

SHEFFIELD CITY COUNCIL

Overview and Scrutiny Management Committee

Meeting held 10 November 2016

PRESENT: Councillors Tony Damms (Chair), Ian Auckland, Steve Ayriss, John Booker, Douglas Johnson, George Lindars-Hammond, Pat Midgley, Josie Paszek and Ian Saunders

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1. APOLOGIES FOR ABSENCE

1.1 Apologies for absence were received from Councillors Helen Mirfin-Boukouris and Steve Wilson.

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 28th July, 2016, were approved as a correct record.

5. PUBLIC QUESTIONS AND PETITIONS

5.1 Petitions

5.1.1 Annie O’Gara submitted a petition containing 164 signatures, expressing concern at the delays of the City Council in adopting an Ethical Procurement Policy, despite promising to do so two years ago. Ms. O’Gara stated that the petition acted as a reminder that the Council had promised, approximately two years ago, to adopt such a policy. She also referred to the fact that there had been both frustration and disappointment on the part of those groups and organisations working with the Council in connection with the adoption of the policy, both in terms of the delays and the lack of engagement, information-sharing and feedback.

5.1.2 The Chair stated that a written response to the petition, which would be incorporated into the responses to the written questions raised at the meeting, would be forwarded to Ms. O’Gara.

5.2 Questions

5.2.1 The following questions were received from members of the public:-

(a) Annie O’Gara, on behalf of the Sheffield Stop G4S and Palestine Solidarity Campaign, stated that whilst she welcomed the aspirations of the City Council, as articulated in the report now submitted, in particular the desire to drive ethical behaviour throughout the supply chain, she did not agree with the bold claim that the proposals before the Committee “achieve” this aim. The Group did not believe that the proposals “hold the supplier to account for unethical behaviour”, and whilst referring to the section in the report headed “Context”, which included the claim “We are proposing inclusion of these terms into contract to ensure suppliers are clear of the Council’s expectations in regard to ethical standards and to ensure Sheffield City Council exercise our “discretion”, as articulated in EU Public Procurement Regulations 2015”, she made the following observations:-

- Sheffield City Council claims here to be using discretion, but the Group can see no exercising of the rights of discretionary exclusion as specified in the Public Procurement Regulations 2015 (Regulation 57), which says contracting authorities can exclude companies “where the contracting authority can demonstrate, by any appropriate means, that the economic operator is guilty of grave professional misconduct which renders its integrity questionable.”
- There is no definition of the City Council’s view of what constitutes “grave professional misconduct” within the documentation, other than legal convictions.
- The Council is not using “any means appropriate” to demonstrate grave professional misconduct as far as we can see, but is confining itself to the criterion of conviction within the UK Courts or International Courts.
- Such a position constitutes mandatory exclusion within the terms of the Public Procurement Regulations 2015, not discretionary exclusion.
- The Council is waiving its right to exclude companies whose “integrity is questionable”. A company’s integrity may be questionable at a level below that of criminal conviction. Contracting authorities are entitled by the Regulations to assess integrity by any means appropriate, but Sheffield is not doing this.

Ms. O’Gara questioned (i) why this right had been waived and whether the Committee was supportive of the Council waiving the right of discretionary exclusion as specified in the Public Procurement Regulations 2015 and (ii) what advice, if any, had the Council taken from outside lawyers, on the basis that legal opinion varied and that the in-house team may, for various reasons, adopt a risk averse approach which was limiting Sheffield’s stated aspirations to “get ahead” and be a “fairest city” in the land.

(b) Val Johnson stated that the Council was not triggering its discretionary power to deselect “where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under the prior public contract, a prior contract with a contracting entity, or a prior contract which led to early termination of that prior contract, damages or other comparable sanctions”.

Ms. Johnson questioned why this right had been waived, and whether the Committee was satisfied with this waiving of such a right, which was clearly specified within the regulations.

(c) Hilary Smith raised an issue relating to the Supplier Code of Conduct, indicating that such Code of Conduct was rightly identified by the Sheffield as a document of crucial importance in achieving what the Council wanted to achieve. Although it had been revised since July 2016, it remained a largely cut-and-paste version of the Department for Environment, Food and Rural Affairs (DEFRA) Code of Conduct. Ms. Smith added that anyone reading the DEFRA document however, would see that key principles within its original had been deleted by the Council, for instance:-

- Under “Working hours are not excessive”, DEFRA went further than the City Council, by making reference to a 48-hour week, the fact that overtime should be voluntary and that there should be limits on this. The City Council has deleted all this.
- DEFRA’s policy also contains a principle which is worded as follows – “No inhumane treatment is allowed”. DEFRA also includes clauses on misconduct which “prohibits physical abuse or coercion, the threat of physical abuse, sexual or other harassment or verbal abuse, or other forms of intimidation.” The Council has deleted this principle.

Ms. Smith questioned why these sections had been left out, and whether the Committee was content that these principles, important to DEFRA, were irrelevant to Sheffield.

(d) Catherine Gaze referred to Principle 4 of the Supplier Code of Conduct, which stated that Sheffield will “commit to the delivery of excellent working conditions, high ethical standards, positive health and wellbeing and training, development and reward opportunities for all.” Ms Gaze stated that it was noteworthy that the phrase “high ethical standards” has not been expanded or exemplified in the bullet points which follow, whilst other phrases in the list have been expanded, and that this omission had been pointed out some months ago to the author who seemed to acknowledge its significance.

Ms. Gaze questioned why this crucial phrase was not being treated in the same way as other elements of this Principle.

(e) John Grayson, on behalf of the South Yorkshire Migration Action Group (SYMAG) referred to the Supplier Code of Conduct, indicating that as this Code stood in the July, 2016 version, it was entirely employee-facing, in that there were no references to the experience of service users, customers or citizens of Sheffield, and was all about the supplier’s workforce. Whilst there were now some references to citizens’ experience of services, following this issue being pointed out to Councillor Ben Curran (Cabinet Member for Finance and Resources), and which were welcomed, the references were very brief, comprising two short sentences only, relating to

privacy and dignity and respect.

Mr. Grayson questioned whether the Committee was satisfied that these elements had been accorded the status they merited. In addition, Mr. Grayson stated that whilst the Council had a proud ethical boast which it could make regarding its trail-blazing action as the City of Sanctuary, it was regrettable that no mention was made of this position in the Policy, spelling out to suppliers that Sheffield sets high ethical standards for its refugees and asylum seeker communities, particularly in respect of the services they received. He questioned why there had been no such reference to this established ethical position.

- (f) Flis Callow referred to Appendix 3 – Ethical Evaluation, indicating that only two of the seven paragraphs in the Appendix relate to ethical matters, the table, which specified ratings, had no reference to ethical issues, and the heading was, in her opinion, misleading. Ms. Callow stated that she welcomed the expansion of criteria to the apply to the supplier’s parent company group of subsidiaries but added, however, that the limited nature of the test being applied to companies undercut the value of this welcome move, and the wording in paragraph 2 had changed since July, 2016, resulting in a degree of ambiguity. She stated that she read this Appendix to mean that companies must self-declare any convictions in International Courts, as well as in UK Courts, and that the Council was still using exclusively, the test of criminal conviction to deselect. She stated that she also understood that the Council was intending to use evidence below that of criminal conviction to deselect, however reputable the source may be.

Ms. Callow questioned whether the Committee read this section as the Group had, and was the Committee happy with this limited and conservative application of the Regulations.

- 5.3 In response, Councillor Ben Curran first expressed his thanks and appreciation with regard to the input of Sheffield Stop G4S and Palestine Solidarity Campaign, together with other individuals, groups and organisations who had been involved in the formulation of the policy. He stated that, despite the timescales in terms of drafting the policy, he considered the work involved to be ground-breaking, and that the Council was well ahead of other local authorities in terms of this area of work. In terms of the questions regarding the Council’s discretionary powers, Councillor Curran stated that the Council had to work within specific legal parameters, and any action outside such parameters could result in potential legal costs for the Council. He stressed that the right of discretion had not been waived, but applied as far as possible within legal frameworks. He stated that whilst the comments and views of the various groups and organisations consulted on the draft policy had been taken into account, it may not be that obvious, or referenced in the latest draft. He did state, however, that there would be no problem making reference to Sheffield as the City of Sanctuary in the document. He stated that as this was a new and ground-breaking piece of work for the Council, it had to use some form of a template, and it had been considered that DEFRA’s Code of Conduct would be a useful starting point, as this was new territory.

- 5.4 David Hollis, Assistant Director of Legal and Governance, responded to some of the legal issues regarding the questions raised, indicating that his background was in procurement law, hence his involvement in the drafting of the policy. Mr. Hollis stated that he did not consider the policy to be “risk averse”, stressing that the Council needed to work within a strict legal framework, being mindful of the potential for legal challenge. Whilst the Council had been in contact with external lawyers and barristers generally about the issues, in connection with the drafting of the policy, which had provided a sound legal viewpoint, it was accepted that the Council had not taken an external viewpoint on some of the specific issues involved. He stressed, however, that the Council was not averse to seeking external views on any issues it considered relevant, and was satisfied that the legal viewpoint taken was correct. The Council would be happy to consider making reference to the test of grave misconduct, and look at putting misconduct beyond criminal conviction, and to include relevant findings of civil liberty. In response to a further question by Annie O’Gara, regarding the Council’s discretion to exclude companies, Mr. Hollis stated that whilst the Council had a discretion to exclude companies, there was no requirement on the Council to specify how it would use that discretion. Whilst that was an option, there was a danger that not all circumstances would be covered, and that might limit the use of the discretion. It was therefore better to not limit the Council’s options by defining beyond the legal test.
- 5.5 Marianne Betts, Interim Director of Finance and Commercial Services, stated that the document was still in its policy development stage, and that the Council was happy to take the views and comments of interested parties to further shape the policy. It was the officers’ view that strong statements needed to be made to suppliers, as part of the procurement process, and if it was not deemed that the current document emphasised this point, consideration would be given to reviewing it. Ms. Betts reiterated the comments made in connection with using DEFRA’s Code of Conduct as a starting point as the Council wanted to base its policy on that of an organisation with credibility. She stated that the aim of the wording of the document was to clearly set out the Council’s position to suppliers and commissioners, and that the wording with regard to discretion would provide the Council with the option of giving consideration to a company at any specific time on the basis that companies’ behaviour could change over time.

6. HOW SHEFFIELD CITY COUNCIL WANTS TO DO BUSINESS - ETHICAL PROCUREMENT

- 6.1 The Committee considered a report of the Interim Executive Director, Resources, on a review of the Council’s commissioning cycle, specifically with regard to its ability to address tax compliance, ethical procurement, grave misconduct, living wage, blacklisting, local economic impact and social value. The report set out a series of proposed revisions to protocols, process and tools associated with the topics, and running across the City Council and its supply chain, and focused on three specific key tools, social value tests, ethical code of conduct for suppliers and revised tender processes.
- 6.2 The report was supported by a presentation by Marianne Betts, Interim Director of Finance and Commercial Services, which focused on ethical procurement, one part

of a wider piece of work. Ms. Betts reported on what the Council was trying to achieve with ethical procurement, which would include driving the Council's view of ethical behaviour as a standard throughout the supply chain and enabling greater return in social value in Sheffield. In terms of making the Council effective, it was the aim to increase City Council spend in the local economy/market and stimulate local business growth and in terms of being efficient, the Council aimed to be cohesive in its messaging/engagement with suppliers/market, and have processes that drove the right outcome, rather than focused primarily on compliance. Ms. Betts referred to the various draft proposals and revisions regarding how the Council held suppliers to account.

6.3 Members of the Committee raised questions and the following responses were provided:-

- Whilst other Codes of Conduct contain statements of intent, which are rarely acted on, the Council wanted to ensure this Code of Conduct, specifically its ethical standards, results in a positive change in terms of how the Council conducted its business.
- It was accepted that information-sharing with interested parties had not been as effective as it should have been and the Council was willing to engage further with such parties, to provide them with a further opportunity to contribute to the wording of the document.
- It was the intention that the document would be reviewed annually, as a minimum, or earlier if there were any major changes to warrant this.
- In terms of sharing the document with, and influencing, partners/other organisations, the Council wanted to get it right and prove the concept, though officers were shortly due to meet representatives from NHS England and the Chair of the Strategic Procurement Group in Yorkshire and Humber, with both organisations being keen to view the document.
- Whilst it was appreciated that there may be a lack of clarity to the document, it had always been the intention to take a slightly different approach, and not simply prepare a policy statement. The document was not holistic, but made reference to a number of key aspects of a wider programme of work. There were a lot of other background documents, such as contract standing orders which, all added together, would form a more holistic approach.
- Officers were very aware of the Council's budget position, and value for money was fundamental, and would always be part of the dynamic. Regarding the supply chain, arrangements applied to sub-contractors, and issues such as zero hours were currently built in.
- If the Council was aware that any of its contractors were not paying the minimum wage, it would investigate this.
- One of the proposals in terms of the process involved the re-launch of Supply2Sheffield, which would allow a two-way conversation, and enable

ongoing dialogue with suppliers, and with local companies in particular.

- Whilst officers would continue to look at how the Council commissioned and packaged its contracts, this element of the procurement process was not included in this specific piece of work.
- In terms of the packaging of contracts, and any likely adverse effects on small and medium-sized enterprises (SMEs), the increase in the contract threshold was removing the requirement of companies to tender up to that threshold, thereby removing the administrative burden. It was not believed that there would be any risks to SMEs and, indeed, was likely to result in an increase in local SMEs contracting for work.
- The living wage definition was based on that of the Living Wage Foundation.
- Suppliers were asked to provide the Council with any details in terms of any act of gross misconduct they had undertaken, as part of the tendering process and, in those cases where this was declared, the Council would make further investigations, as appropriate. The Council would not undertake random checks on tenderers to validate the self-declaration on the basis that this would be viewed as unfair, but if issues subsequently came to light with contractors, this could amount to a breach.
- Although the law was unlikely to change post-Brexit, if there were any changes, officers would follow due process and seek appropriate approvals.

6.4 RESOLVED: That the Committee:-

- (a) notes the contents of the report now submitted, together with the information reported as part of the presentation, and the responses to the questions raised; and
- (b) requests :-
 - (i) that the comments and views now made be forwarded to the Interim Executive Director, 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;
 - (ii) that every effort possible is made to ensure that information is shared with all interested groups and organisations in a timely and accessible manner; and
 - (iii) the Interim Director of Finance and Commercial Services to (A) look at drafting a realistic timetable in terms of when the policies could become operative and (B) investigate further, the wording in terms of the Council’s discretionary powers, specifically with the aim of maximising the Council’s ability to use its discretion where appropriate.

7. REVENUE AND CAPITAL BUDGET MONITORING 2016/17 - AS AT 31ST AUGUST, 2016 (MONTH 5)

7.1 The Interim Executive Director, Resources, submitted a report providing the Month 5 Monitoring Statement on the City Council's Revenue Budget and Capital Programme for 2016/17.

7.2 Mike Thomas, Acting Assistant Director, Strategic Finance, introduced the report which contained, as appendices, an overview of the financial position on each of the Council's Portfolios, the Public Health grant spend across the Council and the Housing Revenue Account budget. The report contained details on the movements in the budget since Month 3, highlighting monthly trends in terms of Months 3 to 6, including levels of variance and risks.

7.3 Mr. Thomas circulated a report, and gave a presentation on the Month 6 Monitoring Statement on the City Council's Revenue Budget and Capital Programme as at 30th September, 2016, which had become available following the publishing of the agenda papers for this meeting. He reported on the forecast revenue overspend trends for Months 3, 5 and 6 in 2016/17, compared with the same months in 2015/16, and referred to the current position in terms of forecast overspend, indicating that, whilst spending control measures were being considered to balance the budget for 2016/17, overspend still remained a real possibility. Councillor Ben Curran added that pressures in terms of social care were proving very challenging for the Council, as had been the case for a number of years.

7.4 Members of the Committee raised questions and the following responses were provided:-

- It was the understanding of officers, who had worked with partners in the Clinical Commissioning Group, that the Group would be able to provide £5m recurrently, but had only provided £3.5m in 2016/17 which had contributed towards the forecast overspend in the Communities Portfolio. In order to mitigate the adverse the effects of such budget deficits, it had been identified that there was a need to pool more of the Council's budgets with NHS England, with the aim of achieving mutual savings.
- Further to the recent budget cuts, and resultant reduction in staffing levels and current vacancy control measures at the Council, it was hoped that customers' expectations could be managed as best as possible.
- With regard to forward planning, there was a two-year plan with regard to Children, Young People and Families and work in Adult Care on looking at how the Council could develop more local capacity. With this, and other intervention measures, it was hoped that there would be some early improvements, followed by further improvements in 2017/18.

7.5 RESOLVED: That the Committee:-

- (a) notes the contents of the report now submitted, including the report on the

Month 6 Monitoring Statement now circulated, the information reported as part of the presentation and the responses to the questions raised; and

- (b) thanks Mike Thomas for attending the meeting and responding to the questions raised.

8. DRAFT WORK PROGRAMME 2016/17

- 8.1 RESOLVED: That the draft Work Programme for 2016/17, set out in the report of the Policy and Improvement Officer now submitted, be approved.

9. ISSUES TO RAISE FROM OTHER SCRUTINY COMMITTEES

- 9.1 It was noted that there were no issues raised by Chairs of the Scrutiny Committees.

10. PRESENTATION TOPICS FOR THE JANUARY 2017 COUNCIL MEETING

- 10.1 The Chair reported on the procedure for selecting topics to be the subject of presentations at future Scrutiny Council meetings. He stated that it had been suggested that this Committee would be the most suitable body to select such topics, and that Members were being asked to select a topic, or topics, for the next Scrutiny Council meeting to be held on 4th January, 2017.

- 10.2 RESOLVED: That approval be given for the general theme for the topic to be on policing, and to be in three parts, as follows:-

- (a) the new Chief Constable of South Yorkshire be invited to outline his plans and approach for policing in South Yorkshire;
- (b) the Police and Crime Commissioner for South Yorkshire (Alan Billings) to report on policing in South Yorkshire, from his perspective; and
- (c) Maxine Stavrianakos (Head of Neighbourhood Intervention and Tenant Support) and Inspector Ian Proffitt (South Yorkshire Police) to talk about hate crime.

11. DATE OF NEXT MEETING

- 11.1 It was noted that the next meeting of the Committee would be held on Thursday, 1st December, 2016, at 10.00 a.m., in the Town Hall.