

DELEGATED DECISION

of Councillor Peter Crew, Chairman of the Policy and Finance Committee and Leader of the Council; Councillor Alan Peak, Vice-Chairman of the Policy and Finance Committee, and Councillor Michal Kus Deputy Leader of the Council in consultation with the Town Clerk

1st April 2015

Barcode Electricity Dispute

On 23rd February 2015 the Policy and Finance Committee considered a report from the Town Clerk and Responsible Financial Officer regarding the electricity dispute at Barcode, 2 South Parade. A copy of the report is attached.

A demand for £32,473, including £27,261 unit charges plus interest and a £100 late payment charge, was received without any warning on Wednesday 28th January from EdF's solicitors. They quote section 6(3) of the Utilities Act 2000 as enabling them to claim direct against the Town Council for the electricity supplied, despite the terms of the Lease. EdF required payment within 7 days after which court proceedings would be commenced.

The demand does not look entirely disproportionate with the amount the Town Council expected to pay. However as a matter of due diligence with public money, legal advice from FDC Law of Keynsham and a specialist Counsel's Opinion has been sought on a number of points arising including whether the Council is liable under the 2000 Act to the direct demand by EdF and how this relates to the terms of the lease which require payment to the Landlord.

The Committee resolved to delegate the making of offers and a final settlement to EdF to Councillor Peter Crew, Chairman of the Policy and Finance Committee and Leader of the Council; Councillor Alan Peak, Vice-Chairman of the Policy and Finance Committee, and Councillor Michal Kus Deputy Leader of the Council in consultation with the Town Clerk.

Negotiations ensued with EdF's solicitors with the professional advice of FDC law. The legal advice is that EdF have not established why the normal 6 year limitation period applies prior to the issue of protective proceedings in January 2016. The Town Council is advised to make an offer to pay the sum of £14,246 in unit charges calculated back to January 2009. In addition it is proposed to question the interest and therefore no offer is to be made in respect of this.

Copy correspondence from FDC Law, solicitors, has been supplied as background papers for the decision makers.

RECOMMENDATION

1. To make an offer to pay the sum of £14,246 in unit charges calculated back to January 2009.
2. To question the interest element and therefore make no offer in respect of this.
3. To authorize further negotiations if required and in accordance with any further external legal advice on the interest and pre-2009 elements of the claim.

DECISION

Under the Town Council's Scheme of Delegation paragraph 2 "Chairman's Action" we in our capacity as Chairman and Vice Chairman of the Policy and Finance Committee and Deputy Leader in consultation with the Town Clerk **AGREE** that the offer to pay the additional £14,246 to the Landlord to be confirmed and the further recommendation as above be adopted.

Peter Crew (Chairman)

Alan Peak (Vice-Chairman)

Michal Kus (Deputy leader)

Advice confirmed by:

Malcolm Nicholson (Town Clerk)

1st April 2015