



**ARTICLE NO: 3A**

**CORPORATE & ENVIRONMENTAL  
OVERVIEW & SCRUTINY  
COMMITTEE**

**MEMBERS UPDATE 2014/15  
Issue: 3**

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**Article of: Borough Solicitor**

**Relevant Managing Director: Managing Director (People and Places)**

**Contact for further information: Mr L Gardner (Extn. 5023)  
(E-mail: [lee.gardner@westlancs.gov.uk](mailto:lee.gardner@westlancs.gov.uk))**

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**SUBJECT: EXEMPTION FROM CONTRACT PROCUREMENT RULES –  
FINANCIAL INVESTIGATION SERVICES**

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## **1.0 PURPOSE OF ARTICLE**

1.1 To inform Members that an Exemption from Contract Procurement Rules has been granted by the Managing Director (People and Places) for Financial Investigation Services provided by Kirklees Borough Council in support of a Proceeds of Crime Act 2002 application (“POCA”).

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## **2.0 BACKGROUND**

2.1 The successful prosecution of two Defendants for a breach of planning law has presented the Council with an opportunity to apply to the Court for a confiscation order under POCA. If the Court makes a confiscation order the Council will receive a significant portion of the sum confiscated.

2.2 The POCA application process requires that a report be submitted to the Court, a substantial element of which is a financial statement which identifies the financial means of the Defendants, and estimates their financial gain from committing the crime and the means to pay any sum confiscated by the Court.

2.3 Officers have attempted to produce the POCA financial statement in-house but have concluded that they do not have the experience and appropriate resource to complete the process. Therefore the statement and report would need to be drawn up by an external provider if the Council were to proceed with the application.

2.4 The Court has given a deadline for report submission of 5<sup>th</sup> December 2014.

### **3.0 CURRENT POSITION**

- 3.1 Lancashire, Greater Manchester and Merseyside Police have been approached to see whether they could provide a POCA financial statement. Only Lancashire Police indicated that they would be prepared to provide a quotation. However, they advised that they would expect to keep all the proceeds confiscated but may, on request, pay some of the confiscated sum to the Council depending on the sum ordered for confiscation. In addition to approaching local police forces, officers have attempted to ascertain whether any private companies would be able to undertake this work but have been unable to identify any that can.
- 3.2 Kirklees Borough Council have also been approached. They advise that they have an experienced and accredited POCA financial investigation unit that provides this service for other local authorities. Their service includes undertaking the necessary Financial Investigation Services and producing a report for the Court. They will also respond to any comments made by the Defendants and attend to give evidence if required. There is no fee for their service but they would expect to share any proceeds gained from the Defendants and payable to the prosecuting authority equally with the Council. The estimated value of the contract is £10,000 to £15,000 (being the likely sum recovered), which means that under normal circumstances Contracts Procedure Rule 6 would require that three quotes be obtained. However, given the pressing timescales and the lack of suitable alternatives, the appointment of Kirklees Borough Council has been approved by the Managing Director (People and Places) under an exemption to Rule 6.

### **4.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 4.1 Not applicable.

### **5.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 5.1 If the Court makes a confiscation order under POCA the sum confiscated and payable to the prosecuting authority will be shared equally between the Council and Kirklees Borough Council.
- 5.2 If no order is made there will be no fee for the investigation unless the Council withdraws the POCA application before the Court makes an order.
- 5.3 In view of the above terms, this activity is likely to be self-financing in which case there will be no financial implications or significant resource implications.

### **6.0 RISK ASSESSMENT**

- 6.1 This item is for information only and makes no recommendations. It therefore does not require a formal risk assessment and no changes have been made to risk registers as a result of this article.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Article.

### **Equality Impact Assessment**

This article is for information only and does not have any direct impact on members of the public, employees, elected members and/ or stakeholders. Therefore no Equality Impact Assessment is required.

### **Appendices**

None.