

	London Borough of Hammersmith & Fulham CABINET MEMBER DECISION MARCH 2016
ICO UNDERTAKING: FUNDING REQUIRED FOR RESOURCES	
Report of the Corporate Director: Ed Garcez Open Report	
Classification - For Decision Key Decision: No	
Wards Affected: All	
Accountable Executive Director: Nigel Pallace	
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AUTHORISED BY:

The Cabinet Member has signed this report.

DATE: 11 March 2016..

1. EXECUTIVE SUMMARY

- 1.1. H&F have signed an ICO Undertaking committing the Council to provide data protection induction training to all their staff, permanent and non-permanent, by 01 December 2015. It also requires the creation of regular refresher training and a performance monitoring system to ensure ongoing compliance. To comply, H&F need additional staffing and system resources. Indicative costs of up to £95,000 (certainly £66,340 as estimated below) which can be funded from the Human Resources Reserve.
- 1.2. Shared ICT Services have devised a phased plan (see Appendix 1) focusing on H&F’s immediate compliance requirements in the first instance (Phase 1) and develop a longer term, learning and development approach

that is implemented across all three Councils (Phase 2). The estimated costs cover H&F's immediate compliance requirements for Phase 1 and initiating Phase 2 only.

2. RECOMMENDATIONS

- 2.1. Cabinet Member to approve funding from Human Resources Reserve and cover the costs of H&F's immediate compliance requirements, in the first instance, and initiate the longer term approach.
- 2.2. To retrospectively waive the provisions of Contract Standing Orders to seek 3 competitive quotations/tenders and award a contract to Devoted Security Solutions Ltd (Company Registration No. 08839587) to deliver the H&F requirements of the ICO Undertaking in the first instance and initiate the longer term project in the sum of £25,350.
- 2.3. To issue a Work Package Request to HFBP relating to (a) the acquisition of licences to use WCC's data protection modules from their e-learning platform with H&F paying a 1/3 share of an annual £1,500 support cost, of £500; and (b) the acquisition of licences to use RBKC's Net Consent at £8.14 per license for 3,500 H&F users (£28,490) plus first year of annual support (£12,000).
- 2.4. To note that the total, estimated cost to date is £66,340, but to allow for a contingency due to the high risk of overspend. The total programme/project will be capped at a total of £95,000.

3. REASONS FOR DECISION

- 3.1. Making a direct award is never the preferred option. It is recommended due to the ICO's urgent requirement dated 06 June 2015 for corporate action in training and development for data protection. Not complying with the requirements of the ICO Undertaking risks further enforcement action against H&F which is likely to be a monetary penalty of up to £500,000.
- 3.2. Shared ICT Services have devised a phased plan (see Appendix 1) focusing on H&F's immediate compliance requirements which are then extended across all three councils to provide a foundation of data protection and information security understanding across all staff in the shared services. These staff are legitimately sharing and processing both staff and service user personal data on behalf of a partner council and need to be aware of the risks involved. Both phases will form part of the preparation for the implementation of Office 365 in 2016.
- 3.3. Devoted Security Solutions Ltd were chosen on the basis of extensive experience and expertise in delivering data protection and information security projects in local government.

4. INTRODUCTION AND BACKGROUND

- 4.1. Between July and December 2014, H&F reported two data protection breaches to the Information Commissioner's Office (ICO). In both incidents staff had disclosed sensitive personal data to a third party as a result of wrongly addressing letters, one delivered by hand and one by email. One of the incidents caused significant damage and distress to the data subjects involved.
- 4.2. On 06 June 2015, the ICO issued H&F with an Undertaking for the Council to improve data protection learning and development and increase the numbers of staff signed up to the Personal Commitment Statement (PCS). At the time of the ICO investigation, 65% of H&F's permanent staff had signed the PCS and completed the mandatory training. By 31 March 2015, this had increased to 77%.
- 4.3. The ICO have advised H&F to make their "best efforts" to comply with the requirements of the Undertaking and to ensure the ICO are advised of any issues the organisation face in achieving full compliance, such as organisational and system changes. HR have advised there is, on average, a 15% turnover of permanent staff so Shared ICT Services propose a target of 90% across all staff as reasonable to drive departmental take-up. A turnover figure is not available for non-permanent staff.
- 4.4. In the hiatus between the Managed Services implementation and the decommissioning of the HR system, Trent, management reporting on compliance currently is difficult. The initial phase will need to use a manual system for recording compliance across H&F (the Council) which will be completed by each of the divisions and monitored by Shared ICT Services who will report up to the management teams and Business Board to chart progress. This process may merge with a Net Consent roll-out across H&F during the initial phase.
- 4.5. To ensure H&F makes its best efforts, the Council must engage with the ICO's Good Practice Team by 01 December 2015 who will then assess whether H&F have done enough to comply with the Undertaking and decide whether any further action is necessary, such as a voluntary and compulsory audits in H&F or a monetary penalty.

5. PROPOSAL AND ISSUES

- 5.1. Appendix 1 provides an outline project plan for the phased approach to be delivered by Shared ICT Services, proposed by the Shared Services Board. This phased approach will maximise the benefits of improved staff knowledge, which will be of particular use to, but not specifically, the Office 365 implementation and the handling of personal data across the three councils. In summary:
 - Phase 1 – deliver on H&F's compliance requirements of the ICO Undertaking by 01 December 2015 in partnership with Human

Resources, Organisational Development and the ASC, Children's Services and Public Health Information Governance Group

- Phase 2 - extend and develop the ICO Undertaking's requirements in H&F across the Royal Borough of Kensington and Chelsea (RBKC) and Westminster City Council (WCC) by bringing forward implementation of the Learning and Development workstream of the Shared Services Information Management Strategy, in partnership with Human Resources and Organisational Development.

6. OPTIONS AND ANALYSIS OF OPTIONS

6.1. The following recommendation was made to both the H&F Business Board and the Shared Services Board in July and August respectively:

- Introduce a mandatory data protection induction and refresher training programme across the three Councils, initially targeting H&F staff to meet the Undertaking's timescales, then to shared service departments and all other departments
- Agree the single Personal Commitment Statement (PCS) across all three Council and mandate sign-up as part of the process
- SSB and departmental management teams (DMT) to receive a quarterly update on Information Governance matters, including information security, PCS and training performance by Council and department to monitor compliance
- A cross-Council awareness raising and communications campaign.

6.2. This recommendation was rejected by both the H&F BB and the SSB for the following reasons:

- Sufficient progress was not achievable by the 01 December 2015, the ICO Undertaking's deadline.
- H&F needs a phased approach that not only satisfies the ICO Undertaking's requirements but implements a learning programme which addresses the behavioural change required to make data protection a live subject for all staff and to be delivered in partnership with Human Resources, Organisational Development, Adult Social Care and Children's Services.

7. CONSULTATION

7.1. The H&F Business Board was consulted on 03 July 2015 and SSB was consulted on 05 August 2015. The Information Governance and Caldicott Support Manager for ASC and Children's Services has been actively engaged from the outset to ensure the outputs align with learning and development requirements of the social care shared services.

8. EQUALITY IMPLICATIONS

8.1. N/A

9. LEGAL IMPLICATIONS

- 9.1 Local Authorities and other public bodies have wide-ranging duties under the Data Protection Act 1998, which include the 7th data protection principle which requires public bodies to have appropriate measures in place to prevent data being compromised.
- 9.2 Data Protection breaches may reach the ICO as the result of self-referral (as in the case of the two H&F breaches referred to in paragraph 4.1) or as the result of complaint by a data subject. In either case the ICO has a variety of enforcement powers which can include monetary penalties of up to £500,000.
- 9.3 Over the last two years there have been 89 Undertakings entered into by public bodies, the majority being connected to breaches of the 7th data protection principle. H&F entered into an undertaking with the ICO on 15th June 2015 as detailed in paragraph 4.2. The recommendations at paragraph 2.1 are steps required towards achieving compliance with the terms of the undertaking.
- 9.4 Not approving the required funding to carry out the steps in paragraph 2.1 would leave H&F in a very vulnerable position when the ICO reviews compliance on or after 1st December 2015, with enforcement by the ICO by way of issuing H&F with a monetary penalty a significant risk.
- 9.1. Implications completed by: Kevin Beale, Principle Solicitor, 020 8753 2740.

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1. There is sufficient funding in Human Resources Reserve to provide up to £95,000 (certainly £66,340) of funding for the extension of Data protection training and staff inductions.
- 10.2. Implications verified by: Andrew Lord, Head of Finance, 020 8753 2531.

11. IMPLICATIONS FOR BUSINESS

- 11.1. There are no implications on businesses in the Borough.

12. RISK MANAGEMENT

- 12.1. Information risk and its management are noted on the Shared Services risk register, risk number 7 and is currently rated as a high risk. The proposal seeks to mitigate the risks sufficiently to remove the immediate threat of enforcement action however information risk will not be eliminated entirely and a further sustained improvement, with sufficient

resources, will be required beyond this initiative in line with the agreed Shared Services Information Management Strategy.

- 12.2. Implications completed by: Michael Sloniowski, Shared Services Risk Manager, 020 8753 2587.

13. PROCUREMENT IMPLICATIONS

- 13.1. There are reasonable grounds for making a direct award given the undertaking received from the ICO and the limited time for the Council to implement it. Given the value of the commission to Devoted Security Solutions Ltd approval to waive Contract Standing Orders is a Cabinet Member decision.
- 13.2. Other expenditure will be dealt with through the normal channels of issuing a Work Package Request to HFBP and in relation to this expenditure there are no procurement related matters to comment on.
- 13.2 Implications completed by: Alan Parry, Interim Head of Corporate Procurement, 020 8753 2581.

LOCAL GOVERNMENT ACT 2000 **LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.			

[Note: Please list only those that are not already in the public domain, i.e. you do not need to include Government publications, previous public reports etc.] Do not list exempt documents. Background Papers must be retained for public inspection for four years after the date of the meeting.

LIST OF APPENDICES:

Appendix 1: Project Scope – phases 1 and 2