

CONTRACTS AND COMMISSIONING SUB-COMMITTEE

Minutes of the meeting held at 7.00 pm on 17 July 2018

Present:

Councillor Stephen Wells (Chairman)
Councillor Neil Reddin FCCA (Vice-Chairman)
Simon Fawthrop, Russell Mellor, Gary Stevens, Michael Tickner
and Angela Wilkins

Also Present:

Councillor Graham Arthur, Claudine Douglas-Brown, Ellily
Ponnuthurai, Lesley Moore, John Nightingale, Emma Pearce and
Dave Starling

1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies were received from Graham Mackenzie from Bromley CCG.

Apologies were received from Councillor Christopher Marlow and Councillor Simon Fawthrop acted as alternate.

2 DECLARATIONS OF INTEREST

Councillor Simon Fawthrop declared an interest as he was an employee of BT.

Councillor Fawthrop and Councillor Neil Reddin declared interests as deferred members of the Bromley Pension Scheme.

Councillor Russell Mellor declared an interest as a current Bromley pensioner.

3 MINUTES OF THE MEETING OF THE CONTRACTS SUB-COMMITTEE HELD ON 29th MARCH 2018

Members noted the draft minutes of the meeting that was held on 29th March.

It was mentioned in the minutes that Councillor Tickner had apologised for lateness. The Chairman expressed the view that this was incorrect and that it was Councillor Carr who had apologised for lateness. The minutes of the special meeting that had been held on 25th June had been sent out via email. The Chairman decided that as Members had only recently received the email, the agreement of the minutes for 25th June would be formalised at the next meeting which was scheduled for September 4th.

A Member pointed out that a report on change controls had been promised but had not been received. Members felt that it would be interesting to see a report

that explained how change controls were utilised and operated within the Council. The Chairman suggested that a report relating to change controls should come to the September meeting. The Director of Commissioning (Lesley Moore) stated that it would be more appropriate if a report on change controls came to the December meeting instead.

The Director explained that there were different kinds of change control notices and that she would be providing training on change controls the same week. The Committee agreed that the report on change controls would be incorporated into the Work Programme and assigned to the December meeting.

A Member mentioned that reports pertaining to change control notices had been looked at previously by the Executive, Resources and Contracts PDS Committee, and that it was important to avoid duplication. It was suggested that a demonstration of the CDB (Contracts Database) alerting system be given at a future Executive, Resources and Contracts PDS Committee meeting, and that members of the Contracts and Commissioning Sub Committee be invited.

It was agreed that at the September meeting, an information briefing would be provided concerning change controls, based around the modular training that would be provided by the Director of Commissioning—the report on change controls would be deferred to the December meeting.

The Chairman referenced EU procurement rules, and suggested that a future item on the Work Programme could be a consideration of what changes to procurement could be expected in the future when the UK left the EU. In response, the Head of Commissioning and Procurement (Dave Starling) explained that the rules had been adopted into UK law, and so it was unlikely that anything would change over the next two or three years.

Members were keen to see the letter that had been promised from Bromley Healthcare. The Chairman asked Mr Feven if he could provide sight of this. Mr Feven agreed to disseminate the letter via the Committee Clerk.

RESOLVED that:

- 1) Subject to the requested amendment to change the name of the Councillor who had given apologies for lateness at the March meeting, the minutes of the meeting held on March 29th were agreed and signed as a correct record.**
- 2) The minutes of the special meeting held on 25th June would be agreed at the next meeting.**
- 3) The Director of Commissioning would provide an information item relating to change controls for the September meeting.**
- 4) A report on Change Controls would be provided for the December meeting.**

5) At a future meeting of the Executive, Resources and Contracts PDS, a demonstration would be provided of the functionality of the Contracts Database. Members of the Contracts and Commissioning Sub-Committee would be invited.

6) Mr Feven would disseminate the most recent letter from Bromley Healthcare via the Committee Clerk.

4 QUESTIONS TO THE CONTRACTS AND COMMISSIONING SUB COMMITTEE FROM COUNCILLORS AND MEMBERS OF THE PUBLIC

No questions had been received.

5 JOINT COMMISSIONING UPDATE--BROMLEY COUNCIL AND BROMLEY CLINICAL COMMISSIONING GROUP

A joint commissioning update report was presented to the Committee. The report had been written jointly by Paul Feven and Graham Mackenzie—Interim Joint Directors of Integrated Commissioning. Daniel Taegtmeyer (Interim CAMHS Commissioner) attended the meeting as an alternate for Mr Mackenzie.

The report provided an update on joint commissioning activity between LBB and Bromley CCG. It was noted that the report had been based around the work programme of the Integrated Commissioning Board (ICB); this Board was the integrated officer governance body for health and social care. The Committee noted that the aim of the ICB was to develop and strengthen the commissioning approach across the borough, to improve service delivery and to ensure value for money.

The Chairman commented that the report seemed to indicate that much contractual activity was taking place, and he asked how much of this was going before LBB's Commissioning Board. Mr Feven responded that projects such as Bromley Well and the Dementia Hub (as jointly commissioned services) should have gone to the Commissioning Board.

In any joint commissioning venture, proposed services for commissioning would be scrutinised by the relevant governance bodies for both the CCG and LBB, and so would come before the Commissioning Board as a matter of course. Strategies for future development would also be referred to the Commissioning Board. Mr Feven stated that he was not sure if Integrated Care Networks (ICNs) had gone to the Commissioning Board, but he could confirm that they had been looked at by the Executive.

The Chairman expressed concern that scrutiny of joint projects may not be taking place adequately. He asked Mr Feven if joint projects had been scrutinised by the relevant LBB PDS Committees. It was confirmed that joint commissioning proposals had been brought before the Health and Wellbeing Board. The Chairman asked Mr Feven for some information concerning the composition of the ICB.

It was noted that the ICB was chaired jointly by LBB's Deputy Chief Executive and Executive Director of Education, Care and Health (Ade Adetosoye) and by the Managing Director of the CCG (Dr Angela Bhan). He explained that both Mr Adetosoye and Dr Bhan would draw on officer support from both LBB and the CCG as required. The work of the ICB was to manage a set of projects and a work programme.

The Chairman wondered where the ICB was answerable to with respect to LBB. The Director of Commissioning clarified that no reports should go anywhere until they had been looked at by the Commissioning Board. She cited the example of developing a Care Home Strategy. The strategy should be scrutinised by the Commissioning Board as the Board would have directors available who would have expertise in that area. Dave Starling sat on the Board. The Board would need to be presented with a Gateway report that would set out risk and cost implications. Only after scrutiny by the Commissioning Board could reports move on to be considered by the Portfolio Holder or by the Executive.

Mr Feven clarified that the work of the ICB was an exploration of ideas, and that there was no attempt to subvert or deviate from the scrutiny process at the appropriate time. When a project was ready for consideration it would go to the Commissioning Board. The Chairman asked if the ICB definition of 'when it is ready' equated to a Gateway Zero report that set out the business case or a Gateway 1 report which would be the last chance for Members to have any input. He was concerned that Members were provided with the opportunity for scrutiny.

A Member commented that the report had a lot of information concerning 'what' but very little information on 'how'. It was with the 'how' that would come innovation and value for money. He wanted to see how things were being done, and how LBB and the CCG would arrive at their joint objectives. More of this type of information should be included in future papers. Members wanted to see how they could be involved in the process, particularly at an early stage like Gateway Zero.

Mr Feven stated that the report was meant to be a light touch document that provided Members with a sense of the scope of activity, and to illustrate how the CCG and LBB were engaged in meaningful dialogue. The 'how' would follow later and the relevant governance procedures would be followed. He pointed out that part of the current process was to unblock pathways so that LBB and the CCG could work together to provide better services and benefit from economies of scale. A brief discussion took place about the geographical nature of ICNs.

The Chairman was concerned that joint commissioning projects may be discussed that at the end of the day may not be affordable. The Vice Chairman asked where the work plan for the ICB originated from. He also asked what the process was for deciding if a service should be commissioned or not. It was clarified that the previous body dealing with the work programme would have been the JICE (Joint Integrated Commissioning Executive); the ICB took over from the JICE. It became clear that the work programme for the ICB was derived from the HWB Priorities and from the JSNA (Joint Strategic Needs Assessment). Going forward there

could be big operational issues to deal with and so membership of the ICB may need to be expanded. This was recently the case with the addition to membership of Janet Bailey (LBB Interim Director of Children's Social Care).

A Member asked if the individuals on the ICB just 'ticked boxes' or if they were 'real' commissioners that provided challenge when required. He asked if the ICB had any 'heretics' as members who would provide the necessary degree of challenge. Mr Taegtmeyer responded that the ICB welcomed challenge and guidance, and brought in experts if required. It was noted that the Director of Commissioning may be able to suggest suitable candidates for ICB membership. Mr Feven responded that the ICB was not averse to expanding its membership. The Chairman stated that as far as LBB was concerned, challenge would come from the Commissioning Board.

Councillor Graham Arthur explained that previously there had been a divide between the CCG and the LBB, and so the plan from central government was to join both organisations together in terms of commissioning and so BCF (Better Care Fund) funding was provided to help divert money from acute care to enable LBB to provide social care. However, most of the money remained within the healthcare community. He felt that the report was helpful and informative, but hoped that at the end of the day it did not end up as a wish list that could not be funded. It was imperative that proper governance be established before any money went from LBB to another organisation.

The Chairman noted that there was no schedule or timescales in the report and this was concerning. If joint integration was the aim by 2020, what was the mechanism that would enable both parties to arrive at the required destination on time? Mr Feven responded and said that all of the projects detailed in the report had either already been completed or were a work in progress.

A Member asked what the position with respect to the alignment of contract registers was. Mr Taegtmeyer answered and explained that work on this had already commenced by a joint team. The intention was that where possible, commissioning and contract information between the CCG and LBB be aligned.

At this point the Director of Commissioning urged caution, and the need to pull back. Matters of governance had to be resolved first. Risks would need to be clarified in a business case together with who was responsible for what system. If LBB were giving the CCG access to their contracts database, the reasons for this would have to be clarified and clearly understood.

A discussion followed around the four themes mentioned in section 3.3 of the report. The Chairman agreed that the matter of Care Homes and the mental health of children and young people should be priorities. The Chairman expressed the view that it was important that LBB was involved in the decision making process regarding priorities, as Councillors were accountable to the public. He wondered how the CCG was scrutinised. Mr Taegtmeyer responded that the CCG was accountable to the NHS and to other partners.

The Chairman re-iterated his concerns that in an environment where over the next two years the Council had to find savings of £39m, it was difficult to see how all of the joint commissioning plans could be afforded. Mr Feven responded that to do nothing was not an option. A Member stated that in the future he would like to see a report that focused more on timescales and outcomes. The public were not interested in Boards, Committees and funding, but were simply interested in what was going to be done and when. In short they were interested in practical outcomes.

The Chairman referred to in year reductions in budgets. Would this be written into the joint contracts? LBB normally asked for continuous improvements and efficiencies. Mr Taegtmeyer replied that the CCG had quality improvement programmes in challenging financial landscapes, and this was not a foreign concept to the CCG. This has been ongoing in the CCG since April 2013.

The Chairman thanked Mr Feven and Mr Taegtmeyer for their time in attending and the meeting, and for a very useful discussion.

RESOLVED that the joint commissioning update report is noted.

6 COMMISSIONING DELIVERY PLAN REPORT

The Committee was presented with a report outlining the Commissioning Delivery Plan for the next four years. The report had been written by the Director of Commissioning and Members were requested to note the report.

The report highlighted the difficult financial environment that the Council was now operating in and outlined the key points that commissioners had to consider when developing a commissioning strategy. It was noted that the information gathered by commissioners would be used to complete a business case that would inform a Gateway 1 report, and that this should therefore be linked to the four year financial forecast.

The Chairman was concerned to see that there were ten ECHS reports red flagged on the Commissioning Board Work Plan. He asked when the relevant reports would be in place as some issues had already gone beyond the deadlines. He was considering asking the relevant directors to attend the Sub Committee to explain why this was the case, and what they would do to rectify the situation. The Chairman expressed concern that the relevant strategic plans for the red-flagged reports were not in place, and indeed may still not be in place in any reasonable timescale.

The Director of Commissioning informed the Committee that she was working with the Deputy Chief Executive and Mr Feven with respect to revised timescales and it was hoped that most of the red-flagged reports would be presented to the Commissioning Board by 30th July.

It was confirmed that the Commissioning Directorate had provided all the relevant training to officers across the Council which should enable the ECHS Directorate to deliver the reports on time. It was noted that in the five years

since the Commissioning Board had been established, significant savings in the region of £15m had been realised. However, it was fundamental that sufficient time be spent working through the commissioning cycle, starting from detailed service reviews, so that the commissioning process was undertaken in the most efficient way possible; this would produce the best outcomes for all concerned.

The Chairman stated that he would like to be kept informed as to whether or not the revised deadline of 30th July was met. The Chairman asked for an update report to be provided concerning this for the next meeting.

The Director of Commissioning said that this work was critical to confirm growth requirements over the next 4 years, and the deadline for finance that officers were working to was the 30th July. When these pressures were identified, then a financial envelope could be formulated to deal with any service re-design that may be required. The Chairman commented that when there were problems with getting behind on a schedule, it was often difficult to catch up, and this was concerning. The Vice Chairman asked if this matter was a one off glitch, or was it systemic.

A Member asked for an update concerning the Mortuary Contract, and asked if bids had now been received. It was explained that the contract had to be extended as the relevant health authority staff had not been available previously to deal with the new bid. However, it was the case that a bid had now been received.

A Member proposed a motion that was seconded by the Chairman. The motion was that in the future, if a report was going to be presented late to the Commissioning Board, then two weeks subsequent to the missed deadline, a letter would be required to be written by the relevant director explaining why this was the case. The letter should be sent to the following recipients:

- The Chief Executive
- The Deputy Chief Executive
- The relevant Portfolio Holder
- The Director of Commissioning
- The Commissioning Board
- The Chairman of the Contracts & Commissioning Sub Committee
- The Vice-Chairman of the Contracts & Commissioning Sub Committee

Post Meeting Note One:

An email was sent by the Committee Clerk on 18th July to the Chief Executive and the Deputy Chief Executive, outlining the principle of the recommendation. In this case the email referenced the 30th July date for the receipt of current red-flagged ECHS reports to the Commissioning Board. The Director of Commissioning, Paul Feven and Committee Members were copied in to the email.

Post Meeting Note Two:

The Chief Executive responded to the determination of the Committee and pointed out that the resolution by-passed the managerial responsibility and accountability which was held by himself. Going forward, he would ensure that the requirements of the resolution were met by the Commissioning Board. Additionally, he would ensure that the Director of Commissioning would be able to update the Committee on any actions undertaken by himself or his delegated officer and would be able to offer an explanation to Members if required.

Councillor Mellor expressed reservations about asking for the letter as he felt that it would over complicate a simple matter. Councillor Tickner expressed the view that asking for the letter would create more work, with a possible request for more resources, for these reasons he abstained.

A discussion took place concerning what information should be incorporated into the Commissioning Board Work Plan going forward. It was agreed that the named officer responsible for reports should be added. The Director of Commissioning explained some of the terminology used in the Commissioning Board Work Plan document. 'Strategy' was the equivalent of 'Gate Zero', requiring a detailed Business Case to be undertaken in line with the training modules and how this would help to mitigate future cost pressures. 'Award' meant that the bid process was completed and a decision had been made in terms of contract award.

Members discussed the relationship between the Commissioning Board and the Contracts and Commissioning Sub-Committee.

RESOLVED that:

1) In the future, if a report was late going to the Commissioning Board, then two weeks subsequent to the deadline, a letter should be written by the relevant director explaining why this was the case, as noted in the minutes.

2) Going forward, the names of responsible officers should be added to the Commissioning Board Work Plan.

3) For the September meeting, an update report should be provided to inform the Committee what occurred with respect to the provision of ECHS reports to the Commissioning Board on 30th July.

7 RETENDER OF THE EXCHEQUER SERVICES CONTRACT

'The Retender of the Exchequer Services Contract' was a report that had been looked at by the Executive on 11th July 2018. The report summarised the outcome of the soft market testing exercise that had been undertaken by officers, and the procurement approach for the retendering of the contract. The Executive was recommended to note the outcome of the soft market testing exercise, and to approve the retendering of the contract. The Executive agreed to the

recommendation.

The report had been scrutinised by the Executive, Resources and Contracts PDS on 5th July. At this meeting it was proposed that in view of the size of the contract, the report should be scrutinised by the Contracts and Commissioning Sub Committee, and that the Executive's decision should be subject to review by it.

It was noted that whilst officers were satisfied with the performance of the current contractor, no further extensions were permitted, and so the contract had to be re-tendered. The Chairman referred to the part of the contract dealing with business rates. He asked if any changes relating to business rates were made by central government, would there be enough flexibility in the revised contract to allow for this; the answer to this was affirmative.

The Chairman referred to 'cash collections' and asked if in this digital age, LBB still required a cash facility as part of the contract. Mr John Nightingale (Head of Revenues and Benefits) explained that cash collections were still required. Cash was still collected from some schools and the kiosk in the Stockwell Building; some people still came into the Council to pay their council tax using cash.

Members discussed the current scope of the contract, and the services that had been added into the contract since the original contract award. There was also a discussion about the potential to add in additional services at a later date. It was noted that the Web Recruitment module of the ResourceLink software was not fit for purpose and so this part of the contract would not be renewed.

The report had advised that the new provider should undertake a health check after 12 months to see what improvements and savings could be made. The Vice-Chairman wondered how this would work out practically, and how LBB could be sure that the benefits of any efficiencies were accrued by LBB.

A discussion took place concerning Service Level Agreements and Key Performance Indicators, and a Member asked when the KPIs would be available. Emma Pearce (*Head of Performance, Governance and Contracts—Commissioning and Procurement*) clarified that this information should be available by the beginning of September. The Chairman asked if a document of some sort could be presented to the September meeting that would outline the KPIs for the new contract.

A Member mentioned that Liberata had been good at attending committees every six months to provide updates and to answer any questions that Members had. She asked if this practice would be formalised in the new contract. The Director confirmed that for any contracts in excess of £5m, there would be a clause written into the contract that stipulated that a representative of the contractor had to be available to attend PDS meetings to address performance issues if required. A Member expressed the view that in the case of large contracts, a clause should be included which gave LBB the ability to call Directors and Chief Executives to PDS meetings.

A Member asserted that it was wrong for the Council to be generating huge 'wet blanket' contracts that made it impossible for small businesses to take part in the tender process, and that this was contrary to central government policy. He felt that small businesses should be allowed to tender for specialist parts of the contract.

The Director of Commissioning responded that the current contract had been operating for fifteen years without any risk, and it was the case that the additional services added in to the contract had resulted in significant savings for the Council. If more contractors were involved, this would result in increased invoice generation and an increase in the number of client teams.

The Head of Commissioning and Procurement (Dave Starling) stated that LBB did consider central government policy. Large contractors were encouraged to use local businesses for sub-contracting work if possible. Liberata had invested heavily in software updates and maintenance and LBB would not be able to duplicate this.

A Member referred to the Public Regulations 2015. He asked if LBB had the legal authority to amend the Regulations if needed. The answer to this was no. There were exemptions to the Regulations, but the Regulations themselves could not be changed.

A discussion took place concerning the matter of TUPE and pension liability. The Director of Commissioning provided assurances that LBB was not at risk of financial loss in any way with respect to TUPE and pension liability. It was imperative that any matters relating to TUPE and pensions involved the Contract Manager. These were matters that would be factored into contracts.

The Chairman referred to section 3.5 of the report that identified a number of services that had been added into the contract by change control notices. He wondered why 'BIDs' (*Business Improvement District*) had been added. It was explained that BIDs had been added as the Council was responsible for collecting Business Rates and a proportion of this was allocated to the BID later.

Similarly, the Chairman asked why 'school sold services' had been added. It was noted that four schools remained under local authority control and had not converted to Academies. Resultantly, this contracted out service had to remain in place as the Council had a statutory duty to provide the service to schools that were still under the control of the local authority.

The Chairman referred to section 4.3 of the report which looked at some of the options to add in additional services. He asked why LBB were still writing cheques. It was explained that a small number of staff on the payroll were still paid by cheque, as were a small number of pension payments. The Chairman hoped that in the near future, the practice of using cheques could be eliminated. Members were informed that Claudine Douglas-Brown (*Head of Exchequer Services*) would be drafting a report concerning this and that the report would be presented to the Executive, Resources and Contracts PDS Committee for their consideration.

The Chairman noted section 4.8.1 of the report which was to do with a review of the current contractor accommodation. It noted that the contractor paid £437k towards accommodation costs. The Chairman commented that now may be the time for a review of the Civic Centre Accommodation Strategy. The Committee was informed that a report on this had gone to the Executive for consideration on July 11th.

The Committee discussed the Aquila Heywood contract that provided the pensions software, and the reasons suggested by officers for a contract extension.

Members discussed the various tender options that had been looked at. It was noted that the favoured option was to tender the contract 'as is' with the option for the provider to offer a price for the additional services set out in section 4 of the report.

A Member felt that there should have been an option 5 added to the report where consideration was given to splitting the contract into smaller sections. The Director of Commissioning stated that this option was not included as it would not provide value for money.

The Chairman asked why a contract period of 8 years had been preferred (with an option to extend for a further 4 years). He asked why LBB did not opt for a 10 or 15 year contract, which may provide a bigger discount. One of the reasons given for this was due to possible changes in innovation and technology which could make a longer contract period undesirable.

A Member suggested that Liberata and other large contractors like Amey be asked what smaller sub-contractors they were using. The Head of Procurement and Commissioning confirmed that the contractor on the Waste Services Contract was using small businesses as sub-contractors, and were providing apprenticeships.

The Chairman referred to the Evaluation Criteria outlined in section 9.5 of the report. It was noted that the evaluation criteria was normally 60% price and 40% quality. The Chairman asked if this could be modified given the size of the contract. The Director of Commissioning stated that for this to change a valid business case would need to be made.

Members noted section 9.8 of the report which was the Indicative Procurement Timetable. The Chairman asked if the time-scales outlined were reliable, and the Director assured that they were.

The Chairman drew attention to papers that had been placed on a table in the room that were related to individual contract areas. The Director of Commissioning stated that the papers were confidential service specifications and should not be removed from the room. The Director declared that it was not in the remit of Members to comment on service specifications.

RESOLVED that:

- 1) The Retender of the Exchequer Services Contract report is noted.**

2) The Contracts and Commissioning Sub-Committee endorse the recommendations agreed by the Executive on 11th July 2018.

3) A document is presented to the September meeting that would outline the KPIs for the new Exchequer Services Contract.

4) A document be provided to the Committee on or around 9th October (after the contract specification had gone out to public tender) to appraise Members concerning KPIs. This would be disseminated via email as there was no meeting scheduled for October.

8 CORPORATE CONTRACT REGISTER REPORT & CONTRACTS DATABASE UPDATE--PART 1

CEO 1641

Members were presented with a report which provided an update on the Corporate Contracts Register and Contracts Database. The report presented July's Corporate Contracts Register for consideration, and also provided an update concerning the Council's Contract Database.

RESOLVED that

1) The report is noted

2) Members note the progress made with respect to the Contracts Database

3) That the appended part 1 Contracts Register formed part of the Council's commitment to data transparency, and that the part 2 version contained an additional commentary—some of which may be commercially sensitive.

9 WORK PROGRAMME 2018/2019

Members noted the Work Programme report.

The Chairman stated that some items had been discussed during the course of the evening and that he anticipated that these had been picked up by the Committee Clerk and would be subsequently added to a revised Work Programme.

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

11 EXEMPT MINUTES OF THE MEETING OF THE CONTRACTS SUB-COMMITTEE HELD ON 29th MARCH 2018

Members noted the exempt information minutes for the meeting on 29th March 2018.

Members agreed the part 2 minutes and they were signed as a correct record.

RESOLVED that the part 2 minutes pertaining to the meeting on 29th March 2018 be agreed and signed as a correct record.

12 CORPORATE CONTRACT REGISTER & CONTRACTS DATABASE UPDATE--PART 2

Members noted the part 2 version of the Corporate Contracts database update, together with the additional commentary.

13 AOB

No other business was discussed.

14 DATE OF THE NEXT MEETING

The date of the next meeting was confirmed as 4th September 2018.

The meeting ended at 10.10 pm

Chairman