

## **Cabinet Members for Finance and IT – Cllr Philip Whitehead**

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**Reference:** FPIO-01-17

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### **The adoption of electronic “e” signatures for executing formal contracts valued below the EU Supplies and Services threshold**

#### **Purpose of Report**

1. To improve the process for execution of contracts by allowing e-signatures to be used by Officers to execute the subject contracts, except where Legal requirements preclude it, such as deeds and other documents to be registered at the Land Registry.

#### **Relevance to the Council’s Business Plan**

2. This decision will support the council’s intention to be an effective council.

#### **Background**

3. Where the councils SAP system is not used to issue an electronic Purchase Order (PO) that incorporates our standard terms and conditions, all formal contracts currently require an ink or “wet” signature. Officers currently prepare a large number of contract documents that arise from across the council.
4. The council needs to ensure it can easily access all its contracts to manage general commercial risk and comply with legislative requirements on Transparency and Freedom of Information. This has been subject to internal audit and the council has sought to improve the securing and retention of its contracts, the key method being to limit Officers that can physically sign contracts to those in Legal Services and the Strategic Procurement Hub. Consequently after a procurement concludes with an award decision, the budget holding commissioner with authority to approve spend of the relevant level is required to complete an Officer Decision Report that authorises Legal or Strategic Procurement to sign the resulting contract(s).
5. This has helped to improve the council’s management of its contracts, but also made visible the resource demands around contract execution, particularly for Strategic Procurement Hub resulting from centralised document administration for lower value requirements. It is also clear that many suppliers prefer the speed and simplicity of exchanging the documents by e-mail with scanned or typed signatures in them. A simple change to allow Officers to sign with an e-signature and exchange contracts via e-mail for example, will free up valuable resource to focus on more important activity without creating any meaningful risk increase for the council.

## **Main Considerations for the Council**

6. SAP Purchase Orders (PO) for new simple purchases are no longer to be issued. These PO contain the councils standard terms of contract to manage risk for its ad-hoc purchases. In the absence of a PO based contract for such purchases there is a risk of creating a significant rise in the number of formal contracts to replace PO that will require a signature. PO also support the council to efficiently meet the requirements to publish spend data under the local government transparency code 2015.
7. This decision will permit an efficient contract signature procedure for the council and suppliers. Allowing e-mail to be used as a way of formalising contracts will reduce the impact across the wider council of having to seek wet signatures on formal paperwork. It also supports mobile working as Officers (and suppliers) will be able to execute contracts without needing to attend an office to print papers.
8. There is a very low risk that suppliers might deny the validity of a contract. This approach is not proposed to be adopted for contracts above the EU Supplies and Services threshold, where certainty of contract formation and the potential complexity of the documents warrants a more formal process. These higher value contracts may also have symbolic signing events that can be an important part of commencing the new relationship.

## **Safeguarding Implications**

9. There are no safeguarding implications arising from this report.

## **Public Health Implications**

10. There are no public health implications arising from this report.

## **Procurement Implications**

11. The use of e-signatures for finalising formal contracts will speed up and simplify the current procedures. There are no procurements that will result from this decision.

## **Equalities Impact of the Proposal**

12. There are no equalities implications arising from this procedural change.

## **Environmental and Climate Change Considerations**

13. This will reduce the amount of paper being printed, postal costs for issuing paper contracts for signature and have a marginal but positive effect on the environment.

### **Risks that may arise if the proposed decision and related work is not taken**

14. Strategic Procurement Officer and Legal Services time will be diverted to avoidable administrative work. Paper will continue to be consumed producing typically two copies of each contract requiring signing and we will also incur avoidable postage costs.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

15. It is possible, but highly unlikely, that a contractor may attempt to deny signature of a contract if not created with a wet signature and a physical copy held by them. E-mails between the parties will act as evidence to mitigate any such claim.

### **Financial Implications**

16. There are no direct financial implications arising from this procedural change.

### **Legal Implications**

17. Legal advice on this issue has been sought and is reflected in the attached papers. There is no legal issue precluding this approach for simple contracts. Officers will need to be provided information and potentially training on the approach once adopted.

### **Options Considered**

18. The options considered were:
  - a. to continue with the current approach, or
  - b. move to e-signatures for all contracts regardless of value
  - c. move to e-signatures for lower value (below EU Supplies and Services threshold - £164,515)

### **Proposal**

19. To permit e-signatures for executing simple contracts below the EU Supplies and Services threshold.

### **Reason for Proposal**

20. To improve the efficient operation of the council.

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### **Appendices**

None

### **Background Papers**

The following documents have been relied on in the preparation of this report:

- 1 – E\_Signing\_Guidance\_Note – Law Society.pdf
- 2 – Memorandum Regarding Electronic Signatures 01/10/17