

CONTRACTS SUB-COMMITTEE

Minutes of the meeting held at 7.00 pm on 30 November 2017

Present:

Councillor Stephen Wells (Chairman)
Councillor Neil Reddin FCCA (Vice-Chairman)
Stephen Carr, Simon Fawthrop, Russell Mellor, Keith Onslow and
Angela Wilkins

Also Present:

Ade Adetosoye, OBE, Nigel Davies, Councillor Ian Dunn, Ellily
Ponnuthurai, Paul Feven, Lesley Moore, Alicia Munday, Doug
Patterson and Dave Starling

82 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

No apologies for absence were received.

83 DECLARATIONS OF INTEREST

Cllr Onslow declared an interest as a pensioner with a policy administered by Zurich Insurance.

84 QUESTIONS FROM COUNCILLORS AND MEMBERS OF THE PUBLIC ATTENDING THE MEETING

No questions had been received.

85 MINUTES OF THE MEETING OF THE CONTRACTS SUB-COMMITTEE HELD ON 21ST SEPTEMBER 2017 AND MATTERS ARISING

There was one amendment to the minutes suggested by the Vice Chairman.

The fourth paragraph of the minutes read '*Longer term contracts would generally require more investment on the part of the contractor*'. The Vice Chairman requested that this be changed to, '*Longer term contracts are preferred where long term investment is required*'.

Subject to this amendment, the minutes were agreed as a correct record.

The Chairman asked if assurances could be given that previous issues relating to change control documentation (CCD) for the Waste Services contract had now been resolved. The Director of Commissioning assured the Chairman that change control documentation was now in place. CCD clauses would be incorporated into

all new contracts. The Executive Director for Environmental and Community Services clarified that with respect to the Waste Services contracts, finalisation of the CCD documentation required input from Finance and Legal. Everything had been agreed in principle with Veolia, and would be ready for the New Year.

The Chairman was pleased to note that a senior position for a Contracts Manager had been successfully recruited to. This person had been recruited from the private sector and possessed strong contract management skills. The post holder would take up post on 4th January 2018, and would also be responsible for recruiting to several junior posts. The Chairman was eager for the post to be filled without delay. He was concerned about possible delays in recruiting to the junior posts, and asked if agency staff could be used in the short term. The Executive Director for Environmental and Community Services confirmed that this was possible.

RESOLVED that subject to the modification mentioned previously, the minutes be agreed and signed as a correct record.

**86 COMMISSIONING AND CHANGING ORGANISATIONAL CULTURE -
UPDATE FROM THE CHIEF EXECUTIVE**

The Chief Executive attended the meeting to update the Sub-Committee concerning commissioning and changing organisational structure.

The Chief Executive stated that he was very encouraged by the update provided by the Deputy Chief Executive and Executive Director of Education, Care and Health around joint commissioning with the CCG. He was also very pleased with the excellent work that had taken place regarding the development of the Contracts Database. He was confident that this work would continue to successfully evolve and this would help the organisation to develop a strong control discipline. It was important that attitudes and behaviours were adaptable and flexible. He referenced changes that had taken place with respect to ECHS, and expressed the view that these were significant.

The Chief Executive was encouraged to see that LBB were harnessing new talent when required, and this would bring in new skills, knowledge, competence and experience to the organisation. He was also pleased to see a positive change in culture evolving and developing, and was confident that LBB possessed the right people with the right disciplines. The Chief Executive said that he was looking for rigour in operational and strategic management and for corporate discipline.

The Chief Executive remarked that he was comfortable with the current position of the organisation, and its ability to deliver corporately. The problems that had been faced by the organisation with respect to Children's Services had been difficult, but in the longer term the organisation had benefited from the hard learning that had taken place.

With respect to being a 'commissioning authority', the Chief Executive stressed that he tended not to focus on the concept of outsourcing, but more on the issue of getting value for money. Because VFM was crucial, it was important that efficient

systems for contract monitoring were in place.

The Chairman asked if it was possible to provide an accurate definition of the term 'Commissioning Authority'. The Chief Executive stated that core principles of being a commissioning authority would include working out who was best placed to provide a particular service, and how the organisation could achieve VFM in all that it did.

The Chairman was pleased to note that training for Contract Managers was now mandatory. He asked the Chief Executive that given the changes that had taken place in ECHS, did he now feel that LBB had the required skill sets to address the issues that had previously been identified. The Chief Executive responded that he was confident that ECHS did now possess the requisite skill sets, but there would naturally be a period of embedding. More use of Section 75 agreements may be required, but he was confident that LBB now possessed greater flexibility in teams and in corporate rigour generally.

The Chairman raised the issue of how Members could ensure democratic oversight of the newly emerging organisation, as this was their responsibility.

A Member commented that LBB had always been a commissioning authority to some extent. He noted that mention had been made of a small cohort that had not accepted the commissioning agenda, and asked how this could be addressed. The Chief Executive answered that if there were staff that could not accept the positive ways that the organisation was evolving and developing, they may like to consider leaving the organisation. If training was required, then it would be provided.

The matter of inviting organisations and contractors to attend scrutiny committees was discussed. It was noted that LBB could call upon the CCG or the PRUH to give an account at any time. The general consensus of the Sub-Committee was that it was good and necessary to ask contractors to attend PDS scrutiny meetings so that the services provided by the contractors could be scrutinised. A Member stated that the Contracts Sub-Committee looked at contract management, whilst PDS Committees looked at contract performance. He expressed the view that LBB should incorporate a clause in its contracts to ensure that the Chief Executives of contractor organisations were accountable to LBB, and were liable to be called to give account to PDS Committees when required. The Chief Executive agreed with this.

The Director of Commissioning clarified that all LBB contracts had a clause written in to them stating that either a Director or a responsible officer for the organisation may need to attend a Council meeting if required.

A Member raised the issue of statutory and legal obligations where services had been commissioned out. He cited a hypothetical scenario where a contractor organisation had taken over the running of the library service, (which was a statutory Council service). He stated that if the contractor organisation went into administration, then that would mean that LBB would be in default of its statutory obligation to provide a library service. The Chief Executive clarified that statutory

obligations in these circumstances remained with the Council, and that the Client Team would manage the contract. Options would be available to the Council— Business Continuity contingency plans would normally be incorporated into contracts as a matter of course.

A Member cited the real example of a situation that had developed previously with respect to Children's Services, and a company called 'Connexions'. In this case the service was brought back in to the Council.

Similarly, the Deputy Chief Executive and Executive Director of Education, Care and Health explained that if a Care Home was closing, then the Council would step in. The law was clear that LBB could deploy staff and take charge.

A Member asked the Chief Executive if he was still concerned about the duplication of work by committees. The Chief Executive responded that he still had some concerns, and was still looking for streamlining. The Member suggested that discussions should take place with the Chief Executive to ensure that work was not duplicated.

A Member expressed the view that PDS Committees were not scrutinising properly with the exception of Audit. It was pointed out that Audit scrutinised 'after the event'. A Member disagreed with the statement that PDS Committees were not scrutinising properly. The Chairman commented that there was a need for more existing Members (and any new Members that were elected in the next round of local council elections) to receive contract monitoring training.

A Member suggested that in the next Induction Programme for Members, it should include training on contracts, corporate parenting and procurement. It was noted that the Director of Corporate Services was working on a new Induction Training Programme for new councillors.

RESOLVED that the update from the Chief Executive on Commissioning and Changing Organisational Culture be noted.

87 JOINT COMMISSIONING WITH THE CLINICAL COMMISSIONING GROUP

CEO 01636

A report was presented to the Sub-Committee to provide an update on joint commissioning with the Clinical Commissioning Group. The update had been requested by the Contracts Sub-Committee at its meeting on 21st September 2017.

Members were informed that some of the joint commissioning was undertaken under Section 75 of the NHS Act (as amended by the Health and Social Care Act 2010), whilst other joint commissioning activities were funded through the BCF (Better Care Fund).

The Sub-Committee was briefed that whilst the JSNA was the key data set from

which local needs were defined, outcome based commissioning was also important in that it would impact on the health and wellbeing of Bromley residents.

The Deputy Chief Executive and Executive Director of Education, Care and Health explained that at the previous meeting of the Contracts Sub Committee (CSC) in September, a micro economic account had been provided with respect to commissioning; the intention for this meeting was to provide a macro economic outlook. He explained that by 2020 it was necessary that LBB and the CCG formulate a joint business plan. He stated that LBB could not solve health and social care needs in isolation, and so had to work in close partnership with the CCG. Efficient leadership would be required if good and effective services were going to be delivered to Bromley residents.

The Deputy Chief Executive referred to the 4 main elements of the report which were:

- An overview of joint commissioning
- Outcome based approaches
- Previous good practice
- Future priorities

The Sub Committee heard that the integration process had started with the Better Care Fund and was then furthered by the Improved Better Care Fund. The idea was to join resources together and to develop joint strategies. The Deputy Chief Executive and Executive Director of Education, Care and Health stated that there was a joint consensus that LBB and the CCG were on the right direction of travel together.

Mr Paul Feven (LBB Head of Programmes) stated that lots of discussions had taken place between LBB and the CCG on key issues. The discussions had then moved into agreement on key issues such as delayed transfers of care. Out of the agreement, a strategy had then been formulated. Joint posts had been set up, and working together would see the benefits of economies of scale in terms of spending power. Both organisations were able to purchase in the nursing care market. Trajectories needed to be joined, and an integrated joint mode of delivery was required.

Mr Feven referenced the good work undertaken by ICNs (Integrated Care Networks). The CCG website defines an ICN as:

'An integrated care network (ICN) is a model of care that brings together a range of health and care services to work in a more joined up way to provide care for patients. This model enables services to be more responsive to the needs of patients and is focused on preventing ill health and proactively managing of patients with complex or long term health conditions'.

Mr Feven expressed the view that it was important to raise the profile of ICNs in Bromley. Another successful joint project was the 'Discharge to Assess' project which was designed to get hospital patients into a re-ablement setting as soon as possible. Similarly, a joint strategy and a joint health and social care offer had been developed for Care Homes.

Mr Feven stated that it was important to work out unified quality definitions, as opposed to several different quality strands. As part of the 2020 plan, strategies would be the ground work for effective delivery models, and systems and leadership would have to be looked at.

A Member expressed concerns that outcomes should not be nebulous or difficult to quantify, but it was important to be able to see that outcomes were being actualised. He felt that it was essential to develop and use innovation and technology. The Chairman agreed that it was important to be able to measure outcomes, and this had historically been difficult.

A Member expressed support for the 2020 integration programme, but was also cautious due to issues and challenges that had emerged in the past. Previously, there had been issues related to cultural differences between LBB and the CCG, and differences of opinion with respect to key issues and key outcomes. He stated that there needed to be a guarantee of clear understanding between both parties with respect to outcomes, VFM, management and governance. These matters had to be made clear, as well as the need for clarity around decision makers.

Three services were cited as examples of existing good practice and good examples of joint working; these were the Dementia Hub, Bromley Well and the Transfer of Care Bureau (ToCB).

Members heard that the Council was the lead commissioner for the Dementia Hub, and that the Hub worked closely with the Memory Clinic from which most of the referrals originated. Members noted the key strategic outcomes for the Dementia Hub, along with specific outputs and KPIs.

Members were informed that Bromley had a larger number of older people than any other London Borough, and it was also the case that the number of people with physical disabilities and sensory impairment had also continued to rise.

Alicia Munday (Head of Programme Design for Commissioning) briefed the Sub-Committee around the Bromley Well Project.

Bromley Well was a new service formed to help support local residents to maintain their health, wellbeing and independence, the Bromley Well service launched on 2nd October 2017. The service was delivered by a partnership of local voluntary sector organisations called Bromley Third Sector Enterprise CIC (BTSE) which brought together many years of expertise to provide a range of services for local people.

The Sub-Committee was briefed concerning the pathways, outcomes and KPIs for the Bromley Well Service. The Sub Committee noted that as part of the Bromley Well initiative, the Council and the CCG had set up a joint carers' strategy. LBB was the lead commissioner for the Bromley Well project. LBB dealt with the procurement for the client and the contract side and reported back to the CCG via their internal commissioning board. The Bromley Well project was scrutinised by the Care Services PDS Committee, and most of the funding from the project came

via the CCG from the Better Care Fund.

Fifteen per cent of the contract value for Bromley Well was retained to allow for innovation and change in the future. The length of the contract meant that it was likely that in the future, needs would change and so there would be a need for innovation and adaptability. The tender for Bromley Well had been led by LBB with a 60/40 split that had been endorsed by the CCG. There had been an engaged specification formulated with clinicians.

The Deputy Chief Executive and Executive Director of Education, Care and Health gave an example that previously there would have existed separate pathways for carers and for the CCG, and that there was a need to integrate pathways. Vulnerable users required simple processes. Previously, a situation could have existed where care for a person's legs could have been split in terms of budgets. One leg could have been paid for by the Council, and one by the Primary Care Trust. There was therefore clearly a need to integrate pathways and to pull resources together, and for budget and efficiency challenges to be addressed.

Ms Munday informed the Sub Committee that as part of LBB's commissioning activities in health and social care, LBB was collecting 100% of NHS numbers. This meant that patients could now be tracked across the system to see how their care impacted services. The CCG was not allowed to track NHS numbers.

Mr Feven pointed out that micro outcomes for individuals in many cases would add up to macro savings which would be created by generating independence. People would be doing new things as a result of being rehabilitated.

A Member raised the matter of insurance liability. He queried who would refer matters of insurance liability to the insurance companies. He stressed that it was important to determine where LBB's insurance liabilities sat. He stated that as LBB would be involved in matters of statutory liability, LBB would need to draft tight contracts. There was also the generic issue that applied to all contracts that involved sub-contracting, which was to make sure that all such contracts were looked at from an insurance perspective.

The case of *Woodland v Essex County Council* [2013] UKSC 66 was noted by the Deputy Chief Executive and Executive Director of Education, Care and Health and he assured that LBB's modus operandi would be in line with this judgement. LBB had to ensure that contracted out services were of a high standard because the Council would still be liable for the statutory duty.

Ms Munday provided assurances that all contracts were scrutinised by the Insurance Team. With respect of Bromley Well, there were no medical implications.

The Director of Commissioning clarified that the main contractor was responsible for dealing with sub-contracting issues. Going forward the contracts database would detail insurance policies.

A Member referred back to the *Woodland v Essex* case and stated that in this

case the sub-contractor did not have insurance, and he was not convinced that liability stood where it should in all cases.

The Vice Chairman raised the issue of outcomes and outputs. He queried if a proper distinguishing would take place between outcomes and outputs, and asked if outcomes would be the most significant indicator. Ms Munday assured that effective monitoring would take place against both outputs and outcomes.

A Member drew attention to the fact that with the joint commissioning, there were two large organisations involved in making decisions for one service. She asked how decisions would get made when there was disagreement, and how could democratic accountability be ensured. The Deputy Chief Executive and Executive Director of Education, Care and Health responded that officers were mandated by the Council's internal structure, and that delegated authority structures were in place. Both organisations were looking to serve the needs of the same local residents and people's mind-sets were changing. A culture of trust needed to be nurtured. Integrated systems, leadership and processes were being developed and a Joint Leadership Board had been set up. If disagreements came, they could be worked through.

The Member continued by saying that if the CCG was not making a good job of a contract, where was the accountability to the public. It was noted that with respect to joint commissioning, LBB would have inputted into the specifications in the contract.

A Member advocated that 'obligations' be written into contracts so that contract managers knew exactly what they were measuring.

The Director of Commissioning explained that in some cases it may be necessary to build in extra capacity into a contract. Sometimes the extra resource could be derived from savings made by virtue of the commissioning process.

The Work of the Transfer of Care Bureau (ToCB) was also noted. The aim of the ToCB was to facilitate a safe and timely discharge of hospital patients back into the community.

The Sub Committee noted that the CCG and LBB had formed the Integrated Commissioning Board as a result of a review of governance arrangements. Resultantly, a number of joint priorities had been established and were outlined in the report.

The Chairman was pleased with the progress that was being made with joint commissioning and asked for an update to come back to the Sub Committee in six months time.

RESOLVED that the report be noted and that an update be brought back to the Sub-Committee in six months time.

88 CORPORATE CONTRACT REGISTER & CONTRACTS DATABASE UPDATE

CEO 01635

The report on the Corporate Contract Register and Contracts Database update had been written by Dave Starling (Head of Commissioning and Procurement). The report presented November's 2017 Corporate Contracts Register for consideration.

The report recommended that the Contracts Sub Committee note the Contracts Register information, including the part 2 commentaries. The Sub-Committee was also asked to note the progress made in developing the Contracts Database.

The Director of Commissioning informed the Sub-Committee that the Contracts Database had gone live in April 2017. An alerting mechanism had been incorporated as an additional feature. This would alert Contract Managers to the requirement to begin a renewal process for a contract. It was also the case that when a waiver form was required, these could now be accessed via the database.

Members heard that hard copies of contracts were kept under seal in the legal department and details of all contracts could now be accessed online. The Chairman was pleased to hear this. He stressed the importance of the benefits to the Council of using this as a working tool, and the fact that it would allow for detailed scrutiny of contracts. He expressed the view that it would allow Portfolio Holders to hold officers to account.

The Chairman speculated that it may be possible in future to sell the database model to other councils, and that the work undertaken was an excellent piece of work that was non-existent in many other councils. He said it was an extensively admirable piece of work completed in a short space of time.

A Member suggested that the concept of the database making money for the Council be looked at by the E&R Working Group on Income Generation, another Member responded that this was unlikely to happen.

It was agreed that £50k be set aside from Central Contingency to complete the next stage of the development of the Contracts Database which was more complex as it dealt with the Authorisation Process to address issues previously raised by Internal Audit.

It had been highlighted by the Director of Commissioning that some staff members had worked very long hours and not taken annual leave so that the work on the Contracts Database could be completed on time. A Member suggested that a thank you letter be drafted. The Chief Executive stated that it was possible to reward those staff members with vouchers.

RESOLVED that

(1) The Sub-Committee notes the Contracts Register and that the publication of the Register forms part of the Council's commitment to data transparency

(2) The Sub-Committee notes the additional commentary on the Contracts Register in Part 2 of the agenda

(3) The Sub Committee notes the progress made with the development of the Contracts Database

(4) £50k be set aside from Central Contingency funds for the future development of the Contracts Database

89 WORK PROGRAMME 2017/18

CSD17164

The Work Programme report was written by Graham Walton, Democratic Services Manager.

The recommendation of the report was that the Sub Committee considers its work programme and indicates any particular issues that it wished to consider.

It was agreed that a further update on the Corporate Contracts Register be received at the next meeting of the Sub-Committee on 6th February 2018.

It was also agreed that an update on Change Control Notices would be brought to the February meeting.

Members noted that for the meeting on 29th March 2018, an item had been scheduled to look page by page through a good contract. A Member suggested that in this regard it would be good to look through a Section 75 contract.

RESOLVED that

(1) An update on Change Control Notices be brought to the meeting on 6th February 2018

(2) When the Sub-Committee examines a contract at the meeting in March 2018, it looks at a contract that is subject to a Section 75 agreement

90 LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION) ORDER 2006 AND THE FREEDOM OF INFORMATION ACT 2000

91 CORPORATE CONTRACTS REGISTER and CONTRACTS DATABASE UPDATE-PART 2

The Sub Committee noted and discussed a part 2 version of the Corporate Contracts Register.

This was the same document as the one considered in Part 1, but had some additional comment that referred to matters that may have been commercially sensitive.

The minutes of this discussion are noted in the Part 2 minutes.

**92 ISSUES FROM AUDIT SUB-COMMITTEE: REVIEW OF STREET
WORKS PERMITS AND DEFAULTS AUDIT FOR 2016/17**

The minutes for this item have been recorded in the part 2 minutes.

The Meeting ended at 10.00 pm

Chairman

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