

City of Westminster

Cabinet Urgency Committee	Date 12 th May 2004	Title of Report Designated Sales: Recovery of "Surcharge"
Classification FOR GENERAL RELEASE		Report of Director of Legal and Administrative Services and the Chief Executive
Wards involved	Not applicable	
Policy context	The City Council has a fiduciary duty to take all reasonable steps to recover the "surcharge" for the benefit of the Council taxpayers.	
Financial summary	<p>Agreement has been reached with Dame Shirley Porter ("DSP") and her family to settle the proceedings for a sum of approximately £12,300,000. Of this amount, £12million will be paid in cash and the rest in costs to third parties. The settlement is subject to approval in the BVI court. External legal and investigative costs to date amount to some £1,735,473 (exclusive of VAT). David Weeks remains jointly and severally liable, although his debt will obviously be reduced by the amount recovered from DSP. Further, relatively limited, costs will be incurred in finalising matters in relation to the settlement with DSP, concluding negotiations for a settlement with David Weeks, and dealing with certain outstanding third party costs.</p>	
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1. Summary

- 1.1 At the meeting on 8th March 2004, the Committee approved a strategy for the negotiations at the mediation in Brussels and authorised officers accordingly. This report and its confidential appendix updates members on the outcome of the negotiations and the next steps.
- 1.2 The report also updates members on the financial aspects.

2. Recommendation

- 2.1 That the position be noted.

3. Background

3.1 DSP

- 3.1.1 At the last meeting the Committee approved a strategy for negotiations at the mediation which took place on Thursday and Friday 22nd and 23rd April 2004, and authorised officers accordingly.
 - 3.1.2 Pursuant to the authority granted at the last meeting, a settlement was achieved to the value of approximately £12,300,000, of which £12million will be paid in cash, and the rest in costs to third parties. The settlement is subject to approval in the BVI court.
 - 3.1.3 The detailed terms of the settlement agreement are subject to confidentiality provisions and the same applies to the details of the negotiations, and documentation which was obtained as a result of disclosure orders. The Committee are, therefore, constrained as to what may be debated in public. Nevertheless, it is possible to make public the broad terms of the settlement and some general information about the asset position forming the background to the settlement. This information is set out in the statement and Q&As attached as Appendix 1.
 - 3.1.4 The detailed terms of the settlement agreement are summarised in the confidential Appendix 2.
 - 3.1.5 A note on DSP's asset position is in the confidential Appendix 3.
- ### **3.2 David Weeks ("DW")**
- 3.2.1 The Committee have already approved terms for a proposed settlement with David Weeks and authorised officers to conclude a settlement agreement, subject also to the agreement of the Audit Commission. Attempts will now be made to bring this matter to a conclusion as quickly as possible.

4. Consultation with the Audit Commission/District Auditor

- 4.1 The Solicitor to the Audit Commission was present at the mediation proceedings/negotiations, and the Audit Commission supported, and was a party to, the settlement agreement.
- 4.2 The District Auditor has also been kept informed.

5. Financial Implications

- 5.1 Judgments have been obtained in favour of the City Council for sums due of up to £43,321,644. External legal and investigative costs to date amount to some £1,735,473 (exclusive of VAT) to which must be added internal legal costs, which bring the total to some £1.8million. Further, relatively limited, costs will be incurred in finalising matters in relation to the settlement with DSP, concluding negotiations with David Weeks, and in respect of certain third party costs. It is anticipated that all such costs can be met within the provisions already approved.
- 5.2 At the meeting on 9th February 2004 a further supplementary revenue estimate of £120,000 was approved for expenditure in 2003/04. This sum was fully expended, as follows:

Supplementary estimate	£120,000
Further expenditure in 2003/04	<u>£133,579</u>
Overspend in 2003/04	£13,579 (offset by anticipated underspend in relation to third party costs – see below)

- 5.3 Provision of £175,000 was made for expenditure in 2003/4 in relation to potential liability for costs in respect of compliance with third party orders. The position in relation to spend against this provision in 2003/04 is as follows:

Provision	£175,000
Spend in 2003/04	<u>£ 66,621</u> (Excluding £10,000 deposited with the Court)
Balance	£108,379

As set out in more detail in the confidential appendix, the settlement agreement makes provision for the payment of most outstanding claims in relation to third party costs. There is one claim which is not covered by the settlement agreement, but it is anticipated that any expenditure in respect of this claim can be met from the balance of the provision made for third party costs claims in 2003/04 (see above).

- 5.4 At the meeting on 6th November 2003, the Committee approved an estimate of £300,000 for legal expenditure in 2004/05. Expenditure to date against this provision is shown below:

Provision	£300,000
External legal costs and disbursements from 3 rd – 27 th April 2004	<u>£ 81,361</u>
Balance	£218,639

It is envisaged that the balance outstanding should be more than sufficient to cover further legal costs in respect of finalising matters in relation to the settlement with DSP, concluding the negotiations with DW, and settling outstanding third party costs claims.

- 5.5 It will be necessary to consider and discuss with the District Auditor the proper apportionment of the £12million to be received in cash as a result of the settlement. Up to some £2million is likely to be credited to the General Fund in respect of the City Council's costs of the litigation. Under an agreement reached some time ago with the Audit Commission, 1/10th of the sum recovered after deducting the costs of recovery is payable to the Audit Commission towards the Auditor's costs in respect of the appeals. Up to some £1million, therefore, will be payable to the Audit Commission. It is likely that a further £3million will be credited to the General Fund and the Housing Revenue Account, in respect of the costs of the Auditor's original investigation and inquiry. The remaining balance of £6million is likely to be apportioned between the General Fund and the Housing Revenue Account, on revenue and capital account, in the same proportions as make up the original surcharge sum. However, these are preliminary indications only and, as stated above, the precise apportionment will be determined in discussion with the District Auditor in accordance with proper accounting practices. The timing of the inclusion of these sums in the accounts will depend upon completion of all legal processes and approvals.

6. Conclusion

- 6.1 The settlement agreed in respect of the City Council's claim against DSP is regarded as a very good one for the City Council. It is anticipated that the trustees application for the approval of the BVI court will be heard on 23rd June 2004. There is no reason to suppose that the court's approval will not be forthcoming. Efforts will now be focused on concluding the negotiations with DW, finalising matters in relation to the DSP settlement, and resolving outstanding claims by third parties in respect of the costs incurred in complying with disclosure orders.

If you have any queries about this report please contact Colin Wilson on ext 2710, e-mail: cwilson@westminster.gov.uk

Background Papers – Copy of the Deed of Settlement dated 24th April 2004 (this background paper is not available for public inspection as it contains exempt information under paragraphs 9 and 12 of Schedule 12A to the Local Government Act 1972, namely "Information relating to the financial or business affairs of particular persons, and any advice received, information obtained or action to be taken in connection with legal proceedings").