

DMPC Decision – PCD 730

Title: **The Provision of a Performing Right Society Licence and a Phonographic Performance Licence**

Executive Summary:

The MPS is seeking to renew the current Phonographic Performance Licence and the Performing Right Society Licence for a further 12-month period from 1 April 2020 to 31 March 2021 at a total cost of £257,000.

The MPS is legally required under the Copyright Designs and Patents Act 1988 to obtain the licenses to permit the playing of music in its buildings, this is based on the number of staff employed.

This paper request for a single tender action to commence in order to renew the current licenses because Phonographic Performance Licence and Performing Right Society Licence Ltd is the only provider of both licences.

Recommendation:

The Deputy Mayor for Policing and Crime is requested to:

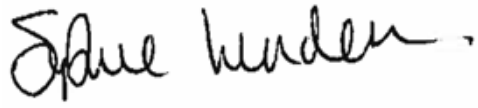
1. Approve a single tender action procurement exercise for the annual renewals of a Phonographic Performance Licence (PPL) and Performing Rights Society (PRS) licence to PPL PRS Ltd (the only provider of the licences).
2. Approve the cost of the new annual licences, PPL Licence £63,924.97 and PRS Licence £193,422.86, grand total £257,347.83 for the period 1 April 2020 to 31 March 2021. The funding is available within existing budgets.
3. Delegate authority to the Commercial Director (HQ Commercial Services) to enter into a contract with a single supplier, PPL PRS Ltd.
4. Delegate authority to the MPS Commercial Director to instigate a single tender action for future annual renewals and to award subsequent contracts to PPL PRS Ltd, providing that the annual cost is no more than £400,000, taking into account further annual tariff increases and potential increases in the recruitment of extra police officers and staff.

Deputy Mayor for Policing and Crime

I confirm I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with the Code of Conduct. Any such interests are recorded below.

The above request has my approval.

Signature

Handwritten signature of Julie Warden in black ink.

Date

24/3/20

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE DMPC

1. Introduction and background

- 1.1. PPL Ltd and PRS Ltd entered into a Joint Venture at the end of February 2018 and formed PPL PRS Ltd.
- 1.2. PPL PRS Ltd, is a non-profit association (originally set up in 1914) and is responsible for ensuring the application of copyright to music and related media in the United Kingdom and the payment of monies associated with the use of this copyrighted data in the UK.
- 1.3. Historically in the MPS, the PPL licence was renewed separately with PPL Ltd, as a single tender action under £100k. Due to the forming of the Joint Venture, it was agreed with Operational Support Services who manages the licences, Commercial Services and PPL PRS Ltd to align both licences into one single annual renewal from 1 April to 31 March each year.

2. Issues for consideration

- 2.1. PPL PRS Ltd are the only official providers of the PPL licence and PPL licence, which allows for exclusive music rights to be exploited in compliance with Copyright Designs and Patents Act (CDPA) 1988. Therefore, it is not possible to carry out a competitive tender process for the renewals.
- 2.2. MOPAC / MPS is required, by law to hold both a PPL licence and a PRS licence under the CDPA 1988. The absence of both licenses would be considered unauthorised and an infringement of the CDPA 1988 and the MPS would be in breach of a statutory legal requirement. It would be almost impossible for the MPS to impose and monitor a force wide ban on the playing of music/media within MPS buildings.
- 2.3. The PPL licence is legally required whenever a soundtrack is played in public, allowing PPL PRS Ltd to collect royalties for the copyright owners of the soundtrack (most commonly record companies) that controls the rights to the recording of the music. This is a special agreement agreed between PPL and the MPS for calculating the licence costing.
- 2.4. The PRS licence is legally required to permit the playing of music in buildings, this is based on the number of staff employed. The licence is paid on behalf of the publisher of the music who controls he rights of the music. The licence legally protects the MPS for music played on its premises, including music played on televisions, radios, in rest areas, gymnasiums, canteens and employees having radios on in the background. This is a nationally agreed formula for calculating the licence costing.
- 2.5. The MPS have explored the option for a multi-year deal with PPL PRS Ltd. However, PPL PRS Ltd can currently only offer annual licences, as their tariffs are inflated annually and their systems do not currently have the mechanism to be able to calculate rates beyond a 12 month period. The tariffs are renewed during January and February and therefore the costs associated with the renewals are subject to change.
- 2.6. In 2013 the MPS Management Board were tasked by the Deputy Commissioner to conduct an urgent review to establish if the PPL and PRS licences were required in the future. This review concluded it was appropriate to continue paying the licences. In particular, it was noted one of the two forces contacted who had ceased to pay the

licence fees has subsequently resumed as enforcing compliance was apparently costing more than paying the licence fee.

3. Financial Comments

- 3.1. The 2020/21 PPL licence will cost £63,924.97 and the 2020/21 PRS licence with cost £193,422.86, with a total cost of £257,347.83. (These values are subject to change as per the new tariff rates published in February 2020). The total cost will be met from existing approved MPS budgets.
- 3.2. The primary driver of the PPL licence fee is the number of MPS buildings. If building numbers increase or reduce in a year there is expected to be a correlating increase or reduction in the licence contract price. This is a special agreement agreed between PPL and the MPS for calculating the licence costing.
- 3.3. The primary driver of the PRS licence fee is staff numbers, if staff numbers increase or reduce in a year there is expected to be a correlating increase or reduction in the licence contract price. This is a nationally agreed formula for calculating the licence costing.

4. Legal Comments

- 4.1. MOPAC is required by the CDPA 1988, to hold a valid PPL licence and PRS licence to allow music to be played publicly on its premises (including via the radio or television). Failure to hold a valid PPL licence and PRS licence will place MOPAC in breach of the CDPA 1988 and expose the organisation to risk of prosecution for copyright infringement.
- 4.2. MOPAC is a contracting authority as defined in the Public Contracts Regulations 2015 ("the Regulations"). All awards of public contracts for goods and/or services valued at £181,302 or above will be procured in accordance with the Regulations.
- 4.3. This report confirms that PPL PRS Ltd is the only economic operator legally capable of granting the PPL and PRS licences. Therefore, MOPAC can obtain the licences directly from PPL PRS Ltd in full compliance with the Regulations under paragraph 4.13 of the MOPAC Scheme of Delegation and Consent, which provides that the Deputy Mayor for Policing and Crime has delegated authority to approve all contract exemptions £100,000 or above.

5. GDPR and Data Privacy

- 5.1. The MPS is subject to the requirements and conditions placed on it as a 'State' body to comply with the European Convention of Human Rights and the Data Protection Act (DPA) 2018. Both legislative requirements place an obligation on the MPS to process personal data fairly and lawfully in order to safeguard the rights and freedoms of individuals.
- 5.2. Under Article 35 of the General Data Protection Regulation (GDPR) and Section 57 of the DPA 2018, Data Protection Impact Assessments (DPIA) become mandatory for organisations with technologies and processes that are likely to result in a high risk to the rights of the data subjects.

- 5.3. The Information Assurance and Information Rights units within MPS will be consulted at all stages to ensure the project meets its compliance requirements.
- 5.4. The project does not currently use personally identifiable data of members of the public, so there are no current GDPR issues to be considered. If the project uses personally identifiable data of members of the public at a later date DPIAs will be completed as needed.

6. Equality Comments

- 6.1. Any equality and diversity implications linked to the provision of the PPL and PRS licences are considered under the Copyright, Design and Patents Act (CDPA) 1988.
- 6.2. This business case has undergone initial equality screening. Due regard has been taken to the Equality Act's Public Sector Equality Duty under Sec 149 of the Equality Act 2010. Real consideration has been taken to assess equality impact caused by the proposed business change including effective engagement and analysing relevant equality information. As a result no negative impact has been identified to any individual and/or group safeguarded by a protected characteristic and to those who are not due to the utilisation of pre-existing staff members and the funding is for supplementary business continuity. Further reviews will be conducted (if necessary) and process monitoring completed. If as a result of the continual development of this strategic paper Equality Impact is identified, a full Equality Impact Assessment will be initiated.

7. Background/supporting papers

- 7.1. Appendices:
- Strategic Case
 - Economic Case
 - Commercial Case
 - Financial Case
 - Management Case

Appendix 1

Strategic Case

PPL License:

- PPL collects and distributes money for the use of recorded music on behalf of record companies and performers.
- The approval of this PPL annual licence renewal is necessary for the MPS to publicly play music/soundtracks within MPS premises under copyright law.
- The PPL licence applies to the following MPS locations: 164 named locations, 47 named gymnasiums and 13 named canteens. This list will be updated frequently by the MPS to ensure information can be provided quickly to PPL PRS Ltd when requested.
- As the estate is reducing dramatically at an increasing rate, MO11 will notify PPL PRS Ltd of the details of vacated buildings so it can be added as a credit note to the next respective licence renewal, if relevant. Since the previous annual renewal for 2019 there has been a decrease in the total number of named locations from 166 down to 164.
- Different avenues were explored in an attempt to negate the need to purchase a PPL licence. For example, turning off all broadcast devices across the estate was deemed impractical due to the number of buildings and the difficulty in imposing such a policy. Being able to listen to music whilst at work is also seen as an important workplace benefit for police officers and staff in the MPS and any suggestion that this benefit would be withdrawn could result in a decline in morale. Muting all devices, unless there was an operational need, was rejected PPL because the licence tariffs cannot be used on a part time basis. There has never been a 'music at work' policy within the MPS that would prevent employees from listening to broadcast music in the workplace.

PRS Licence:

- The copyright relating to music and lyrics is owned by the writers and composers and is covered by the PRS licence which the MPS have been compliant with since 2006 by annually purchasing a licence based on the staff levels in the MPS. The right for PRS to charge is enshrined in the CDPA 1988. So where a musical work is performed in public, either live or from any sound recording source (radio, TV, CD, MP3 etc), the rights of composer and publisher (as assigned to PRS) are engaged. The charging regime formula was historically agreed by the Association of Chief Police Officers (ACPO) on behalf of all Forces and is based on the number of employees an organisation employs.
- A no music policy would need to be put in place if the MPS agreed want to remove this cost. In order for this to be effective the MPS would have to source workstations that did not have speakers/sound cards. This measure is not practical as internal video messages and some forms of training would not be possible.
- A total ban on devices such as: radio, TV, mobile phones, MP3, CD etc removing all broadcast devices across the estate was deemed impractical due to the number of buildings and difficulty in imposing such a policy.

Economic Case

- PPL PRS Ltd diligently enforces license requirements on organizations such as the MPS and in order to support organizations of our size in being compliant, PRS developed a tariff for police forces.
- There is no real option other than to purchase these licences due to the following:
- If MOPAC decide not to purchase the licences then the MPS/Authority will be in breach of the CDPA 1988.
- It is not feasible for the MPS to impose a music ban across the organization.
- It is not feasible for the MPS to implement a regime that captures in detail what music is played and monitor and inform PPL PRS Ltd of updates for copyright charging.
- By renewing both licences, the MPS will remain legally compliant with the CDPA 1988 and will prevent the imposition of fines in addition to the licence charges. It also negates the requirement to impose and manage a music ban across the organisation and trying to substitute all computer terminals and laptops with devices incapable of producing sounds and take measures to ensure no music is played across the estate.
- The formula for calculating the cost of the licences was previously agreed as per the following:
 - The PPL charge is based on a police force tariff based on the number of employees an organization has and the types of establishment it has to ensure that MPS is covered for usage throughout the year.
 - The PRS charge is calculated using a formula agreed with ACPO and developed a standard tariff for police forces, based on their standard protocols PPL PRS Ltd have invoiced the MPS for two such licenses (incorporated into a single licence renewal) - for the workplace and for the rest rooms/canteen areas. It is impractical for the MPS to assess every building where music may be played to provide information to enable alternative calculation of the fee.
- Any risks linked to the provision of the PRS and PPL licences are assumed to have been considered under the CDPA 1988.

Commercial Case

- The Public Contract Regulation 32(2)(b)(iii) permits a contracting authority to negotiate directly with a sole economic operator without prior publication of an Official Journal of the European Union (OJEU) notice when, for reasons connected with the protection of exclusive rights, including intellectual property rights, the public contract may be awarded only to a particular economic operator. This confirms that the renewal of the license is exempt from competition.

Value for Money Statement

- The licences are statutory requirements, which the MPS must procure in order to continue playing media legally. In order to avoid this cost the Authority would be forced to substitute all computer terminals and laptops with devices incapable of producing sounds and take measures to ensure no music is played across the estate. This would prove counter-productive to business as usual and the cost of implementing effective controls would likely be greater than the cost of procuring the licence.
- The MPS fee for the PPL licence is a special agreement agreed between PPL PRS Ltd and the MPS. The MPS are required to supply PPL PRS Ltd the total number of MPS buildings on a periodic basis in order to calculate the costing.
- The MPS fee for the PRS licence is calculated in accordance with the pricing formula agreed by ACPO for all forces. MO11 provide PPL PRS Ltd with periodic staff volume updates, in order for the calculation to be completed and to ensure that each annual quote reflects the an accurate price.
- Value for money opportunities have been identified as follows:
 - Consider putting a no music policy in place in order to remove the cost from the organisation.
 - Ensure the size of the estate and workforce is closely monitored in order to keep the costs down.
 - License fees will be adjusted by Retail Price Index (RPIX).

Financial Case

Financial Implications

PPL Licence:

- The cost of the 2020/2021 PPL licence (£63,924.97) and will be met from within the existing MO11 budget, from which a budget provision of £63,924.97 is available.
- The primary driver of the licence fee is the number of MPS buildings, if building numbers increase or reduce in a year there is expected to be a correlating increase or reduction in the licence contract price (subject tariff changes).
- This is a special agreement agreed between PPL and the MPS for calculating the licence costing.
- In the last 12 months the number of buildings has decreased by a total of two main office locations. However, the total price has increased from the previous annual licence taking into account the annual tariff increase (increase of £2,446.49).
- The costing formula is outlined in the table below resulting in the cost of (£63,924.97 for 2020/2021:

Table 1

	2018-19 (12 Months) 1 April 2019 to 31 March 2020	2020-21 (12 Months) 1 April 2020 to 31 March 2021
Number of Buildings (office/work space)	166	164
Agreed Audible Area	Of 5m ² per person	Of 5m ² per person
Audible Area	217,770	217,770
Quote	£61,478.48	£63,924.97

- The quote totalling for the year 2020 to 2021 provides cover for the following:
 164 Sites (Fee calculated by Audible Area 5m² per person)
 47 Gyms (Flat fee per gym): £134.63 x 47: £6,327.61 / + 3% inflation: £6,517.44
 13 Canteens (Charged at the concessionary rate): £142.87 X 13: £1,857.31 / +3% inflation: £1,913.03

Charges are at a single standard rate for gyms.

- Charges for the cafes/restaurants/bars are set at an agreed 50 sqm per premise rate using only traditional broadcast sources (radio/TV stations only available via analogue regardless of delivery source). Charges for the offices/garages/general work space are set via a banded tariff of square metres. A special agreement was made as m² was seen as too much of an administrative burden to obtain per premise and therefore initially 4.5m² were charged per person at each premise. This rose to 5m² per person in the 2014-2015 PPL licence period. All tariff rates have been adjusted using RPIX.
- The final annual PPL licence renewal fee agreed with PPL has taken into account building closures and will reimburse the license fee in proportion to the changes to the estate. As per the previous agreement payments for licenses from 1st April 2019 to 31st March 2020

were adjusted by RPIX. All three tariffs used to calculate the quote have increased by just over 3% using the RPIX.

- As the estate is reducing dramatically at an increasing rate, MO11 will notify PPL PRS Ltd of the details of vacated buildings so it can be added as a credit note to the next respective annual PPL licence renewal, if relevant.

PRS Licence:

- The cost of the 2020/2021 PRS licence (£193,422.86) and will be met from within the existing MO11 budget, from which a budget provision of £193,422.86 is available.
- The primary driver of the licence fee is staff numbers, if staff numbers increase or reduce in a year there is expected to be a correlating increase or reduction in the licence contract price (subject tariff changes).
- This is a nationally agreed formula for calculating the licence costing.
- In the last 12 months there has been a slight increase in the total number of police staff and officers (from 39,803 to 40,796): increase of 993. Previous annual licence: £190,809.49
- The costing formula is outlined in the table below resulting in the cost of £193,422.86 for 2019/2020:

Grand-Total				£ + VAT
Workstations			Canteen / Breakout Areas	
Staff	40,796		Staff	40,796
29%	11,830		50%	20,938
Units of 25	473		Units of 25	815
1/2 Hours	14		1/2 Hours	N/A
Days	229		Days	314
Rate *	0.0927		Rate *	0.1845
Sub-Total Cost	£140,573.80		Sub-Total Cost	£47,215.39
Sub-Total (for Workstations and Canteen / Breakout Areas)				£187,789.19
*Additional 3% inflation - please see supporting information below				£5,633.67
Grand-Total				£193,422.86

- Note that the above charges have been calculated based on the 2019 PRS Tariff 'I'. The account renewal in April will incur the new 2020 Tariff 'I' which is due to be released in March, but not currently available for the quote. PPL PRS Ltd have therefore allowed for 3% tariff inflation, although this figure may be less.
- With reference to the Workstation pricing formula, the price is derived from 29% of the total number of MPS staff which is then divided by a unit of 25 employees to gain the average number of staff to whom the music is audible for each half hour, which equates to the total amount of effective staff. The total number of effective staff is then multiplied by the total amount of half hours, days and rate to arrive at the total cost. With reference to the Canteen and Breakout Areas table, the price is derived from 50% of the

total number of MPS staff which again is divided by a unit of 25 employees to gain the average number of staff to whom the music is audible. *The new 2020 tariff will be published in early 2020. For budgeting purposes an addition of 3% to cover inflation has been added to the sub-total figure (as per advice received from PPL PRS Ltd).

Applicable to both Licences:

- The Director of Resources had agreed the allocation of revenue budget, as appropriate, to MO11 to fund this PPL licence cost and to provide for ongoing future costs.
- PPL PRS Ltd apply a surcharge of 50% for late payment.

Management Case

- This requirement currently sits outside of the Service Integration and Management (SIAM) Towers model, the single tender action/licence, once awarded, will be managed internally by representatives from MO11 and HQ Commercial Services.

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOIA) and will be made available on the MOPAC website following approval.

If immediate publication risks compromising the implementation of the decision it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? NO

If yes, for what reason:

Until what date: N/A

Part 2 Confidentiality: Only the facts or advice considered as likely to be exempt from disclosure under the FOIA should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a **Part 2** form –

ORIGINATING OFFICER DECLARATION

Tick to confirm statement (✓)

Financial Advice

The Strategic Finance and Resource Management Team has been consulted on this proposal.

✓

Legal Advice

The MPS legal team has been consulted on the proposal.

✓

Equalities Advice:

Equality and diversity issues are covered in the body of the report.

✓

Commercial Issues

The Contract Management Team has been consulted on the commercial issues within this report.

✓

GDPR/Data Privacy

- GDPR compliance issues are covered in the body of the report

✓

Director/Head of Service

The Chief Finance Officer has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.

✓

Interim Chief Executive Officer

I have been consulted about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Deputy Mayor for Policing and Crime.

Signature

Date 20/03/20





MOPAC

MAYOR OF LONDON
OFFICE FOR POLICING AND CRIME

THE PROVISION OF A PERFORMING RIGHT SOCIETY LICENCE AND A PHONOGRAPHIC PERFORMANCE LICENCE

Report by Lee Kitchen on behalf of the Chief of Corporate Services

Part 1 – This section of the report will be published by MOPAC. It is classified as OFFICIAL – PUBLIC

EXECUTIVE SUMMARY

The Metropolitan Police Service (MPS) is seeking to renew the current Phonographic Performance Licence (PPL) and the Performing Right Society Licence (PRS) for a further 12 month period from 1 April 2020 to 31 March 2021 at a total cost of £257k.

The MPS is legally required under the Copyright Designs and Patents Act (CDPA) 1988 to obtain the licenses to permit the playing of music in its buildings, this is based on the number of staff employed.

This paper request for a single tender action to commence in order to renew the current licenses because Phonographic Performance Licence and Performing Right Society Licence (PPL PRS) Ltd is the only provider of both licences.

This paper also requests that MOPAC delegate authority to the MPS Director of Commercial Services to instigate a single tender action for future annual renewals and to award subsequent contracts to PPL PRS Ltd providing that the annual cost is no more than £400k.

A. **RECOMMENDATIONS - That**

The Deputy Mayor for Policing and Crime, via the Investment and Monitoring meeting (IAM) is asked to:

1. **Approve a single tender action procurement exercise for the annual renewals of a Phonographic Performance Licence (PPL) and Performing Rights Society (PRS) licence to PPL PRS Ltd (the only provider of the licences).**
2. **Approve the cost of the new annual licences: (PPL Licence: £63,924.97 / PRS Licence: £193,422.86) grand total: £257,347.83 for the period 1 April 2020 to 31 March 2021, funding is available within existing budgets. These values are subject to change as per the new tariff rates published in February 2020. The previous total annual licence fees of £252,287.97 has increased to £257,347.83 (2% increase of £5,059.96) taking into account an increase in staff levels and inflation).**

3. **Delegate authority to the Commercial Director (HQ Commercial Services) to enter into a contract with a single supplier (PPL PRS Ltd: the only provider of the licences).**
4. **Delegate authority to the Commercial Director (HQ Commercial Services) to instigate a single tender action for future annual renewals and to award subsequent contracts to PPL PRS Ltd, providing that the annual cost is no more than £400k, taking into account further annual tariff increases and potential increases in the recruitment of extra police officers and staff.**

Time sensitivity

A decision is required from the Deputy Mayor by 22/03/2020. This is because the current licences expire on the 31/03/2020.

Introduction and Background

1. PPL Ltd and PRS Ltd entered into a Joint Venture at the end of February 2018 and formed PPL PRS Ltd.
2. PPL PRS Ltd, is a non-profit association (originally set up in 1914) and is responsible for ensuring the application of copyright to music and related media in the United Kingdom and the payment of monies associated with the use of this copyrighted data in the UK.
3. Historically in the MPS, the PPL licence was renewed separately with PPL Ltd, as a single tender action under £100k. Due to the forming of the Joint Venture, it was agreed with Operational Support Services (MO11) who manages the licences, Commercial Services and PPL PRS Ltd to align both licences into one single annual renewal from 1 April to 31 March each year.

Issues for Consideration

4. PPL PRS Ltd are the only official providers of the PPL licence and PPL licence, which allows for exclusive music rights to be exploited in compliance with Copyright Designs and Patents Act (CDPA) 1988. Therefore, it is not possible to carry out a competitive tender process for the renewals.
5. The Mayors Office for Policing and Crime (MOPAC)/MPS is required, by law to hold both a PPL licence and a PRS licence under the CDPA 1988. The absence of both licenses would be considered unauthorised and an infringement of the CDPA 1988 and the MPS would be in breach of a statutory legal requirement. It would be almost impossible for the MPS to impose and monitor a force wide ban on the playing of music/media within MPS buildings.
6. **The PPL licence** is legally required whenever a soundtrack is played in public, allowing PPL PRS Ltd to collect royalties for the copyright owners of the soundtrack

(most commonly record companies) that controls the rights to the recording of the music. This is a special agreement agreed between PPL and the MPS for calculating the licence costing.

7. **The PRS licence** is legally required to permit the playing of music in buildings, this is based on the number of staff employed. The licence is paid on behalf of the publisher of the music who controls the rights of the music. The licence legally protects the MPS for music played on its premises, including music played on televisions, radios, in rest areas, gymnasiums, canteens and employees having radios on in the background. This is a nationally agreed formula for calculating the licence costing.
8. The MPS have explored the option for a multi-year deal with PPL PRS Ltd. However PPL PRS Ltd can currently only offer annual licences, as their tariffs are inflated annually and their systems do not currently have the mechanism to be able to calculate rates beyond a 12 month period. The tariffs are renewed during January and February and therefore the costs associated with the renewals are subject to change.
9. In 2013 the MPS Management Board were tasked by the Deputy Commissioner to conduct an urgent review to establish if the PPL and PRS licences were required in the future. This review concluded it was appropriate to continue paying the licences. In particular, it was noted one of the two forces contacted who had ceased to pay the licence fees has subsequently resumed as enforcing compliance was apparently costing more than paying the licence fee.

Contributes to the MOPAC Police and Crime Plan 2017 to 2021.

10. Not applicable.

Financial, Commercial and Procurement Comments

11. The 2020/21 PPL licence will cost £64k and the 2020/21 PRS licence with cost £193k, with a total cost of £257k. The total cost will be met from existing approved MPS budgets.
12. The primary driver of the PPL licence fee is the number of MPS buildings. If building numbers increase or reduce in a year there is expected to be a correlating increase or reduction in the licence contract price. This is a special agreement agreed between PPL and the MPS for calculating the licence costing.
13. The primary driver of the licence fee is staff numbers, if staff numbers increase or reduce in a year there is expected to be a correlating increase or reduction in the licence contract price. This is a nationally agreed formula for calculating the licence costing.

Legal Comments

14. MOPAC is required by the CDPA 1988, to hold a valid PPL licence and PRS licence to allow music to be played publicly on its premises (including via the radio or television). Failure to hold a valid PPL licence and PRS licence will place MOPAC in breach of the CDPA 1988 and expose the organisation to risk of prosecution for copyright infringement.
15. The Mayor's Officer for Policing Crime is a contracting authority as defined in the Public Contracts Regulations 2015 ("the Regulations"). All awards of public contracts for goods and/or services valued at £181,302 or above will be procured in accordance with the Regulations.
16. This report confirms that PPL PRS Ltd is the only economic operator legally capable of granting the PPL and PRS licences. Therefore, MOPAC can obtain the licences directly from PPL PRS Ltd in full compliance with the Regulations under paragraph 4.13 of the MOPAC Scheme of Delegation and Consent, which provides that the Deputy Mayor for Policing and Crime (DMPC) has delegated authority to approve all contract exemptions £100,000 or above.

Equality Comments

17. Any equality and diversity implications linked to the provision of the PPL and PRS licences are considered under the Copyright, Design and Patents Act (CDPA) 1988.
18. This business case has undergone initial equality screening. Due regard has been taken to the Equality Act's Public Sector Equality Duty under Sec 149 of the Equality Act 2010. Real consideration has been taken to assess equality impact caused by the proposed business change including effective engagement and analysing relevant equality information. As a result no positive or negative impact has been identified to any individual and/or group safeguarded by a protected characteristic and to those who are not. Further reviews will be conducted (if necessary) and process monitoring completed. If as a result of the continual development of this strategic paper Equality Impact is identified, a full Equality Impact Assessment will be initiated.
19. It is a legal requirement to ensure we have the licences. From an equality perspective, as it is a legal requirement for the PRS and PPL, no protected groups would be advantaged or disadvantaged by making sure that we have the licences.

Privacy Comments

The contract does not use personally identifiable data of members of the public, so there are no GDPR issues to be considered.

Real Estate Implications

20. The calculation/mechanism for the PPL licence fee includes the number of MPS buildings within the current MPS estate profile.

Environmental Implications

21. The PPL and PRS licences permits the MPS to legally play music on its premises, including music played on televisions, radios, in rest areas, gymnasiums, canteens and employees having radios on in the background.
22. Any environmental implications linked to the provision of the PPL and PRS licences are considered under the CDPA 1988.

Background papers

23. Not applicable.
24. Appendix 1

Appendices (supporting information):

- 1. Strategic Case**
- 2. Economic Case**
- 3. Commercial Case**
- 4. Financial Case**
- 5. Management Case**

25. Not applicable.

Report author: Lee Kitchen, HQ Commercial Services, ICT Category Manager, 781578 / 0207 161 1579.

Appendix 1

Strategic Case

PPL License:

- PPL collects and distributes money for the use of recorded music on behalf of record companies and performers.
- The approval of this PPL annual licence renewal is necessary for the MPS to publicly play music/soundtracks within MPS premises under copyright law.
- The PPL licence applies to the following MPS locations: 164 named locations, 47 named gymnasiums and 13 named canteens. This list will be updated frequently by the MPS to ensure information can be provided quickly to PPL PRS Ltd when requested.
- As the estate is reducing dramatically at an increasing rate, MO11 will notify PPL PRS Ltd of the details of vacated buildings so it can be added as a credit note to the next respective licence renewal, if relevant. Since the previous annual renewal for 2019 there has been a decrease in the total number of named locations from 166 down to 164.
- Different avenues were explored in an attempt to negate the need to purchase a PPL licence. For example, turning off all broadcast devices across the estate was deemed impractical due to the number of buildings and the difficulty in imposing such a policy. Being able to listen to music whilst at work is also seen as an important workplace benefit for police officers and staff in the MPS and any suggestion that this benefit would be withdrawn could result in a decline in morale. Muting all devices, unless there was an operational need, was rejected PPL because the licence tariffs cannot be used on a part time basis. There has never been a 'music at work' policy within the MPS that would prevent employees from listening to broadcast music in the workplace.

PRS Licence:

- The copyright relating to music and lyrics is owned by the writers and composers and is covered by the PRS licence which the MPS have been compliant with since 2006 by annually purchasing a licence based on the staff levels in the MPS. The right for PRS to charge is enshrined in the CDPA 1988. So where a musical work is performed in public, either live or from any sound recording source (radio, TV, CD, MP3 etc), the rights of composer and publisher (as assigned to PRS) are engaged. The charging regime formula was historically agreed by the Association of Chief Police Officers (ACPO) on behalf of all Forces and is based on the number of employees an organisation employs.
- A no music policy would need to be put in place if the MPS agreed want to remove this cost. In order for this to be effective the MPS would have to source workstations that did not have speakers/sound cards. This measure is

not practical as internal video messages and some forms of training would not be possible.

- A total ban on devices such as: radio, TV, mobile phones, MP3, CD etc removing all broadcast devices across the estate was deemed impractical due to the number of buildings and difficulty in imposing such a policy.

Economic Case

- PPL PRS Ltd diligently enforces license requirements on organizations such as the MPS and in order to support organizations of our size in being compliant, PRS developed a tariff for police forces.

There is no real option other than to purchase these licences due to the following:

If we decide not to purchase the licences then the MPS/Authority will be in breach of the CDPA 1988.

It is not feasible for the MPS to impose a music ban across the organization.

It is not feasible for the MPS to implement a regime that captures in detail what music is played and monitor and inform PPL PRS Ltd of updates for copyright charging.

By renewing both licences, the MPS will remain legally compliant with the CDPA 1988 and will prevent the imposition of fines in addition to the licence charges. It also negates the requirement to impose and manage a music ban across the organisation and trying to substitute all computer terminals and laptops with devices incapable of producing sounds and take measures to ensure no music is played across the estate.

The formula for calculating the cost of the licences was previously agreed as per the following:

The PPL charge is based on a police force tariff based on the number of employees an organization has and the types of establishment it has to ensure that MPS is covered for usage throughout the year.

The PRS charge is calculated using a formula agreed with ACPO and developed a standard tariff for police forces, based on their standard protocols PPL PRS Ltd have invoiced the MPS for two such licenses (incorporated into a single licence renewal) - for the workplace and for the rest rooms/canteen areas. It is impractical for the MPS to assess every building where music may be played to provide information to enable alternative calculation of the fee.

Any risks linked to the provision of the PRS and PPL licences are assumed to have been considered under the CDPA 1988.

Commercial Case

- The Public Contract Regulation 32(2)(b)(iii) permits a contracting authority to negotiate directly with a sole economic operator without prior publication of an Official Journal of the European Union (OJEU) notice when, for reasons connected with the protection of exclusive rights, including intellectual property rights, the public contract may be awarded only to a particular economic operator. This confirms that the renewal of the licence is exempt from competition.

Value for Money Statement

- The licences are statutory requirements, which the MPS must procure in order to continue playing media legally. In order to avoid this cost the Authority would be forced to substitute all computer terminals and laptops with devices incapable of producing sounds and take measures to ensure no music is played across the estate. This would prove counter-productive to Business as Usual and the cost of implementing effective controls would likely be greater than the cost of procuring the licence.
- The MPS fee for the PPL licence is a special agreement agreed between PPL PRS Ltd and the MPS. The MPS are required to supply PPL PRS Ltd the total number of MPS buildings on a periodic basis in order to calculate the costing.
- The MPS fee for the PRS licence is calculated in accordance with the pricing formula agreed by ACPO for all forces. MO11 provide PPL PRS Ltd with periodic staff volume updates, in order for the calculation to be completed and to ensure that each annual quote reflects the an accurate price.

Value for money opportunities have been identified as follows:

- Consider putting a no music policy in place in order to remove the cost from the organisation.
- Ensure the size of the estate and workforce is closely monitored in order to keep the costs down.
- License fees will be adjusted by Retail Price Index (RPIX).

Financial Case

Financial Implications

PPL Licence:

- The cost of the 2020/2021 PPL licence (£63,924.97) and will be met from within the existing MO11 budget, from which a budget provision of £63,924.97 is available.
- The primary driver of the licence fee is the number of MPS buildings, if building numbers increase or reduce in a year there is expected to be a correlating increase or reduction in the licence contract price (subject tariff changes).
- This is a special agreement agreed between PPL and the MPS for calculating the licence costing.
- In the last 12 months the number of buildings has decreased by a total of two main office locations. However the total price has increased from the previous annual licence taking into account the annual tariff increase (increase of £2,446.49).
- The costing formula is outlined in the table below resulting in the cost of (£63,924.97 for 2020/2021:

Table 1

	2018-19 (12 Months) 1 April 2019 to 31 March 2020	2020-21 (12 Months) 1 April 2020 to 31 March 2021
Number of Buildings (office/work space)	166	164
Agreed Audible Area	Of 5m ² per person	Of 5m ² per person
Audible Area	217,770	217,770
Quote	£61,478.48	£63,924.97

- The quote totalling for the year 2020 to 2021 provides cover for the following:
 - 164 Sites (Fee calculated by Audible Area 5m² per person)
 - 47 Gyms (Flat fee per gym): £134.63 x 47: £6,327.61 / + 3% inflation: £6,517.44
 - 13 Canteens (Charged at the concessionary rate): £142.87 X 13: £1,857.31 / +3% inflation: £1,913.03

Charges are at a single standard rate for gyms.

- Charges for the cafes/restaurants/bars are set at an agreed 50 sqm per premise rate using only traditional broadcast sources (radio/TV stations only available via analogue regardless of delivery source). Charges for the offices/garages/general work space are set via a banded tariff of square metres. A special agreement was made as m² was seen as too much of an

administrative burden to obtain per premise and therefore initially 4.5m² were charged per person at each premise. This rose to 5m² per person in the 2014-2015 PPL licence period. All tariff rates have been adjusted using RPIX.

- The final annual PPL licence renewal fee agreed with PPL has taken into account building closures and will reimburse the license fee in proportion to the changes to the estate. As per the previous agreement payments for licenses from 1st April 2019 to 31st March 2020 were adjusted by RPIX. All three tariffs used to calculate the quote have increased by just over 3% using the RPIX.
- As the estate is reducing dramatically at an increasing rate, MO11 will notify PPL PRS Ltd of the details of vacated buildings so it can be added as a credit note to the next respective annual PPL licence renewal, if relevant.

PRS Licence:

The cost of the 2020/2021 PRS licence (£193,422.86) and will be met from within the existing MO11 budget, from which a budget provision of £193,422.86 is available.

The primary driver of the licence fee is staff numbers, if staff numbers increase or reduce in a year there is expected to be a correlating increase or reduction in the licence contract price (subject tariff changes).

This is a nationally agreed formula for calculating the licence costing.

In the last 12 months there has been a slight increase in the total number of police staff and officers (from 39,803 to 40,796): increase of 993. Previous annual licence: £190,809.49

The costing formula is outlined in the table below resulting in the cost of £193,422.86 for 2019/2020:

Grand-Total				£ + VAT
<u>Workstations</u>			<u>Canteen / Breakout Areas</u>	
Staff	40,796		Staff	40,796
29%	11,830		50%	20,938
Units of 25	473		Units of 25	815
1/2 Hours	14		1/2 Hours	N/A
Days	229		Days	314
Rate *	0.0927		Rate *	0.1845
<u>Sub-Total Cost</u>	<u>£140,573.80</u>		<u>Sub-Total Cost</u>	<u>£47,215.39</u>
Sub-Total (for Workstations and Canteen / Breakout Areas)				£187,789.19
*Additional 3% inflation - please see supporting information below				£5,633.67
Grand-Total				£193,422.86

Please note that the above charges have been calculated based on the 2019 PRS Tariff '1'. The account renewal in April will incur the new 2020 Tariff '1' which is due to be released in March, but not currently available for the quote. PPL PRS Ltd have therefore allowed for 3% tariff inflation, although this figure may be less.

With reference to the Workstation pricing formula, the price is derived from 29% of the total number of MPS staff which is then divided by a unit of 25 employees to gain the average number of staff to whom the music is audible for each half hour, which equates to the total amount of effective staff. The total number of effective staff is then multiplied by the total amount of half hours, days and rate to arrive at the total cost. With reference to the Canteen and Breakout Areas table, the price is derived from 50% of the total number of MPS staff which again is divided by a unit of 25 employees to gain the average number of staff to whom the music is audible. *The new 2020 tariff will be published in early 2020. For budgeting purposes an addition of 3% to cover inflation has been added to the sub-total figure (as per advice received from PPL PRS Ltd).

Applicable to both Licences:

The Director of Resources had agreed the allocation of revenue budget, as appropriate, to MO11 to fund this PPL licence cost and to provide for ongoing future costs.

The revenue funding for this renewal has been agreed and approved by the MO11 Finance Lead Accountant to be paid via GL Code: 5793 / Cost Centre Code: SS627.

PPL PRS Ltd apply a surcharge of 50% for late payment.

Management Case

- This requirement currently sits outside of the Service Integration and Management (SIAM) Towers model, the single tender action/licence, once awarded, will be managed internally by representatives from MO11 and HQ Commercial Services.