

Report Title:	Waste Contract Amendment
Contains Confidential or Exempt Information	No - Part I
Cabinet Member:	Councillor Coppinger, Cabinet Member for Planning, Environmental Services and Maidenhead
Meeting and Date:	Cabinet – 10 February 2022
Responsible Officer(s):	Andrew Durrant Executive Director, Place Emma Duncan, Monitoring Officer
Wards affected:	All

## **REPORT SUMMARY**

*The report identifies action needed to ratify a decision made under delegated authority in relation to a contract change notice to the Serco Waste Contract.*

### **1. DETAILS OF RECOMMENDATION(S)**

**RECOMMENDATION:** That Cabinet notes the report and:

- i) Ratifies the contractual amendment dated 28 September 2021**
- ii) Notes and endorses the actions proposed and taken in respect of future decision making.**
- iii) Recommends that the Audit and Governance Committee to review the suggested improvements to process identified in the report.**

### **2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED**

- 2.1 The waste and recycling collections contract was procured via a full OJEU compliant competitive tender during 2018/19. The initial contract term is 8 years followed by the potential of an 8-year extension. The contract was procured on the basis of a weekly collection service and contained a contract change mechanism.
- 2.2 Once procured, the operation of the contract is an executive function meaning that Cabinet (or an officer, using delegated powers) are able to make decision of the contract provided they remain within the budgetary framework.
- 2.3 At Cabinet during discussions on the 2021/22 Budget on 4<sup>th</sup> February 2021, the Cabinet Member for Planning, Environmental Services and Maidenhead noted a projected £175,000 saving and that *“he should have introduced fortnightly black bin collection as soon as the Council declared a climate emergency. Those councillors who wanted to achieve carbon neutrality by 2030 should have demanding a change in the frequency of waste collection. It was now proposed to collect black bins fortnightly but everything else would remain the same.”*

- 2.4 At Council on 23 February 2021 the budget was debated which contained the proposed saving. Councillor Coppinger explained *“that not every property would move to a fortnightly collection. There were 64,000 properties in the borough and 18,000 would stay on a weekly collection... Councillor Coppinger recognised that the administration did promise to keep a weekly bin collection, but all had learnt so much more about the planet and what each person could do to save it. It was a sign of good governance to be nimble and adapt to changing circumstances. He therefore proposed that the council continue with the change without modification because all knew it to be the right thing to do.”*
- 2.5 During the summer of 2021 officers of the Council discussed with the provider the introduction of a new fortnightly waste collection in line with the direction given by Cabinet which resulted in a change to be agreed using the contract change provisions in the contract. This was a complicated process and involved setting off potential income streams within the waste budget, however the net increase to budget provision was identified at £500,000. The Cabinet Member and Cabinet were consulted and engaged through the contract change mechanism process.
- 2.6 In these circumstances officers (under the Council’s Contract Standing Orders and delegated authority) are able to make variations to contracts up to £500,000 subject to consultation requirements with officers and the Cabinet Member. If the change proposed is over £500,000 then it becomes a decision to be exercised by Cabinet and will be a key decision requiring inclusion on the Forward Plan.
- 2.7 On this basis the contract change mechanism within the existing contract was used and completed on 28 September 2021.
- 2.8 The financial implications were addressed by the Finance Update considered by Cabinet on 25 November 2021;

*“10.4 Areas of Risk and Opportunity (significant)*

*Neighbourhood Services – The hybrid fortnightly general waste collection enduring solution means that residual waste will be collected fortnightly while collections of recycling and food waste will remain weekly (green waste remains fortnightly). These changes to the waste collection contract have added £500,000 of pressures this year. To deliver this model, Serco requires additional resources in the form of vehicles and staff...*

*16. Capital Programme*

*16.4 Purchase of Waste Vehicles*

*16.4.1 The hybrid fortnightly general waste collection solution means that residual waste will be collected fortnightly while collections of recycling and food waste will remain weekly Green waste remains fortnightly.*

*16.4.2 To deliver this model, the contractor requires six additional waste vehicles. **Two vehicles will be purchased in the current financial year with a further four vehicles to be purchased during 2022/23.***

*16.4.3 Approval is sought to **vire £235,000** from the Infrastructure Delivery Programme budget to purchase two waste vehicles with no additional financial impact on the capital programme in the current financial year.”*

- 2.9 As identified above, revenue spend was dealt with as an in year pressure within the budget envelope through contingency arrangements and an additional in year capital spend of £235,000 was approved. It was also noted that capital provision would need to be made in 2022/23 for additional vehicles.
- 2.10 Subsequently it has come to light that whilst the net effect on the budget was correctly identified as £500,000, the adjustment to the contract was in excess of that, meaning that appropriate officer delegated authority was not in place at the time the change notification was completed. Additionally, the decision to vary the contract would have qualified as a key decision and therefore needed inclusion on the Forward Plan (whether a Cabinet or Officer decision). This is a complex issue, involving a number of officers and teams at the Council, however whilst the objectives were correct the decision-making process was not correctly followed.
- 2.11 As the officer delegated to make the decision had ostensible authority to bind the Council, the contract is binding, however there is a need to regularise the position to prevent future challenge.
- 2.12 Consequently Cabinet are asked to ratify the decision to vary the Waste Contract (dated 28 September 2021) in line with the financial implications in the Finance Update presented to Cabinet on 25 November 2021.
- 2.13 As a result of this issue coming to light, governance processes around delegated decision making and procurement have been reviewed. Cabinet should also note that a number of steps have been taken to prevent further procedural issues of this nature as follows;
- Contract Standing Orders have been revised to emphasise key decision limits.
  - The decision-making guidance covering key decision thresholds and delegated decisions has been reissued and will be discussed at Corporate Leadership Team.
  - A decision tracker has been implemented for papers submitted to Cabinet, so that there is clarity around if decisions are required and the constraints around the decision-making process.
  - Procurement already exists as an area for action within the Annual Governance Statement with a Procurement Toolkit and training planned and the reissued decision-making guidance will be promoted as part of this process.

## Options

**Table 1: Options arising from this report**

Option	Comments
To ratify the Contract Change Notice dated 28 September 2021 <b>This is the recommended option</b>	This is the preferred option as it resolves the governance issue and mitigates against risk of challenge.

Option	Comments
To not ratify the Contract Change Notice dated 28 September 2021	This is not the recommended action as it leaves the internal governance process unclear and exposes the Council to risk of challenge. This has no impact on the change to the service delivery, the contract extension or the budget impact.

### 3. FINANCIAL DETAILS / VALUE FOR MONEY

- 3.1 There are no direct financial consequences of the decision to ratify the contract change and any financial implications related to the change itself are considered in the main body of the report.

### 4. LEGAL IMPLICATIONS

- 4.1 The Monitoring Officer is making this report under section 5A of the Local Government and Housing Act 1989. The report has been sent to all Members and the Head of Paid Service and the Executive Director of Resources have been consulted. Cabinet must report to all Members of the Council saying what action it has taken, or proposes to take and the reasons for the action or taking no action and send it to all Members. The Monitoring Officer is satisfied with the actions taken and recommended and content that they will fully address the issues raised.

### 5. RISK MANAGEMENT

**Table 2: Impact of risk and mitigation**

Risk	Level of uncontrolled risk	Controls	Level of controlled risk
<b>Legal Challenge</b>	<b>Medium</b>	<b>Ratification of decision</b>	<b>Low</b>

### 6. POTENTIAL IMPACTS

- 6.1 Equalities. Equality Impact Assessments are published on the [council's website](#). The proposal does not have any equality impacts and a screening assessment has been completed
- 6.2 Climate change/sustainability. There are no impacts as a consequence of the decision.

6.3 Data Protection/GDPR. No personal data has been processed.

## 7. CONSULTATION

7.1 The Head of Paid Service, the Section 151 Officer, the Deputy Section 151 Officer and the Deputy Monitoring Officers have been consulted on the report.

## 8. TIMETABLE FOR IMPLEMENTATION

8.1 Implementation date if not called in:

The decision is whether or not to ratify the exercise of delegated authority, as opposed to an issue of approving a contract change.

## 9. APPENDICES

9.1 This report is supported by 1 appendix:

- Equality Impact Assessment

## 10. BACKGROUND DOCUMENTS

10.1 This report is supported by 0 background documents:

## 11. CONSULTATION

Name of consultee	Post held	Date sent	Date returned
<i>Mandatory: Statutory Officers (or deputies)</i>			
Adele Taylor	Executive Director of Resources/S151 Officer	210122	21/01/22
Emma Duncan	Deputy Director of Law and Strategy / Monitoring Officer	Author	
<i>Deputies:</i>			
Andrew Vallance	Head of Finance (Deputy S151 Officer)	210122	25/1/22
Elaine Browne	Head of Law (Deputy Monitoring Officer)	210122	21/1/22
Karen Shepherd	Head of Governance (Deputy Monitoring Officer)	210122	21/1/22
<i>Other consultees:</i>			
<i>Directors (where relevant)</i>			
Duncan Sharkey	Chief Executive	210122	21/1/22

Andrew Durrant	Executive Director of Place	<b>Author</b>	
Kevin McDaniel	Executive Director of Children's Services	<b>Information only</b>	
Hilary Hall	Executive Director of Adults, Health and Housing	<b>Information only</b>	
<i>Heads of Service (where relevant)</i>			
	Head of Neighbourhood Services	<b>210122</b>	
<i>External (where relevant)</i>			
N/A			

Confirmation relevant Cabinet Member(s) consulted	Cabinet Member for Planning, Environmental Services and Maidenhead	Yes
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## REPORT HISTORY

<b>Decision type:</b>	<b>Urgency item?</b>	<b>To follow item?</b>
Key decision First entered into the Cabinet Forward Plan: 120122	No	No

<p>Report Author:          Andrew Durrant Executive Director, Place andrew.durrant@rbwm.gov.uk          Emma Duncan, Monitoring Officer emma.duncan@rbwm.gov.uk</p>
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**ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD**  
**EQUALITY IMPACT ASSESSMENT**

**EqlA : Waste Contract**

**Essential information**

Items to be assessed: (please mark 'x')

<b>Strategy</b>		<b>Policy</b>		<b>Plan</b>		<b>Project</b>		<b>Service/Procedure</b>	X
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<b>Responsible officer</b>	Emma Duncan	<b>Service area</b>	Governance/Law	<b>Directorate</b>	Governance, Law, Strategy
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<b>Stage 1: EqlA Screening (mandatory)</b>	Date created: 020222	<b>Stage 2 : Full assessment (if applicable)</b>	Date created : n/a
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**Approved by Head of Service / Overseeing group/body / Project Sponsor:**

*"I am satisfied that an equality impact has been undertaken adequately."*

**Signed by (print):** Emma Duncan

**Dated:**020222

# ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

## EQUALITY IMPACT ASSESSMENT

### EqlA : Waste Contract

#### **Guidance notes**

##### **What is an EqlA and why do we need to do it?**

The Equality Act 2010 places a 'General Duty' on all public bodies to have 'due regard' to:

- Eliminating discrimination, harassment and victimisation and any other conduct prohibited under the Act.
- Advancing equality of opportunity between those with 'protected characteristics' and those without them.
- Fostering good relations between those with 'protected characteristics' and those without them.

EqlAs are a systematic way of taking equal opportunities into consideration when making a decision, and should be conducted when there is a new or reviewed strategy, policy, plan, project, service or procedure in order to determine whether there will likely be a detrimental and/or disproportionate impact on particular groups, including those within the workforce and customer/public groups. All completed EqlA Screenings are required to be publicly available on the council's website once they have been signed off by the relevant Head of Service or Strategic/Policy/Operational Group or Project Sponsor.

##### **What are the "protected characteristics" under the law?**

The following are protected characteristics under the Equality Act 2010: age; disability (including physical, learning and mental health conditions); gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

##### **What's the process for conducting an EqlA?**

The process for conducting an EqlA is set out at the end of this document. In brief, a Screening Assessment should be conducted for every new or reviewed strategy, policy, plan, project, service or procedure and the outcome of the Screening Assessment will indicate whether a Full Assessment should be undertaken.

##### **Openness and transparency**

RBWM has a 'Specific Duty' to publish information about people affected by our policies and practices. Your completed assessment should be sent to the Strategy & Performance Team for publication to the RBWM website once it has been signed off by the relevant manager, and/or Strategic, Policy, or Operational Group. If your proposals are being made to Cabinet or any other Committee, please append a copy of your completed Screening or Full Assessment to your report.

##### **Enforcement**

Judicial review of an authority can be taken by any person, including the Equality and Human Rights Commission (EHRC) or a group of people, with an interest, in respect of alleged failure to comply with the general equality duty. Only the EHRC can enforce the specific duties. A failure to comply with the specific duties may however be used as evidence of a failure to comply with the general duty.



# ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

## EQUALITY IMPACT ASSESSMENT

### EqIA : Waste Contract

#### Stage 1 : Screening (Mandatory)

##### 1.1 What is the overall aim of your proposed strategy/policy/project etc and what are its key objectives?

The report relates to use of delegated decision making and record keeping, an existing process. The process is a statutory obligation. This is a compliance issue and will not have any impact in terms of the Equality Duty.

**1.2 What evidence is available to suggest that your proposal could have an impact on people (including staff and customers) with protected characteristics? Consider each of the protected characteristics in turn and identify whether your proposal is Relevant or Not Relevant to that characteristic. If Relevant, please assess the level of impact as either High / Medium / Low and whether the impact is Positive (i.e. contributes to promoting equality or improving relations within an equality group) or Negative (i.e. could disadvantage them). Please document your evidence for each assessment you make, including a justification of why you may have identified the proposal as “Not Relevant”.**

**ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD**  
**EQUALITY IMPACT ASSESSMENT**  
**EqIA : Waste Contract**

# ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

## EQUALITY IMPACT ASSESSMENT

### EqlA : Waste Contract

Protected characteristics	Relevance	Level	Positive/negative	Evidence
<b>Age</b>	n/a			<i>Key data: The estimated median age of the local population is 42.6yrs [Source: <a href="#">ONS mid-year estimates 2020</a>]. An estimated 20.2% of the local population are aged 0-15, and estimated 61% of the local population are aged 16-64yrs and an estimated 18.9% of the local population are aged 65+yrs. [Source: ONS mid-year estimates 2020, taken from <a href="#">Berkshire Observatory</a>]</i>
<b>Disability</b>	n/a			
<b>Gender re-assignment</b>	n/a			
<b>Marriage/civil partnership</b>	n/a			
<b>Pregnancy and maternity</b>	n/a			
<b>Race</b>	n/a			<i>Key data: The 2011 Census indicates that 86.1% of the local population is White and 13.9% of the local population is BAME. The borough has a higher Asian/Asian British population (9.6%) than the South East (5.2%) and England (7.8%). The forthcoming 2021 Census data is expected to show a rise in the BAME population. [Source: 2011 Census, taken from <a href="#">Berkshire Observatory</a>]</i>
<b>Religion and belief</b>	n/a			<i>Key data: The 2011 Census indicates that 62.3% of the local population is Christian, 21.7% no religion, 3.9% Muslim, 2% Sikh, 1.8% Hindu, 0.5% Buddhist, 0.4% other religion, and 0.3% Jewish. [Source: 2011 Census, taken from <a href="#">Berkshire Observatory</a>]</i>
<b>Sex</b>	n/a			<i>Key data: In 2020 an estimated 49.6% of the local population is male and 50.4% female. [Source: ONS mid-year estimates 2020, taken from <a href="#">Berkshire Observatory</a>]</i>
<b>Sexual orientation</b>	n/a			

# ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

## EQUALITY IMPACT ASSESSMENT

### EqlA : Waste Contract

#### Outcome, action and public reporting

Screening Assessment Outcome	Yes / No / Not at this stage	Further Action Required / Action to be taken	Responsible Officer and / or Lead Strategic Group	Timescale for Resolution of negative impact / Delivery of positive impact
Was a significant level of negative impact identified?	No			
Does the strategy, policy, plan etc require amendment to have a positive impact?	No			

If you answered **yes** to either / both of the questions above a Full Assessment is advisable and so please proceed to Stage 2. If you answered “No” or “Not at this Stage” to either / both of the questions above please consider any next steps that may be taken (e.g. monitor future impacts as part of implementation, re-screen the project at its next delivery milestone etc).

## CABINET

THURSDAY, 10 FEBRUARY 2022

PRESENT: Councillors Andrew Johnson (Chairman), Stuart Carroll (Vice-Chairman), David Cannon, David Coppinger, Samantha Rayner, David Hilton, Gerry Clark, Donna Stimson and Ross McWilliams

Also in attendance: Councillor Christine Bateson, Councillor Julian Sharpe, Councillor Sayonara Luxton, Councillor John Bowden, Councillor Helen Price, Councillor Phil Haseler, Councillor Catherine del Campo, Councillor John Baldwin, Councillor Amy Tisi, Councillor Gurpreet Bhangra and Councillor Simon Bond.

Officers: Duncan Sharkey, Hillary Hall, Adele Taylor, Emma Duncan, Andrew Valance, Andrew Durrant, Kevin McDaniel, Louisa Freeth, Rebecca Hatch, Louisa Dean and David Cook

### WASTE CONTRACT AMENDMENT

Cabinet considered the report regarding a decision made under delegated authority in relation to a contract change notice to the Serco Waste Contract.

The Monitoring Officer informed Cabinet that officers of the Council discussed with the waste contract provider the introduction of a new fortnightly waste collection in line with the direction given by Cabinet which resulted in a change to be agreed using the contract change provisions in the contract. This involved setting off potential income streams within the waste budget, however the net increase to budget provision was identified at £500,000.

Under the Council's Contract Standing Orders and delegated authority officers were able to make variations to contracts up to £500,000 subject to consultation requirements with officers and the Cabinet Member. If the change proposed was over £500,000 then it becomes a decision to be exercised by Cabinet.

Whilst the net effect on the budget was correctly identified as £500,000, the adjustment to the contract was in excess of that when revenue pressures were taken into effect, meaning that appropriate officer delegated authority was not in place at the time the change notification was completed and thus it should have been a Cabinet decision. The contract was now binding but Cabinet were being asked to ratify the decision.

The Chief Executive apologised to Cabinet and said that this had been a mistake by officers and should have been picked up as a Cabinet decision, there were no financial implications but our processes would be reviewed and reported to the Audit and Governance Committee.

Cllr Bond said that he would have liked to have seen more detail within the report explaining the increase in the contract. He mentioned that Cabinet had been informed about the issue so that briefing note could have been attached as an appendix.

The Chief Executive informed that during lockdown domestic tonnage had increased, he agreed that the briefing note would be circulated.

Cllr Carroll reported that as he had left the room during the discussion he would not be voting on the recommendations.

**RESOLVED UNANIMOUSLY: That Cabinet noted the report and:**

- i) Ratified the contractual amendment dated 28 September 2021.**
- ii) Noted and endorsed the actions proposed and taken in respect of future decision making.**
- iii) Recommended that the Audit and Governance Committee reviewed the suggested improvements to process identified in the report.**