


<b>Commissioner Decision Report</b> 12 <sup>th</sup> April 2016	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Zena Cooke – Corporate Director Resources	<b>Classification:</b> Unrestricted
<b>Grants Register 2016/17</b>	

<b>Originating Officer(s)</b>	Steve Hill – Head of Benefits Services
<b>Wards affected</b>	All
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	<b>One Tower Hamlets</b>

### **Executive Summary**

This report sets out the approach being taken in maintaining the Councils 2016/17 Grants Register.

### **Recommendations:**

The Commissioners are recommended to:

1. Note the report and share any comments they may have.
2. Note the 2016/17 Grants Register attached at Appendix A.

### **1. REASONS FOR THE DECISIONS**

- 1.1 Commissioners at their pre- agenda planning meeting on 9<sup>th</sup> February 2016 requested an update on the development of the new 2016/17 grants register.
- 1.2 This report details progress on developing the 2016/17 Grants Register which is attached at Appendix A.

### **2. ALTERNATIVE OPTIONS**

- 2.1 The council is required to comply with Secretary of State Directions and to deliver the actions set out in the Best Value Action Plan. The grant register was a specific recommendation made by Commissioners. No alternatives are proposed.

### **3. DETAILS OF REPORT**

- 3.1 The Grants Register was a recommendation of Commissioners and acts as a central database for all grant funding that the council awards.
- 3.2 The register is updated on a monthly basis and details the budget for each grant stream. The register also details the responsible officers and the decisions of awards made by the Commissioners together with details of delegation of decisions to relevant Directors or their delegates.
- 3.3 The attached spreadsheet (at Appendix A) shows the Grants Register going forward for 2016/17. All officers that administer a grant scheme within the register have been contacted and the register updated as set out below.
  - Grants that are expected to continue in 2016/17
  - The budget associated with each of those grants for 2016/17
  - Whether decisions for the grant have been delegated to officers or will remain with Commissioner
  - The Cabinet Lead Member for the grant scheme
- 3.4 The updated Grants Register for 2016/17 will go live in April and is attached at Appendix A.
- 3.5 Officers are currently exploring the possibility of integrating the Grants Register within the council's grants management ICT system (GIFTS). This would support greater efficiency in the analysis and reporting of grants. An update on progress of this development will be presented to a future Commissioners Decision Making Meeting in Public.
- 3.6 The new Grants Register together with a separate piece of work being undertaken which links individual grants to Community and Strategic plan priorities (part of the Best value Action Plan) will be used to inform our work on the consolidation of grants.

### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 There are no financial implications arising from the recommendations in the report and all costs can be met from within existing resources.

### **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.

- 5.8 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. Best Value considerations have also been addressed in paragraph 9 of the report.
- 5.9 The Council must operate a fair and open application procedure to process a request to obtain funding. Requests for grant funding should ordinarily be measured against a predetermined set of criteria and the criteria themselves must be fair and transparent.
- 5.10 The grant agreement 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.
- 5.11 When implementing the scheme, the Council must ensure that no part of the funds issued represents a profit element to any of the recipients. The inclusion of profit or the opportunity of making a profit from the grant or third parties indicates that the grant is really procurement activity and would otherwise be subject to the Council's Procurement Procedures and other appropriate domestic and European law. This would mean therefore, that the Council would have failed to abide by the appropriate internal procedures and external law applicable to such purchases.
- 5.12 The Treaty on the Functioning of the European Union (TFEU) provides that certain government activities may be prohibited because they give an advantage in a selective way to certain entities, which might affect competition within the internal market. Those advantages may amount to prohibited state aid, or may be state aid which is either expressly allowed by the Treaty, or which may be allowed, dependent on the circumstances. Certain activities are considered to be compatible with EU law however and which includes "aid having a social character" (see Article 107(2)(a) of TFEU. In this case, the grants are for the provision of social and community facilities and services and are therefore not prohibited.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1. The council's support of the voluntary and community sector through grants, contributes to the delivery of the One Tower Hamlets priorities and objectives.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 The Grants Register was a recommendation by Commissioners; this report provides an update on progress to update the Grants Register for the 2016/17 financial year.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 There are no immediate sustainability or environmental issues to consider.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 The recommendations made in this report will minimise the risk of failing to implement the actions agreed in the Best Value Action Plan on grants.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 There are no immediate Crime and Disorder reduction implications.

## **11. SAFEGUARDING IMPLICATIONS**

- 11.1 There are no immediate Safeguarding implications.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- None

#### **Appendices**

- Appendix A – Grants Register 2016/17

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

- None

#### **Officer contact details for documents:**

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