerns to be raised by council will be assessed under the revised RAG payment arrangements. Organisations that fail to pro-actively monitor and manage their performance or identify concerns will continue to be paid under the existing RAG payment arrangements.

2. ALTERNATIVE OPTIONS

- 2.1 If revised arrangements are not agreed, other options are outlined below.
 - a) To continue the arrangements as agreed by Commissioners at their Decision in Public Meeting of 29 July 2015.
 - b) To develop alternative proposals following further consultation.

3. DETAILS OF REPORT

Introduction and Background

- 3.1 Tower Hamlets Council has a history of providing grants programmes to support voluntary and community organisations. The Main Stream Grants (MSG) is the primary service development grant regime and currently funds approximately 130 individual projects to deliver a wide range of activities and services.
- 3.2 The council has always paid its Main Stream Grants funding based on satisfactory performance. Officers use a Red/Amber/Green (RAG) system to assess the performance of projects. In this regard projects are RAG rated

based on their performance during the previous quarter. Details of the current RAG rating are set out below.

3.2.1 A project is rated **RED** where:

- Output/outcome targets for the quarter in question is showing an under achievement greater than 20%; or where the cumulative target to date is showing an underachievement of more than 15 % below target and where:
 - there are **significant issues or concerns** regarding either the quality or evidencing of the outputs/outcomes
 - there may be concerns regarding the proper use of the grant

3.2.2 A project is rated **AMBER** where:

- Output/outcome targets for the quarter in question is showing an under achievement of between 11-20%; or where the cumulative target to date of more than 15% below target; or where
 - there may be **minor issues or concerns** regarding either the quality or evidencing of the outputs/outcomes
 - there may be concerns regarding the proper use of the grant

3.2.3 A project is rated **GREEN** where:

- Output/outcome targets have been achieved or exceeded for the quarter in question or where any underachievement is within 10% of the target; or where the cumulative outputs/outcomes achieved to date is not showing an underachievement of more than 10%; and where;
 - The quality of both the outputs/outcomes and the evidencing is clear and there are no issues
 - There are no concerns regarding the proper use of the grant

Agreed Arrangements

3.3 At the 29 July meeting Commissioners agreed that overall project ratings of **GREEN**, **AMBER** and **RED** were to be used to determine the grant payments to projects. The following example clarifies how the payments by results approach will be applied where the quarterly grant is £18,000.

3.3.1 Where the project is **RED - the advance payment for the next quarter will be £0**. A Project Improvement Plan will be agreed and the project will be expected to have made up the under-performance; and also be rated **GREEN** by the next quarter.

Where the project makes up its under-performance as agreed, the withheld funding will be released to the organisation. (*This means that the project will have been paid fully in arrears for the quarter*).

3.3.2 Where the project is **AMBER - the advance payment for the next quarter will be £12,000** (equivalent to 2 months funding). A Project Improvement Plan will be agreed and the project will be expected to have made up the under-performance, and be rated **GREEN** by the next quarter.

Where the project makes up its under-performance as agreed, the withheld funding will be released to the organisation. (*This means that the project will have been paid 2 months in advance and 1 month in arrears for the quarter*).

3.3.3 Where the project is **GREEN** - the advance payment will be £18,000. In this situation no further action will be taken

3.4 If a project fails to improve its performance for the next quarter as agreed, appropriate further action will be agreed which could result in the withdrawal of grant.

Review and Revised Arrangements

3.5 Following representations from the Tower Hamlets Council for Voluntary Services (THCVS); Commissioners and then officers met with representatives from the THCVS to consider the proposals they put forward Commissioners then requested that a review of the agreed Payment By Results arrangements be undertaken and revised proposals with pro-active self-assessment conditionality be brought forward for consideration

3.6 In considering the potential impact which the new Payment By Results could have on some organisations, officers have worked closely with THCVS to bring forward revised proposals. The proposed new arrangements are set out below:

3.6.1 A project is rated **RED** where:

- Output/outcome targets for the quarter in question is showing an under achievement greater than **25%**; or where the cumulative target to date is showing an underachievement of more than **20%** below target and where:
 - there are **significant issues or concerns** regarding either the quality or evidencing of the outputs/outcomes
 - there may be concerns regarding the proper use of the grant

3.6.2 A project is rated **AMBER** where:

- Output/outcome targets for the quarter in question is showing an under achievement of between **16-25%**; or where the cumulative target to date of more than **20%** below target; or where
 - there may be **significant issues or concerns** regarding either the quality or evidencing of the outputs/outcomes
 - there may be concerns regarding the proper use of the grant

3.6.3 A project is rated **GREEN** where:

- Output/outcome targets have been achieved or exceeded for the quarter in question or where any underachievement is within **15%** of the target; or where the cumulative outputs/outcomes achieved to date is not showing an underachievement of more than **15%**; and where;
 - The quality of both the outputs/outcomes and the evidencing is clear and there are no issues
 - There are no concerns regarding the proper use of the grant

3.7 In addition to the change in percentages that would lead a project to be classed as Red, Amber or Green a further change is proposed to the payment arrangements where the project is rated as **RED**.

3.7.1 Where the project is **RED**, and this has been notified prior to the quarter end together with written reasons and an action plan, then the advance payment for the next quarter will be 50% of the quarterly profile.

A Project Improvement Plan will be agreed and the project will be expected to have made up the under-performance by the end of the next quarter leading to a **GREEN** rating.

Where the project makes up its under-performance as agreed, the withheld funding will be released to the organisation. (*This means that the project will have been paid 50% in advance and 50% in arrears for the quarter*).

4. COMMENTS OF THE CHIEF FINANCE OFFICER

4.1 The changes proposed are designed to ensure organisations receiving grant funding pro-actively manage their performance, improve the link between grant payments and the delivery of outcomes, whilst at the same time ensuring that providers have sufficient scope to continue to deliver services and make improvements where necessary.

4.2 There are no additional financial commitments required as a result of the recommendations within this report.

5. LEGAL COMMENTS

5.1 Whilst there is no strict legal definition of grant, a grant is in the nature of a gift and is based in trust law. However, grants are often given for a purpose so it is sometimes unclear whether a grant has been made or the arrangement is a contract for services. A contract for services is not a grant and therefore, an arrangement which is classified as a contract for services would be outside the remit of the power conferred upon the commissioners to approve.

5.2 There will be many grants which are made by the Council for the purpose of discharging one of its statutory duties. However, as a grant is in the nature of a gift, it is considered there must be some element of discretion on the part of the Council as grantor as to whom a grant is made to and whether this is made. If the Council is under a legal duty to provide a payment to a specific individual or organisation, and cannot lawfully elect not to make such a payment, then that should not amount to a grant.

- 5.3 There are a number of similarities between the mainstream grants process and procurement of public contracts within the meaning of the Public Contracts Regulations 2015. The key features which separate the grants process from the need to comply with the requirements of those Regulations are as follows. Firstly, the payment of money by the Council is to reimburse actual costs incurred by the recipient and not profits. Secondly, the Council pays the amount that it deems appropriate from the funds available rather than paying the most economically advantageous bid price. Thirdly, grants typically proceed from an application process rather than a procurement procedure. A feature of the application process is that the applicant requests funding for a project that it has developed, rather than developing a proposal to the Council's technical specification. When implementing the grants programme, the Council must take care to maintain these points of distinction.
- 5.4 In this case, the Council is not under a legal duty to provide these payments. The payments are discretionary and therefore considered to be a grant.
- 5.5 The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31 March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).
- 5.6 To the extent that the Commissioners are exercising powers which would otherwise have been the Council's, there is a need to ensure that the Council has the power to make the grant in question.
- 5.7 The proposed grants are supported by others of the Council's statutory powers, such as its general power of competence. Section 1 of the Localism Act 2011 gives the Council a general power of competence to do anything that individuals generally may do, subject to specified restrictions and limitations imposed by other statutes. This general power of competence supports the Mainstream Grants programme.
- 5.9 The Council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This is referred to as the Council's best value duty. In that regard, the payment of grants should include a clear monitoring process against defined parameters in order for the Council to demonstrate either: that delivery is in line with the application and, therefore, the grant achieved its purpose; or provide clear delineation where outcomes were not achieved and the reasons for such failure are apparent. Monitoring should therefore include measuring performance against the expected outcomes and this report is advising as to a revision as to rating criteria applied to project

performance. This is designed to make arrangements to improve the link between grant payments and delivery of outcomes.

- 5.10 When making decisions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). A proportionate level of equality analysis is required to discharge the duty and information relevant to this is contained in the One Tower Hamlets section of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. The contribution of voluntary and community sector organisations to delivering One Tower Hamlets objectives and priorities are explicitly recognised in the Council's Voluntary and Community Sector Strategy.
- 6.2 Organisations play a key role in delivering services that address inequality, improve cohesion and increase community leadership: the deliveries of these services are real examples of 'One Tower Hamlets' in practice.
- 6.3 The opportunities and outcomes targeted through the Main Stream Grants Programme play a key role in delivering the aims of One Tower Hamlets.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The council's Commissioning Framework which forms part of the VCS Sector Strategy provides transparency and clarity in the delivery of desired outcomes along with cost of providing those outcomes to facilitate more efficient alignment of funding allocations.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The funding priorities within the MCG Programme support the spirit of SAGE. The council, as a funder of third sector proposals that meet these priorities assists in the implementation of the strategic aims of SAGE.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 A number of different risks arise from any funding of external organisations. The key risks are:
- The funding may not be fully utilised i.e. allocations remain unspent and outcomes are not maximised
 - The funding may be used for purposes that have not been agreed e.g. in the case of fraud

- The organisations may not be able to secure additional funding necessary to deliver the agreed activities
- The organisation may not be in the event have the capacity to achieve the contracted output/outcomes.

9.2 To ensure that risks are minimised, each project within the Main Stream Grant programme will be required to comply with the standard Grant Agreement terms.

9.3 There will also be appropriate renegotiated performance targets to be met and the evidence required.

9.4 All projects will continue to be strictly monitored to ensure compliance with the revised Payment By Results arrangements including the revised RAG rating criteria.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 The services that will be provided through the MSG programme cover a broad spectrum of activities some of which are key drivers in contributing to the reduction in crime and disorder, these include:

- Improving community cohesion
- Getting people into employment
- Providing timely advice and advocacy
- Supporting 'at risk' individuals

11. SAFEGUARDING IMPLICATIONS

11.1 The Grant Agreement which funded organisations enter into as part of the MSG process commits organisations to complying with a number of requirements in relation to safeguarding.

11.2 Where an organisation provides services to persons under 18 or to vulnerable adults and employs staff or volunteers in a position whose duties include caring for, training, supervising or being responsible in some way for children or vulnerable adults or who have access to records or information about any of these types of individuals, the organisation must ensure that all such staff and volunteers receive an Enhanced Check For Regulated Activity for the purposes of the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012 before such staff and volunteers commence relevant activities.

Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

None

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- Main Stream Grants 2015/18 Programme:
<http://moderngov.towerhamlets.gov.uk/ieListDocuments.aspx?CId=695&MId=6133&Ver=4>

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