



<b>Title of Report:</b>	<b>Concessionary Trading Point – Payment Rebate</b>
<b>Committee Report Submitted To:</b>	<b>Environmental Services Committee</b>
<b>Date of Meeting:</b>	<b>12 September 2023</b>
<b>For Decision or For Information</b>	<b>For Decision</b>

<b>Linkage to Council Strategy (2021-25)</b>	
Strategic Theme	Improvement and Innovation
Outcome	A Sustainable, Accessible Environment
Lead Officer	Head of Capital Works, Energy & Infrastructure

<b>Budgetary Considerations</b>	
Cost of Proposal	£13,950 plus vat
Included in Current Year Estimates	<b>N/A</b>
Capital/Revenue	N/A
Code	
Staffing Costs	None

<b>Legal Considerations</b>	
Input of Legal Services Required	<b>NO</b>
Legal Opinion Obtained	<b>NO</b>

<b>Screening Requirements</b>	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	Yes/No	Date:
	EQIA Required and Completed:	Yes/No	Date:
Rural Needs Assessment (RNA)	Screening Completed	Yes/No	Date:
	RNA Required and Completed:	Yes/No	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	Yes/No	Date:
	DPIA Required and Completed:	Yes/No	Date:

## **1.0 Purpose of Report**

To allow members to consider a recommendation of the NI Public Sector Ombudsman (NIPSO) to rebate the licensee on Councils concessionary trading site at West Bay Portrush and to provide authorisation to make such a payment - see appendix 1 recommendation 59 (i).

## **2.0 Background**

Following an auction of Councils concessionary trading sites (March 2021) A complaint was made by the successful bidder of the concessionary trading site at West Bay.

Having exhausted Councils complaint process the complainant subsequently referred the complaint to the NIPSO.

The new licensee / successful bidder raised a complaint that Council removed the application criteria requirements originally stipulated in the application form to participate in an online auction to tender for licences to trade on Council concessionary sites and that this was altered after the process had commenced, without informing existing registrants. As a result, the complainant said the application process was unfair and disadvantaged them and those who did meet all the original application criteria.

To provide some context, officers received a plethora of enquiries from members of the public who wished to be able to participate in the auction for an outdoor concessionary trading site but currently did not have a trading receptacle. They wished to attempt to enter the outdoor catering market during a period of uncertainty due to covid restrictions which impacted indoor venues and felt they were being discriminated against and the auction was a 'closed shop.' They wished to secure a site from which to trade from first before purchasing a receptacle.

A decision was therefore taken within the department to open the auction up to those who did not have a trading receptacle. This decision was taken in an attempt to achieve best value for our assets in line with NI Audit guidelines. Due to time constraints/deadlines to ensure continuity of trading, a notice could not be placed in local media outlets prior to the date of the auction. Note: this only affected one trading site.

The findings and recommendations from NIPSO are attached - ***Appendix A.***

## **3.0 Proposals**

1. To accept the recommendation 59 (i) within the NIPSO report and refund the overpayments to date over and above the yearly licence fee of £7,800 plus vat and to charge the remainder of the licence period at this amount. This equates to £6,700 plus vat per annum for year 1 (2021/22) and year 2 (2022/23). Year

3 (2023/24) is £550 plus vat based on payments already made. Total refund of £13,950 plus vat.

2. Commission and independent review of the approach taken in the procurement exercise as recommendation 59 (ii)
3. Note all other recommendations within the NIPSO report shall be addressed by officers – items 58 to 61)

## **5.0 Recommendation**

It is recommended Members consider the findings of the NIPSO report and authorise officers to rebate the overpayments.

## **Appendix A – Extract of Conclusion and Recommendations from NIPSO report.**

### **CONCLUSION**

55. I received a complaint about the actions of the Council in relation to the conduct of a procurement exercise for the concessionary licence to occupy the trading site for a three-year term. The complainant said the Council removed the need to meet published Application Requirements after the application process had started and she was not informed of this. As a result, the complainant said she paid a higher price than she otherwise should have, to win the concessionary licence.
56. I made findings of maladministration in relation to:
- The Council's failure to adhere to the original selection process by removing the Application Requirements after the process had already commenced;
  - The Council's failure to notify all applicants, including the complainant, of its decision to remove the Application Requirements;
  - The Council's course of action to continue with and subsequently conclude the procurement exercise which was flawed, by progressing applicants to the auction who did and did not meet the Application Requirements.
57. I am satisfied that the maladministration identified caused the complainant to experience financial loss and the injustice of loss of opportunity to have the concessionary licence won as part of a fair process. The complainant also experienced the injustice of loss of opportunity to make an informed decision as to how high she wished to bid or whether to participate in the auction in the first place. In addition, I consider the complainant suffered the injustice of uncertainty, upset and frustration as she lost all confidence in the integrity of the procurement exercise.

### **Recommendations**

58. I recommend that the Council provides the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice caused as a result of the maladministration identified (within one month of the date of the final version of this report).
59. To help prevent future reoccurrences of the failings identified in this investigation, I further recommend the Council:
- (i) Refunds the overpayments made by the complainant to date over and above the licence fee of £7,800 plus VAT per annum and to charge the remainder of the licence period at this amount;
  - (ii) Commissions an Independent Review of its approach taken in the procurement exercise for this trading site and that which it undertook for the trading sites listed in its

press advert of 21 February 2021. The review should seek to identify and learn from the issues that have emerged from this investigation; and

(iii) Provides specific training to Council Officers and all relevant staff on conducting public procurement exercises, particularly regarding those which involve auctions.

60. The Council should provide me with its proposal regarding recommendation

(i) in response to the draft report within one month.

61. I further recommend that the Council implements an action plan to incorporate recommendations (ii) and (iii) and should provide me with an update within three months of the date of my final report. That action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies).