



# Amendment to Council Procedure Rules in relation to Grant Agreements

**To:**

Civic Affairs Committee 21 September 2022

**Report by:**

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**Wards affected:**

All

## 1. Introduction / Executive Summary

- 1.1 The Councils Constitution at Part 4G – Contract Procedure Rules, 1.22.2, currently states that “ALL Grant Agreements paid to third parties must be executed as a deed”.
- 1.2 Whilst it is true that to be legally enforceable, grant agreements must be executed as a deed, it does not take into consideration that the Council would not wish to take a voluntary or community group to court to reclaim any monies unless absolutely necessary, and in many cases the cost of court action would exceed the value of the grant award in any event.
- 1.3 The preferred route is to develop and maintain excellent relationships with our funded groups, whereby groups feel able to discuss any concerns they have about their funding award and group status at the earliest stages. This allows the Council to resolve issues and agree a way forward which in turn enables groups to continue to support Cambridge residents experiencing social and/or economic disadvantage.
- 1.4 Alongside this, the Grants Team has put in place robust processes to manage the risks associated with making grant awards (as set out in

point 4 below) and is now seeking this approach to be reflected in the Contract Procedure Rules.

- 1.5 The proposed amendment would give the Council the ability to execute grants as deeds where it was felt this was proportionate to the risk or where particular thresholds were met – such as over a certain financial value. It would also allow the majority of grants which are lower risk and of lower value, to be signed under hand. This is a simpler, more efficient process that has been shown to work in recent years with small awards, and also enables an approach and language to be used that is more accessible to voluntary and community groups.

## **2 Recommendations**

- 2.1 The Committee is asked to recommend to Council that Contract Procedure Rules are amended to enable Grant Agreements to be approved by deed; or signed under hand where appropriate by delegated authority to the Director. The new wording would be as follows: “ALL Grant Agreements paid to third parties must be executed as a deed; or signed under hand where appropriate by delegated authority to the Director”.

## **3 Background**

- 3.1 There is an annual budget of £1,000,000 available for Community Grants subject to approval of the Council’s budget in February and a further £30,000 for Sustainable City Grants and approximately £325,000 for Homelessness Prevention Grants (this can vary year on year). These funds are all managed through the Councils ‘Grants Gateway’ which was introduced in 2019.
- 3.2 As part of the Our Cambridge Transformation Programme, the Council is reviewing its relationship with the voluntary and community sector. Running alongside this, a 2-phase review of Community Grants is underway. The first phase has focused on simplifying the process for groups applying for small amounts of funding and has seen the introduction of a shorter, electronic grant application form. It is hoped there will be an increase in new and under-represented groups applying.
- 3.3 The second phase of the Grants Review will feed into the wider discussion on community investment and wealth building. The outcome

of this phase may result in changes to the way the Council supports the voluntary and community sector. This could include the introduction of longer-term funding agreements or a move to commissioning services. In these circumstances the Council may wish to retain the ability to execute grants as deeds to reflect the higher value (and therefore higher risk) of those awards.

- 3.4 Whilst the Council has executed some grants as deeds, it has not been the practice for the Community Grants, Sustainable City Grants or Homelessness Prevention Grants for several years. This is because the terminology used in deeds and the implications of deeds can be intimidating or inaccessible for community groups. It is felt that an approach of using deeds would be an active disincentive for many groups and conflict with the Council's aim of making the grants process as simple as possible for the voluntary and community sector.
- 3.5 The process of executing grants as deeds is resource intensive for the Council. Every grant agreement executed in this way requires the Legal Team to check and amend the signatory clause, reflecting the legal status of the group. It requires two copies to be signed and for them to be sealed. This cannot be done electronically. If this were to become the practice for the Community Grants, Sustainable City Grants and Homelessness Prevention Grants, between 150-200 grant agreements would need to be executed at the same time prior to the start of the new financial year, requiring additional legal resource. Officers believe that this is disproportionate to the risk involved.

## **4 Mitigating Risks**

- 4.1 The main differences between a deed and a grant agreement signed underhand, are that a deed would include a 'Joint and Several Liability' section. This would specify that 'where the recipient is neither a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign the agreement on behalf of the recipient shall be jointly and severally liable for the recipient's obligations and liabilities arising under this Agreement'. This can be very off putting for small groups and has previously resulted in a group feeling unable to take up an award. Similarly, a deed would include a section on 'Governing Law' which sets out that the agreement 'shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts'. This can also be

seen as intimidating and heavy-handed for groups simply wishing to make a difference in their community. By omitting these sections, a grant agreement is not legally enforceable.

- 4.2 Whether or not a grant agreement is executed as a deed or underhand, the requirement will remain that every funded group must sign a grant agreement which sets out what the funding is for and the terms on which the award is made. No monies are paid over until this agreement is signed by both parties. There are no proposals to change this approach as grant agreements are a very useful tool in managing risk and expectations and is widespread practice across local authorities and other grant making bodies.
- 4.3 As set out at 1.3 above, the primary way the Council mitigates the risks associated with issuing grant awards is to get to know it's funded groups and maintain good communication links. This has proved effective in many cases, where the Grants Team are given a 'heads up' of emerging issues by the group themselves thereby allowing appropriate support to be put in place.
- 4.4 Other ways the Grants Team mitigates the risks are:
- Checking the legal and financial status of every group at the point of application (in addition to generalist grants officers, the Grants Team has a specialist community accountant whose role is to identify financial irregularities and concerns and support groups to present their accounts and budgets accurately).
  - Ensuring every group has the necessary policy and procedures in place to ensure the funded activity can be delivered legally, safely and effectively.
  - Involving council officer experts in the grant assessment process to ensure the proposed activity is deliverable.
  - Setting specific conditions on grant agreements if there are any concerns e.g., "provide evidence of Public Liability Insurance".
  - Requiring a monitoring report at the end of every year, with a 6-month monitoring report also required from groups receiving over £10,000.
  - Setting staged payments for groups receiving awards of £10,000 or over.
  - Visiting groups throughout the year (the activity where appropriate or attending meetings).
  - Encouraging organisations that are new to the Grants Team to apply for small amounts of funding and prove they can successfully

manage that before potentially submitting more ambitious applications in future years.

- Holding an annual team away day to review previous years grants round and make improvements to the process and documentation as necessary.

4.5 When considering whether to formalise an approach that moves away from sealing all grants as deeds, advice has been taken from the Principal Lawyer (Contract and Procurement); Head of Legal Practice; Head of Shared Internal Audit Service; The Head of Community Services and the Director of Neighbourhoods. Whilst noting the law does not take account of any financial thresholds which the Council may set, adopting a risk-based approach is supported as a proportionate way of dealing with community groups.

## **5 Implications**

### **a) Financial Implications**

None if the recommendation is approved. There is a potential increase in staffing costs if all grants were executed as deeds.

### **b) Staffing Implications**

The recommendation will maintain the staffing levels as they are currently. Moving to executing grants as deeds will require additional capacity in the Legal Team and potentially in the Grants Team.

### **c) Equality and Poverty Implications**

Approving the recommendation would have no negative equality and poverty implications. If the Council moved to executing all grants as deeds, it is likely that smaller groups would be deterred from obtaining a grant. Many of the smaller groups support people with protected characteristics.

### **d) Net Zero Carbon, Climate Change and Environmental Implications**

None.

### **e) Procurement Implications**

None.

### **f) Community Safety Implications**

None.

## **6 Consultation and communication considerations**

No consultation is required.

## **7 Background papers**

No background papers were used in the preparation of this report.

## **8 Appendices**

None.

## **9 Inspection of papers**

To inspect the background papers or if you have a query on the report please contact Julie Cornwell, Community Funding and Voluntary Sector Manager, Tel: 01223 717855, email: [julie.cornwell@cambridge.gov.uk](mailto:julie.cornwell@cambridge.gov.uk)