

Overview and Scrutiny Management Committee

Meeting held 25 November 2015

PRESENT: Councillors Cate McDonald (Chair), Sue Alston, Steve Ayris, John Booker, Tony Damms, Pat Midgley, Chris Rosling-Josephs, Jack Scott, Sarah Jane Smalley and Geoff Smith

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1. APOLOGIES FOR ABSENCE

1.1 An apology for absence was received from Councillor Denise Fox.

2. EXCLUSION OF PUBLIC AND PRESS

2.1 No items were identified where resolutions may be moved to exclude the public and press.

3. DECLARATIONS OF INTEREST

3.1 There were no declarations of interest.

4. MINUTES OF PREVIOUS MEETING

4.1 The minutes of the meeting of the Committee held on 30th July 2015, were approved as a correct record.

5. PUBLIC QUESTIONS AND PETITIONS

5.1 Alan Kewley raised three questions and responses were provided, as follows:-

(a) Please clarify how members of the public and community groups can influence the content and priorities of the Council's Scrutiny Committees' work programmes?

The Chair stated that members of the public and community groups can influence the Council's Committee agendas in a number of different ways, including raising questions at meetings of the Council, Cabinet or Committee meetings.

(b) Please clarify the overview role of this Committee?

Response – The role of this Committee, as stated clearly on the Council website, was to provide an overview and co-ordinating role regarding the four Scrutiny and Policy Development Committees, rather than challenge the Committees.

(c) Please clarify who is responsible for the overall effectiveness of the Council's statutory duty for self-scrutiny?

The Chair stated that the Leader of the Council (Councillor Julie Dore) and the

Chief Executive would be responsible for the overall effectiveness of the Council's statutory duty for self-scrutiny whilst Councillor Cate McDonald, as Chair of this Committee, and Michael Bowles (Head of Elections, Equalities and Involvement) were responsible for the day-to-day function of scrutiny.

- 5.2 Neil Fitzmaurice questioned whether the Committee was aware that certain important items that used to be considered annually by Scrutiny Committees no longer do so, meaning that partner organisations are no longer seen to be publicly accountable? In the case of certain conservation charities responsible for large areas of public land, there has been an obligation to appear annually before a Scrutiny Committee, which has been simply ignored. What can this Committee do to restore accountability and scrutiny?

The Chair stated that it was no longer the role of Scrutiny Committees to scrutinize individual Service Level Agreements, as it had been in the past. However, members of the public could raise questions at Council or Cabinet meetings with regard to specific agreements. If it was then decided that the relevant Scrutiny Committee should scrutinize any agreements, the Committee would have to determine whether this would be prioritised over other topics which the Committee had agreed to scrutinise.

6. HOW SHEFFIELD CITY COUNCIL WOULD LIKE TO DO BUSINESS

- 6.1 The Committee received a report of the Interim Executive Director of Resources seeking its views, as part of a consultation exercise, with the aim of refreshing and, in cases, developing, the Council's procurement policies and supporting processes on engaging, procuring and managing relationships with its suppliers. The policy, which currently had a working title 'How Sheffield City Council would like to do Business', stated that the Council would like to do business in a manner that maximised the benefits for the City, and covered three key themes - ethical, efficient and effective. The report was supported by a presentation from Marianne Betts, Director of Commercial Services, and also in attendance for this item was Councillor Ben Curran (Cabinet Member for Finance and Resources).
- 6.2 The report stated that a culmination of activities had resulted in the opportunity for the Council to review its policies and processes holistically in regard to engaging, procuring from, and managing its supply chain, with such activities including changes in legislation, issues raised by Members, officers and the public regarding topics such as tax compliance, ethical procurement, grave misconduct, Living Wage and blacklisting, and the appointment of a new Director of Commercial Services. The report set out a number of considerations, policy development ideas and detail of what the review could mean for the people of Sheffield
- 6.3 Councillor Ben Curran referred to the public question raised, and a petition submitted to, the Council meeting held on 1st October 2014, relating to the Council's contracts with G4S, as well as the Notice of Motion moved by himself, at that meeting, regarding procurement and corporate tax compliance. Councillor Curran, whilst apologising for the delay in producing the report as the basis for a draft policy, stated that he would now like to listen to the views of Members and the public as part of the review of the Council's procurement policies and processes.

- 6.4 As part of the presentation, Marianne Betts reported on the opportunities the Council was trying to create, which included a cohesive and balanced suite of supplier-focused policies and protocols. She stated that the policies should be developed in the context of each other, and result in a common-sense approach that was compelling to the City as a whole, suppliers and the Council, create an environment that allowed some flexibility to reflect changing priorities, maximise opportunities within existing constraints and reduce the chances of 'avoidable' risks occurring.
- 6.5 Hilary Smith, Stop G4S Campaign, put forward her views, on behalf of the campaign, referring specifically to the Council's ethical procurement policy. She referred to the petition presented to the Council meeting in July 2014, at which time they were informed by Councillor Ben Curran that he hoped that Sheffield's policies were such that companies who behaved like G4S would not get contracts with the Council, unless they changed their behaviour. Ms Smith stated that they were obliged to resubmit the petition to the Council meeting in October 2014, after being informed that the Council did, indeed, have contracts with G4S, and the campaign supported the Motion submitted by Councillor Curran at that meeting which, amongst other things, explicitly noted the guiding principles on business and human rights, which the campaign had drawn to the attention of the Council. Ms Smith also referred to that part of the Motion directing the Chief Executive to produce a report on a proposed review of the Council's procurement policy which, amongst other things, "limited the opportunity in the Council's procurement process for companies who commit gross misconduct". She stated that they were well aware, and supported the fact that this process was not just about G4S, but stressed that they were as committed as anyone to ensure that any company that violated human rights and failed to operate in an ethical manner did not benefit from contracts with the Council. Ms Smith stated that, whilst they welcomed and supported the idea of this Committee being actively involved in the process of developing a draft policy, they expressed concerns at both the delay in drafting such a report, as well as the lack of substance contained in the report. Ms Smith stated that a key issue was how the Council defined 'grave misconduct' and proposed that the Council should adopt a policy whereby grave misconduct included activity which violated key conventions (or incorporated into UK law), and also included activities or omissions which 'aided or abetted' the committing of crimes.
- 6.6 Members of the Committee raised questions and the following responses were provided:-
- In the last year, the majority of providers appointed by the Council paid the Living Wage, or above but, to date, the Council was unable to directly reward or incentivise any companies that paid the Living Wage through the evaluation of its procurement processes, for example, by attributing "bonus points", due to the legal constraints within the EU Procurement Regulations. However, it was recognised that further work needed to be undertaken to understand when the Council could place living wage as a requirement within its tender requirements to the market.

- Contract management was high on the Council's list of priorities in terms of its procurement policy. The Council had experienced issues with regard to contract management in the past, and had established a forum to look into, and resolve these issues.
- With regard to ethical procurement, one part of the proposal was to introduce a code of conduct. The intention was that the obligations should flow down the full supply chain, from the principal contractor, who would then be responsible for filtering down the terms of the contract to sub-contractors. If applied, the code of conduct would be embedded as a contractual requirement, and enable the Council to audit the performance of the supplier against the code of conduct. It was accepted that several of the larger contractors comprised a complicated network of sub-contractors, and that it was very difficult in terms of when the Council should take action in terms of one of the company's sub-contractors not acting ethically. There was a need, as part of the review process, to draft a clear framework/approach in engaging suppliers and monitoring performance against the code of conduct, which would provide the Council with guidelines as to when such action should be taken. The approach should take into account resource implications, risk and enable flexibility in decision-making, where possible. There was a need to find a balanced approach as taking legal action often took a long time, as well as resulting in costs for the Council, and ongoing monitoring of each supplier would result in there being resource issues in terms of investment of time.
- It was hoped that, by having this review, future procurement processes and policies could focus on the three key themes - ethical, efficient and effective - which would have a positive impact on the City as a whole. As well as the three key themes, the Council would also continue to give consideration to the sustainability and commercial viability of contracts, together with the environmental impacts of contracts on the City.

6.7 In terms of ethical procurement, the Committee identified the following issues as needing to be considered as part of the policy review process:-

- The Committee expressed frustration at the time it had taken to reach this point, and looked forward to seeing further progress early in the new year.
- The Council, through the leader assessment and contract management processes, should consider rewarding contractors that pay the Living Wage. One way of doing this was by applying appropriate weighting in evaluating tenders, where possible, within the bounds of current legislation and case law.
- The strategy must achieve the right balance of priorities between a strong ethical stance and commercial risk
- The strategy needs to set out clear guidelines for sub-contractors, as well as main contractors. This will need to take into account "materiality".
- In terms of gross misconduct, the strategy needs to be clear on how to deal with large multi-national companies that have complex structures.

- The Council needs to identify any mechanisms that would enable it to push up ethical standards in its current contracts.
- 6.8 Hilary Smith expressed concerns that there had been little discussion in terms of the ethical conduct of contractors, and requested that the Stop G4S Campaign be part of the discussions on that element of the revised procurement policies and processes. She stated that if the Council planned to create a Code of Conduct in terms of ethical treatment in contracts, there was a need to tackle the behaviour of large companies. She also requested that the Campaign be informed of the timeline in terms of the implementation of the revised policy.
- 6.9 Marianne Betts stated that it was hoped a draft report could be produced early in 2016, which would contain all the different components of how the Council would like to do business, such as policies, processes and cost implications. She added that a proposed Code of Conduct would be appended to the report.
- 6.10 Members of the Committee raised questions of the other two key themes, and the following responses were provided:-
- The Code of Conduct would be one of a number of elements on the revised policy, not the sole solution.
 - In order to maximise benefits to the City's economy, one issue that was being looked at included breaking up the larger contracts into smaller elements in order to allow smaller, local companies, who would not normally have the manpower or resources, to tender for the contracts. There was a variety of suppliers and stakeholders across the City, both within the supply chain and outside of it currently in the process of being consulted with by the Council on the proposed approach. The Council was also looking to re-launch a rebranded 'Buy for Sheffield' in terms of engaging the Sheffield market and publicising what action the Council was taking to support the City's economy.
 - The policy development has to take into account constraints, but it was noted that below EU procurement thresholds, the Council had greater, not unlimited, discretion, and could make some stronger policy choices.
 - There was a recognition that the Council's supply chain was validly a "mixed economy" of supplier and contract types. In regard to longer-term contracts, the Council still needed to ensure best value across the contract term, therefore make educated and informed choices at the point of commissioning the arrangement.
 - One of the priorities was to look at how the Council could become a city exemplar in terms of procurement activity. The intention was to first look at what revisions the Council could make internally, but with a view to future collaborative activities. Whilst there were some good examples of collaborative procurements being undertaken currently, including a number of care support initiatives procured with the Clinical Commissioning Group, there had not been any detailed consultation with outside

organisations/stakeholders (non supply chain) on the revised policy as yet.

- Concern was noted at the use of potentially restrictive framework agreements. Frameworks had a clear value to the Council when used appropriately, and could often demonstrate value for money when you include the total cost of running a procurement exercise. Whilst some frameworks had restrictive terms, the large majority enabled the Council to tailor some heads of terms to its needs. The Council also engaged with key framework providers to build good relationships, and could have the ability to shape frameworks prior to going to market. The Council was not tied to the use of a particular framework and had the ability to commission services from the wider market, assuming this would result in better value for money.
- Depending on the nature of the contract, details of the different weightings could be included in the tender documents.

6.11 In terms of the other procurement areas, the Committee identified the following issues as needing to be considered as part of the policy review process:-

- Encouraging local procurement, particularly how we do it to maximise the Sheffield pound and achieve value for money.
- The Council should demonstrate leadership across the City in procurement, where appropriate; an aspiration of the strategy should be to embed and use these principles with partners across the City.
- The strategy should consider how the Council can deconstruct larger contracts to enable a wider range of providers to bid for them, particularly small/medium enterprises and the Voluntary, Community and Faith Sector.
- The strategy should be explicit and transparent about how the principles – effective, efficient, ethical – can be weighted and balanced against each other.

6.12 RESOLVED: That the Committee:-

- (a) notes the information contained in the report now submitted, the presentation now made and the responses provided to the questions raised; and
- (b) requests that the comments and views now made, and as summarised, be forwarded to the Interim Executive Director of Resources in order to provide a steer on the outline ideas for 'How Sheffield City Council would like to do Business' to enable the relevant policies to be shaped.

7. WORK PROGRAMME 2015/16

7.1 The Committee received and noted a report of the Policy and Improvement Officer setting out its draft Work Programme for 2015/16.

8. SCRUTINY COMMITTEE WORK PROGRAMME OVERVIEW

- 8.1 The Committee received and noted a report of the Policy and Improvement Officer setting out the draft Work Programmes for the four Scrutiny and Policy Development Committees, providing a comprehensive picture of planned scrutiny activity.

9. ISSUES TO RAISE FROM SCRUTINY COMMITTEES

- 9.1 There were no issues raised from any of the four Scrutiny and Policy Development Committees.

10. DATE OF NEXT MEETING

- 10.1 It was noted that (a) there will be a special meeting of the Committee on Thursday, 10th December 2015, at 4.00 pm, in the Town Hall, and (b) the next regular meeting of the Committee would be held on Thursday, 28th January 2016, at 2.00 pm, in the Town Hall.

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