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# Overview and Scrutiny

## Managing Contracts

## Public Accounts Select Committee

March 2013

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### Membership of the Public Accounts Select Committee 2013:

**Councillor Alexander Feakes (Chair)**

**Councillor Jim Mallory (Vice-Chair)**

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**Councillor Vicky Foxcroft**

**Councillor Helen Gibson**

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## Chair's Introduction

*To be inserted.*

Councillor Alexander Feakes  
Chair of the Public Accounts Select Committee

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# 1. Executive summary

- 1.1. Organisations in the public sector are facing increasing pressures to reduce costs and improve performance. Within local government, new regulatory requirements as well as increases in contract volumes and complexity have resulted in an increasing recognition of the importance and benefits of effective contract management. This review came about as members were interested in how contracts in Lewisham were being managed and monitored; how contract requirements were being enforced; and what the processes were around bringing contracts to an end.
- 1.2. The first part of the review highlights what is generally received as best practice in contract management. The first step is to ensure that there is good procurement with contract management planned for from the start of the procurement process. Service delivery will then monitor the contracted service to make sure it is delivered in accordance with the agreed performance and quality levels set out in the contract and will use methods such as Key Performance Indicators and customer feedback. Relationship management is also important, as there is effort needed to make the relationship work and to maintain and develop an open and constructive relationship with the supplier. This relies on mutual trust and understanding, openness and excellent communications as well as a joint approach to managing delivery. The contract administration which oversees the mechanics of the relationship between the customer and provider is also a key component of contract management.
- 1.3. Within Lewisham contract management guidance is set out in a Practice Note entitled 'Managing the contract' and highlights key approaches and mechanisms that should be used. Lewisham also has a Procurement Strategy, which sets out how the Council will approach and develop its procurement abilities, including contract management elements. Lewisham generally looks for a minimum of 3 year contracts in order to ensure there is enough stability in a contract for both the Council and the supplier.
- 1.4. Lewisham uses key performance indicators to identify what are the crucial aspects of performance that Lewisham wants and can measure. Lewisham also uses contracts that contain what are known as split elements, where overhead payments will generally be met but profits will be based on performance. This is used in conjunction with a number of other monitoring mechanisms.
- 1.5. In terms of relationship management, the relationship potential is assessed by conducting interviews with potential contractors. There has been development and progression in the knowledge and experience in managing contracts as more contract management has taken place.
- 1.6. A Council contract is generally regarded as a good one to have for suppliers, partly this is due to contract administration by the Council as they pay regularly, on time and are quite safe. Contracts are also reviewed in order to learn lessons about how they are managed.
- 1.7. Case studies examining the Parks Management Contract with Glendale and the Residential and Nursing Care framework contracts highlight how contract management in Lewisham works in practice.

## 2. Recommendations

2.1. The Committee would like to make the following recommendations:

- R1. Officers who manage contracts should receive training on and support to achieve effective management of contract and professional individual relationships between client and contractor and their staff.
- R2. Where practicable, there should be continuity of contact on the officer side throughout the contract, and across periods of contractor changeover. Where changes in personnel take place, suitable handover and overlap procedures should be used to ensure continuity of relationship.
- R3. Lewisham should seek to increase the appropriate transfer of risk to the contractor in its contracts, particularly for service and customer failures. Contracts should be flexible enough to allow changes in the risk profile during its life as confidence in the contractor and the client-contractor relationship increases, with allowance for commensurate changes in reward for the contractor.
- R4. The use of model contracts, case studies and other methods of transparently explaining the risk transfers in contracts to potential contractors should be used so that the contractors are able to price the risk appropriately and reasonably in the bidding processes. The council should feel sufficiently confident in its contractor relationship management experience to push contractors to not over price the risks in contracting with Lewisham.
- R5. Lewisham should explore, where appropriate and on a case-by-case basis, passing the responsibility of handling the customer interface and dealing with the public to the contractor.
- R6. Wherever possible, remedies for contract failure on customer facing contracts should demand restitution as well financial loss. Likewise, outstanding customer service should be rewarded in the contracting framework
- R7. Cross-service unit 'contract champions' - those officers with substantial positive experience of successfully managing contracts and contractor-client relationships - should be encouraged to spread good practice, advise on contracting processes and drafts, and identify potential efficiencies or service improvements that could be gained from the contracting process.
- R8. There should be increased use of incentives in contracts, where profit for the contractor is generated only after the contractor has achieved specified performance levels.
- R9. The tendering interest register that is being created should advertise upcoming tendering opportunities available with the council and allow companies to be able to register their interest in fulfilling them.
- R10. Lewisham's Procurement Strategy should be updated to reflect the changed and constrained circumstances of the Council.
- R11. Due to the obligation to the public by contractors who are delivering public services and spending public funds, contracts between the Council and their contractors should be as open and transparent as possible. This should include open contract specification documents, the understanding that contractors have a responsibility to

be accountable to public scrutiny and the expectation that contractors should address public scrutiny and queries in a meaningful way.

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### **3. Purpose and structure of review**

- 3.1. At the meeting of the Public Accounts Select Committee on 16<sup>th</sup> April 2012 the Committee resolved to undertake an in-depth review looking at how contracts are managed with Lewisham. At its meeting on 14<sup>th</sup> June 2012 the Committee approved the scoping report for the review.
- 3.2. Members were interested in how contracts were being monitored; how contract requirements were being enforced; and what the processes were around bringing contracts to an end. Contract management is becoming increasingly important as more council services are outsourced. Contracts for providing critical services for the public and council staff need to provide quality services and achieve value for money. Proactive contract management is needed to ensure that service expectations are met and that, if possible, further savings or social benefits are realised. Services face different challenges in managing contracts and the large number and diverse nature of council contracts means that different approaches have to be taken depending on the circumstances.
- 3.3. The Committee agreed that, throughout the review, the Committee should consider the following key questions:
  - How contracts are monitored
  - How contract requirements are enforced
  - How responsive is the contractor to complaints of public/staff
  - What procedures are in place for ending the contract
- 3.4. The evidence sessions on 10 October 2012 and 10 January 2013 provided information on the general approach taken by the council to managing contracts and how corporate oversight of the various contract management activities taking place is achieved. This was coupled with information on best practice in contract management and examples of previous scrutiny carried out in Lewisham and across the country into contract management. Additionally evidence was provided on contract case studies.
- 3.5. The Committee concluded its review and agreed its recommendations on Tuesday 26 March 2013.

## 4. What is good contract management? – Previous scrutiny and best practice

### Basics of contract management

- 4.1. Within local government a number of services that were historically delivered by the Council itself are now delivered by outside organisations. Previously a local Council would have directly employed officers to deliver services, along with the associated costs of management of that service and equipment to supply it, however now services may be 'contracted out' to other organisations to deliver. Contracts have to be drawn up to specify what it is organisations need to do and when, and these contracts need to be monitored and managed to ensure that they are being carried out.
- 4.2. Organisations in the public sector are facing increasing pressures to reduce costs and improve performance. Within local government, new regulatory requirements as well as increases in contract volumes and complexity have resulted in an increasing recognition of the importance and benefits of effective contract management.
- 4.3. Contract management is the active monitoring and control of all aspects of the relationship between the supplier and the Council. It is the process of managing and administering a contract from the time it has been agreed and signed through to the end of the service period, what is often referred to as the 'operational period'. The main aim is to make sure the service specified in the contract is delivered in a cost effective and reliable way, at the agreed price and standard within the terms and conditions of contract.
- 4.4. Potential benefits of contract management can include effectively managing the risk and the potential additional value that can be obtained from effective contract management.<sup>1</sup> The level of resources devoted to contract management and the type of activities undertaken should match the potential benefits they may deliver.
- 4.5. Contract management is successful if the arrangements for service delivery continue to work well for the Council and the contractor, and the expected business benefits and value for money are being realised.

### Good procurement can lead to good contracts

- 4.6. Procurement is the process of acquiring goods, works and services, covering both acquisition from third parties and from in-house providers. Procurement can range from buying in an entire service, say through the private finance initiative; to purchasing key components, such as large capital assets; or buying smaller items like office equipment. Good practice guides highlight that the procurement phase and the contract management phase should be seen as a continuous process with contract management planned for from the start of the procurement process.<sup>2</sup> The foundations for good contract management are laid in the stages before the contract awarded, with successful contract management relying upon careful, comprehensive and thorough implementation of what was agreed during the procurement of the contract.<sup>3</sup>

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<sup>1</sup> Page 17, Good Practice Management Framework; National Audit Office, 2008.

<sup>2</sup> Page 5, Good Practice Management Framework; National Audit Office, 2008.

<sup>3</sup> Page 4, Contract Management Guide; CIPS, October 2007.

- 4.7. Steps in the procurement process, such as preparing the business case and securing management approval, are vital so there is buy-in from the start. The outcomes of the contract, the critical success factors for the contract and possible alternatives should be established, as well as any risks identified and consideration given as to whether awarding the contract could have a knock on effect to other areas of the Council. Building in feedback from the suppliers into the contract at the procurement stage increases the likelihood of problems and issues being promptly identified and resolved.
- 4.8. As part of the procurement process there are a number of things that should be developed and put in place, including:
- Assembling the project team
  - Developing contract strategy
  - Risk assessment
  - Developing contract exit strategy
  - Developing a contract management plan
  - Drafting specifications and requirements
  - Establishing the form of contract
  - Evaluating tenders documents
  - Negotiation
  - Awarding the contract<sup>4</sup>
- 4.9. Previous scrutiny by Buckinghamshire County Council Procurement Task and Finish Group in April 2011 highlighted that, as the Council continues to move towards an enhanced role as a commissioner of services rather than being a direct provider, procurement activity has an increasingly important role to play.
- 4.10. Their recommendations were focused on the issues of getting the strategy for procurement right, strengthening democratic accountability and transparency, improving the contract letting process and ensuring that there is robust contract management.<sup>5</sup>
- 4.11. As well as good procurement, three other areas were identified throughout the national and local best practice guidance as being vital to ensuring that the contract is managed effectively. These areas are the management of service delivery, the management of the relationship with the supplier and contract administration.

#### Service delivery

- 4.12. The service delivery element of contract management monitors the contracted service to make sure it is delivered in accordance with the agreed performance and quality levels set out in the contract. These performance and quality levels of service should have been established during the procurement stage.
- 4.13. Measuring the quality as well as quantity of the service being delivered is important and should be assessed. This means creating and using quality measurements or metrics that allow the quality of a service to be measured. The Council should be looking for value for money from its contracts and this is achieved by balancing quality of the service being delivered against the cost of it.
- 4.14. A useful way of finding out if the Council is effectively measuring quality and quantity as well as value for money is through benchmarking, which is making like for like

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<sup>4</sup> Pages 4-25. Contract Management Guide; CIPS, October 2007.

<sup>5</sup> Page 67, Procurement Task & Finish Group, Buckinghamshire County Council; April 2011

comparisons between organisations. Price comparisons offer a quick and effective way to gauge whether value for money is being achieved. Comparing the value for money with what other organisations are getting and comparing the way contracts are managed with the way other organisations manage theirs can also lead to improved service delivery or at least knowledge of how one organisation compares with others.

- 4.15. Managing risks is also important to service delivery. Risks are the uncertainty of outcome, whether positive opportunity or negative threat. In contract management, managing risk means identifying and controlling factors that may have an impact on fulfilment of the contract. Risks can relate to many aspects of the contract, including fluctuation in demand, lack of provider capacity, change in requirements and transfer of skilled staff. Risks must be identified and managed and should be placed with the party best placed to manage them. This could be with the provider, although the provider will want compensation for this. Risks placed with providers are referred to as transferred risks.
- 4.16. Another major part of contract management is considering service continuity, or what will happen if service fails or is interrupted. Those parts of a service that are identified as being critical should have a business continuity plan in place should anything go wrong. The risks associated with service interruption or failure should be identified, recorded, assigned to an individual and managed using good risk management practice.

#### Relationship management

- 4.17. As well as the more formal aspects of the contract, the relationship between the Council and the supplier must also be managed. It is in the Council's interest to make the relationship work and maintaining and developing an open and constructive relationship with the supplier is key to managing the contract well. Three key factors for success are:
- Mutual trust and understanding
  - Openness and excellent communications
  - A joint approach to managing delivery
- 4.18. A first step, again related to the procurement stage, is to put the right people in place to manage the contract. The individual or team responsible for contract management must have enough knowledge (business, contractual and technical) to understand both sides of the arrangement. If possible key contract management staff should be involved in the development of the contract. The skills and experience required to manage the relationship may be different from those required to manage service delivery, so it can important to consider whether training existing staff or recruiting an experienced professional contract manager would work best.
- 4.19. There will always be some tensions between the different perspectives of Council and the provider. Therefore culture, attitude and behaviour can be as important as the terms of the contract. Good contract management is about resolving or easing these tensions, both sides' objectives must be shared and understood and the contract arrangement focussed on achieving them. Having the right attitudes can help create the right behaviours and adversarial approaches will increase the distance between the Council and the provider.
- 4.20. Good communications allow problems to be identified and resolved early, and builds an atmosphere of mutual trust and appreciation of each other's priorities. The routes

through which information will flow during the contract should be defined and ideally tested before the contract commences.

- 4.21. There are three levels of communication within a contractual arrangement:
- Strategic (senior management/board of directors)
  - Business (contract managers on both sides)
  - Operational (technical and frontline staff)
- 4.22. Communications between the Council and the client should be peer to peer so they are discussed at the relevant level. E.g. operational problems are resolved by staff at the operational level, not discussed by business managers.
- 4.23. However good the relationship between customer and provider and however stable the services being delivered, problems may arise and dealing with these promptly is also important. Problem management procedures should be in place, which should include escalation procedures that can be used when needed. The contract should define the procedures for undertaking corrective action if, for example, target performance levels are not being achieved. If a dispute cannot be managed at the level at which it arises it will be necessary to escalate to a higher level of authority. This escalation process also needs to be managed.

#### Contract administration (including improvements)

- 4.24. Contract administration is concerned with the mechanics of the relationship between the customer and provider. Its importance should not be underestimated, as clear administrative procedures can ensure that all parties in the contract understand who does what, when and how. Contract administration is an overhead that the Council will have to find resources for, and assigning adequate resources to manage the contract is important. The cost required to manage a major contract has been estimated at around 2% of the contract value.
- 4.25. Any contract is likely to evolve and administration should include keeping documentation up to date to accurately reflect these changes and what is happening on the ground. Procedures should be put in place to keep contract documentation up to date and ensure that all documents relating to the contract are consistent.
- 4.26. Any changes to services, procedures or contracts may have an effect on service delivery, performance, costs and on whether the contract represents value for money. The specification and administration of change control is an important area of contract administration. Therefore structures should be in place with representatives from both Council and provider management for reviewing and authorising change requests. Any changes should be in line with the original contract. It is important that additional demands on the service provider should be carefully controlled, so that only changes that can be justified in business terms are added to the contract.
- 4.27. Requirements for service performance reports and management information should be built into the contract and confirmed at the procurement stage in order to ensure that management understands what is happening. Where possible, the provider's own management information and performance measurement should be used, so that the Council does not have to develop its own measures.
- 4.28. Public sector managers are under constant pressure to improve. In contract management this translates into a need for continuous improvement in the performance or value for money of providers' service and can be built into the contract, for example through a price decreasing year on year. Another way of

improving services is through incentives, which can motivate the provider to improve by offering increased profit, or some other desirable benefit. Types of provider incentive include guaranteed levels of capacity, revenue sharing and commercial opportunities. Incentives to improve are normally built into contract terms and it is important that incentives are balanced.

- 4.29. They should not emphasise one part of the performance at the expense of other, perhaps less visible, aspects. Financial incentives should offer rewards to both parties that fairly reflect any investment that may have to be made to achieve the saving or improvement. The aim should be to seek to bring down costs, not profit margins and to allow a supplier a reasonable return to cover such items as training and development. It is important that continuous improvement is seen as being desirable and beneficial to both parties rather than as a means to drive down prices.

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## 5. How does Lewisham do contract management?

### Basics of contract management

- 5.1. Lewisham Council has a Practice Note entitled 'Managing the contract' which sets out how a contract should be managed. The Practice Note highlights that contract management is the principle that encompasses all elements of procurement, can be seen as a cyclical process and requires three basic elements:
- The setting of clear objectives
  - A strategy to reach the stated objectives
  - A method of monitoring progress, so that adjustments can be made deliberately and quickly should momentum be lost.
- 5.2. Lewisham's contract management is the active monitoring and control of all aspects of the relationship between the supplier and the Council. The primary aim is to ensure the delivery of a cost effective and reliable service at the agreed price and standard with the terms and conditions of contract, and financial propriety. The Practice Note covers the following areas of contract management:
- Operating the contract
  - Contract monitoring and engagement
  - Contract control
  - Contract variations
  - Contract extensions and renewals
  - Re-tendering
  - Contract claims
  - Reporting and record keeping
  - Satisfactory completion
- 5.3. Evidence supplied by Lewisham officers highlighted that lessons have been learnt from the management of contracts over the years. Officers explained that there has been a shift in focus from reducing costs under Compulsory Competitive Tendering (which came in during the 1980s) towards a balance between cost and performance, where if the quality threshold has not been met then officers will not look at the price of the contract.

### Good procurement can lead to good contracts

- 5.4. Lewisham has a procurement strategy, which was developed in 2007. Lewisham produced its first Procurement Strategy in 2000, which was then updated in 2003 and then reviewed by the Audit Commission in 2004/05. The strategy defines procurement as the process of acquiring goods, works and services, covering both acquisition from third parties and from in-house providers. It points out that all Council services involve procurement and can range from buying in an entire service, say through the private finance initiative to purchasing key components, such as large capital assets, or buying smaller inputs like office equipment. The strategy has six main aims that are set out:
- to ensure that procurement policies and procedures reflects our vision, values and objectives
  - for procurement to be well planned and managed, and to continuously improve
  - to work in collaboration with other public sector bodies and the London Centre of Excellence
  - to develop a supply chain management function within the corporate procurement team

- engage with all elements of the business community including small to medium enterprises, black and minority ethnic business owners, social enterprises and the voluntary sector to provide Lewisham with a mixed economy of service provision
  - for efficiency savings and quality to be clearly demonstrated by contracted services
- 5.5. The strategy goes into more detail around the 5 key objectives that the Council considers necessary for the delivery of the procurement strategy. The cultural shift objective includes ensuring that procurement decisions and procurement principles link up with the borough's overarching community strategy. Pursuing value for money, equality and sustainability in procurement is also important.
  - 5.6. Providing leadership and building capacity is another objective, with leadership identified as being with both politicians (through the Mayor and Overview and Scrutiny) as well as with officers (through the corporate management role and the management function). Ensuring that people have procurement skills and training can also build capacity.
  - 5.7. Pursuing partnership and collaboration is also an important part of the procurement strategy. This involves taking a partnership approach to strategic procurement and exploring different forms of partnership. Improving project and risk management skills and knowledge within the Council will also help collaboration within the Council and with other organisations.
  - 5.8. Doing business electronically by using more e-procurement is another key objective, while the final objective is stimulating markets and achieving community benefits. This includes making it easier for businesses to know how they can sell services and products to the Council by producing a 'selling to the council' guide, marketing the council to suppliers and promoting a diverse and competitive market. As part of the strategy a local compact with the voluntary and community sector has been developed as well as a small business friendly concordat. The Council seeks to use buying power to stimulate innovation and achieve community benefits.
  - 5.9. To support the implementation of the procurement strategy, there is a 'Manager's guide to procurement', which is a desktop guide to undertaking a procurement exercise and includes a section on contract management. Lewisham has an approved list of contractors that have been through an application process and met the Council's standards of suitability and competence. Contracts are awarded through the approved or select list system, or by public advertisement.
  - 5.10. Andy Murray, Procurement Strategy Manager highlighted in evidence sessions the need to be very clear, transparent and fair during the public procurement process. Lewisham generally looks for a minimum of 3 year contracts in order to ensure there is enough stability in a contract for both the Council and the supplier and to ensure value for money.
  - 5.11. Through the use of procurement, Lewisham has enabled 54% of contractors to be local or small to medium enterprises, though this does not translate to 54% of the value of council contracts, as large single contracts tend to go to larger firms. It is possible to attract smaller, local contractors by using the approved list of contractors and by developing frameworks. Andy Murray cited the example of the catering contract which involves 16 local firms on a framework agreement which will supply them with regular work. Additionally, smaller contracts (known as category C contracts) require that there is at least one quote from a local company. Contracts

are listed on a register and all spend over £250 is published. A tendering interest register is also being created where current and upcoming tendering opportunities will be advertised and companies able to register their interest in fulfilling them.

- 5.12. An incumbent bidder can have an advantage when retendering a contract and long relationships (such as with Glendale) can occur. However if a contractor performs badly it will be remembered and taken into account.
- 5.13. A part of the procurement process is to assess the relationship potential by conducting interviews with people. While there are bidding teams who specialise in sales sent by contractors, officers also try to talk to those who will be delivering the contract itself to see if they will be a good fit. With the Council's Residential and Nursing Care contract, officers will assess if a home will work as a provider, which is done by examining the size and capacity of the team as well as the organisational resilience of the company.
- 5.14. The procurement of Parks Management Contract with Glendale has attracted national and international attention, with people coming to talk to Glendale and Council officers in order to learn from how the contract was procured and how it is managed. The contract remains fairly novel within the grounds maintenance industry. It is believed that this is because other councils may be put off by the total transfer of the management functions.

#### Service delivery

- 5.15. Service delivery and the levels of service provided for local residents is key for Lewisham. Like other local government organisations, the suppliers will be taking public money and delivering services to the public, sometimes including very vulnerable members of society. Andy Murray highlighted the importance of using key performance indicators to identify what are the crucial aspects of performance that Lewisham wants and can measure. Contracts can contain what are known as split elements, where overhead payments will generally be met but profits will be based on performance and decided against key performance indicators (KPIs). This will occur in contracts such as the parking contract which currently being tendered.
- 5.16. Lewisham has ongoing dialogue with contractors via provider forums and meetings to ensure officers know what is going on, as well as monitoring and site visits. Officers receive daily updates from D & B, a company which supplies market intelligence and information, on current contractors so that they are aware of what is going with their businesses and how they are performing overall. An example of where this has been useful was the case of care provider Southern Cross. This company was running into difficulties and officers were aware of this, monitored it and prepared contingencies in case the company could not supply its services.
- 5.17. User forums can be useful to obtain feedback on contract performance from those using services. The Council maintains ongoing dialogue with users and gets feedback from vulnerable users, often speaking to families as well as social work teams, clinical teams and advocacy groups in addition to thematic reviews and statutory reviews for vulnerable users. There are feedback loops built into the contracts, any complaints are recorded and a contract would only be extended if performance is satisfactory. Open book accounting is also used with contractors so Lewisham can look at contractors' books to see how they are performing and if they are sustainable as a business, as well as their management information.

- 5.18. When contracts are drafted the aim will be to prevent unilateral changes being made by either party and include breakage and redundancy costs, with a process to go through in case of poor service delivery. If performance delivery is not up to standard, there has been no improvement in performance and the Council wishes to break the contract then it would be up to the contractor to calculate the costs of breaking the contract. These costs would reflect the increased risk and would be compared against a schedule of their rates. Sometimes it may cost too much to be able to break a contract.
- 5.19. Dee Carlin, Audrey-Marie Yates, Heather Hughes from the Joint Commissioning Team outlined how the contract monitoring process is implemented in Lewisham. They stated that a number of partners are involved in this process; these include the Care Quality Commission and LINK who undertake unannounced inspection and spot checks as they have a right to enter a care home without giving them notice.
- 5.20. There is also feedback from home managers, service users and staff delivering the service. The Lay Visitors provides an independent peer review role, however they have no right to enter a care home without permission. In addition, Officers rely on people's experience and professionalism to carry out reviews, checks and self-monitoring; it is crucial that there is mutual trust between the care home providers and the contract monitoring team. Officers highlighted that they use a risk based approach and that it doesn't take long to pick up that something is wrong in a care situation.
- 5.21. There are processes in place for reporting that poor performance is occurring in a care home to other authorities. For example, in a recent incident there were major concerns over a care home's performance. Lewisham informed the CQC and other authorities that the home was being looked at and no new placements occurred while the management were turning it around.
- 5.22. Lewisham's Parks Management Contract transfers most of the risks associated with the management of public open space from the Council to the contractor. The contract relies on performance related payments coupled with a rigorous monitoring regime. There are currently 3 client officers who monitor performance. This is carried out using a selection of methods including a monthly randomly generated list of sites to inspect, the monitoring of administration systems and targeted inspections if there are performance concerns. A defective service notice can be served if needed and there is a dispute resolution process.
- 5.23. It is possible to cancel the Glendale contract as there is a 5 year break clause along with termination clauses for serious performance issues. A performance score is calculated from the results of the monitoring inspections, with a performance deduction if the quality standards have not been met. The performance target is set at 97.75% with a minimum performance of 96.75%. The yearly average default for parks and enclosures for 2012/13, to date, and 2011/12 are 97.51% and 97.67% respectively. The results for the housing estates for 2012/13, to date, and 2011/12 are 96.36% and 96.93% respectively. The current resident satisfaction rate is 89%, which is double what it was before the service was outsourced in February 2000.
- 5.24. The contract standards are performance related, so for example in an area like grass cutting it is about the grass not being above a certain height, rather than the specific number of cuts per year. The default penalties amounted £83k over the last year, which was better than the year before and much better than at the start of the initial contract. The contract is structured in such a way that Glendale can only achieve

98% performance and so there will always be a financial reduction from the monthly contract sum.

- 5.25. Glendale have a customer facing role and aren't shielded from the public. Customer complaints go directly to Glendale and are handled by them. This means it is their responsibility to satisfactorily resolve them. Public liability insurance is also the responsibility of Glendale. If a customer complaint comes in to the client team then there will be a monitoring visit and inspection and Glendale may receive a performance deduction.
- 5.26. If the Council wished to engage a new provider other than Glendale it would have to consider changing the style of contract if it wanted to save money. It may be possible to do this by going back to a more traditional 'cut and collect' contract where the supplier would simply carry out tasks specified by the Council. However the risks that have currently been transferred would then come to the Council, so costs would likely stay the same (or possibly rise) due to dealing with that.
- 5.27. The new street lighting contract will have the contractor run the interface with residents, which, as has been shown with the Glendale contract, is an effective and powerful risk transfer. Contracts with risk transfer built in are typically longer term, generally over 5 years, as the supplier may need to build up the interface with their customers and would need the stability of a longer contract to be able to do this at a reasonable price for the Council. However the financial climate and increasing budgetary pressures on Lewisham Council means that 2 to 3 year contracts could currently be more convenient for the Council, as this will avoid committing the organisation to a long term contract for services that may be unaffordable in a few years' time.
- 5.28. During evidence gathering, the subject of adding scrutiny by councillors of contracts was raised. Officers were clear that additional scrutiny of this sort could add a cost to the process, either through the required officer cost to supply information, the cost the contractor would charge for, or the potential cost in terms of the time taken to schedule in scrutiny by elected members. If there was more scrutiny of contracts then there would be a need to resource it.

#### Relationship management

- 5.29. Relationship management is one of the key elements of contract management. Effective monitoring requires good communication between the Council, the supplier and any other related parties. Andy Murray stressed the importance of good relationships with contractors. Partnership approaches can work well, though there are still contractors who will see the relationship as adversarial and be difficult when dealing with the Council.
- 5.30. Having a good relationship with the people involved in delivering the contract is important, through understanding the roles, needs and the business matters. There needs to be committed people on both sides to make it work. This takes an effort to do well but officers feel is something Lewisham does well and the development and progression in knowledge and experience in managing contracts that has occurred over the years has helped this.
- 5.31. Contracts and frameworks can often be legally complex and difficult for the public to understand. Therefore guidance is produced and put in plain language so that smaller organisations that may not have the same level of contract expertise are able to understand and bid for contracts. Officers do go out to groups and talk them

through it, such as with Voluntary Action Lewisham, Carers Lewisham and Positive Ageing Council which get the relationship off to a good start.

- 5.32. The Residential and Nursing Care contracts require that officers speak to the client team and contractors as well as front-line workers before the contract starts to build up key relationships. The contract requires that personal relationships are properly developed and established quickly in order for officers to get involvement in the delivery of the service and for suppliers to feel part of the Council. Where a service provider is not performing adequately, the Council will work closely with the provider to address the areas of concerns and produce a plan to rectify failings. This is a key part of contract management and officers are introducing increased training on managing relationships.
- 5.33. Within the Parks Management Contract there is a small but experienced contract team which has developed a real partnership with Glendale based on trust. There is no duplication of work within the contract; the Council retains the strategic overview while Glendale has the role of delivering and managing the operation of the service. Officers explained that the start of the initial contract in 2000 was difficult at first, however the relationship developed and the difficulties were overcome. Not being adversarial was important, as was the stability of a long-term contract. Short term contracts can mean that staff change often. Building good working relationships is key.
- 5.34. Due to the importance of good relationships in long-term contracts, incumbent bidders are often at an advantage as they already have an established relationship with the client and so may not price so highly for perceived financial risks.

#### Contract administration (including improvements)

- 5.35. As highlighted previously, the administration of the contract and appropriate record keeping is important in the overall management of the contract. Andy Murray highlighted the importance of reviewing contracts in order to learn lessons about how they are managed, the specifications and the process. For example, if a change must be made to the contract then it should be done in accordance with the change control procedure set out in the contract. If the change is agreed then a variation order must be developed and approved then tied in with the main contract. The variation order should be subjected to the same value for money scrutiny as the contract would be and costed on the basis of the schedule of rates set out in the contract. Method statements, where contractors explain how they will achieve outputs, can be evaluated to see if they are reasonable and achievable.
- 5.36. A Council contract is generally regarded as a good one to have for suppliers, partly this is due to contract administration which means that the Council pay regularly, on time and are quite safe.
- 5.37. Officers look to add value and build in continuous improvement into the contract. Contracts need to be flexible to be able to allow this to happen. Due to the increasing financial constraints that have been put on the Council recently, there has been an effort to transfer some of these costs pressures onto Council contracts. Negotiation with contractors means that as the Council requires efficiency savings, these too can be taken on my contractors. There has not been a rise in adversarial and harsh attitudes and Lewisham has managed to bring in the London Living Wage, apprenticeships and other social benefits in recent years.

- 5.38. Currently, the Council block contract 79 nursing beds in borough. The placement process into these beds is managed carefully to ensure that voids are kept to a minimum and this process has got better over the years. . Block purchasing is where the Council buys a number of beds en masse to ensure that there will be sufficient supply of good quality nursing beds to meet the assessed need or demand at a price which is competitive.
- 5.39. Within the Parks Management Contract there is an annual 3% efficiency savings built in. As part of the Councils budget reduction process 2011/12 - 2013/14 the contract sum will be reduced by £437k and a further £438k of savings have or will be achieved by the removal of the parks improvement budget.

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## 6. Case Study – Residential and Nursing Care Contracts

- 6.1. At present Lewisham commissions 1032 residential and nursing placements, this includes people with learning disabilities and adults with mental health. Services are commissioned from approximately 310 providers in and out of the borough. The current cost of the nursing placements are £19.2m while the residential placements are £25.7m.
- 6.2. Lewisham has to ensure that there is a continuous supply of care home accommodation to meet the assessed need or demand at a price which is competitive, can be afforded and at an acceptable level of quality. In relation to the commissioning of residential and nursing home care, the fundamental questions that need to be continually addressed are:
- Is the overall supply adequate to meet the assessed need and is there any need to intervene in the market to support some or other aspect of the overall supply?
  - How will LBL be able to secure a continuous and adequate supply, in terms of volume, price and quality, in competition with other boroughs, including should the contracts be spot or block?
- 6.3. These objectives and questions are set in the context of national and local values and priorities, such as the requirement to take forward the personalisation agenda and the need to ensure value for money. Commissioners utilise a number of negotiation tools to achieve a fair placement fee, including benchmarking other local authorities, the Care Funding Calculator and historical intelligence.
- 6.4. In Lewisham, the Council and partners commission care home places both within Lewisham and out of borough. The commissioning process is utilised by officers to ensure that social care and health services purchased from any provider meet the needs of the local population. The process includes assessing the needs, prioritising outcomes, procuring the service as set out below, and managing contracts.
- 6.5. The procurement process is designed to choose the service provider who will provide the service to the required standard identified in the service specification and at the optimum cost, thus representing the best value for money. This is achieved by evaluating the tender submissions on a balance of “Quality” and “Cost”. The “Quality” aspects relate to how the service will operate and potential providers are asked to respond to specific questions (known as method statements) and are based on the Care Quality Commission’s Guidance.
- 6.6. Care homes have to demonstrate how they will provide services around the following areas:
- Dignity in care provided
  - Involvement and information ( respecting and involving people who use services, consent to care and treatment)
  - Personalised care treatment and support
  - Safeguarding and safety
  - Suitability of staffing and training
  - Quality Management
  - Suitability of management
  - Arrangements for short stay/ interim respite placements
  - Promoting environmentally friendly practice
- 6.7. Block contracts are used where there is a scarcity of beds and the Council has to ensure that there is sufficient provision to meet the needs of residents who require

these services. Spot contracts are used for the majority of care home placements to secure individual placements on a case by case basis.

- 6.8. All the necessary social care and health information pertaining to the individuals care needs are provided to the care homes, as well as a Service Specification, Spot Agreement terms and conditions under a Block Contract for a specific number of nursing beds in borough. Contract officers will ensure that the care home is compliant under the Care Quality Commission's Guidance and a care home placement will only be completed when all necessary checks have been concluded.
- 6.9. All commissioned services are routinely monitored for contract compliance and acceptable performance and quality. Currently, five contract monitoring officers are responsible for carrying out this area of work. The aim of the contract monitoring is to ensure that the services delivered by care homes are delivered in line with the contract and specification and are providing care of the highest quality, adhering to the principles of best value. This is done through a variety of methods:
- Lay Visitors, who visit care homes in the borough and are able to raise issues and concerns about the quality of care being provided.
  - A Contract Management Tool and Care Homes Monitoring Framework are in place to ensure there is a consistent approach to monitoring performance
  - Monitoring takes place at least on a quarterly basis for block contracts and large spot contracts.
  - Individual review cases
  - Complaints
  - Service reviews
- 6.10. If a care home does not meet the performance requirements, the Council has legal means it can pursue to adjust or terminate the contract, the details of which are set out clearly in the contract. Failure to meet key indicator targets, such as training standards and dealing with complaints, in a specific time period will not normally lead to funding/payments being withheld, except in cases where there has been a severe breach of contract. If a breach of conditions of contract is identified the commissioners will seek legal advice and a letter will be written to the service provider drawing attention to the specifics of the breach and requiring action to be taken within a specified period from the date of the letter.
- 6.11. The range of interventions and activity set out above is designed to ensure that Lewisham's residents receive high quality and cost effective care and that when this is not the case, remedial steps are taken.

## 7. Case Study – Parks Management Contract

- 7.1. The Green Space management and maintenance contract was awarded to Glendale Grounds management on 1<sup>st</sup> March 2010. The procurement of the new contract followed the successful delivery of the previous 10-year Green Space contract also awarded to Glendale in March 2000. The current contract requires Glendale to provide a combined parks management and grounds maintenance service for the borough's parks and a grounds maintenance service only for other areas such as housing green space (on estates managed by Lewisham Homes) closed churchyards, car parks and highways enclosures. The Lewisham contract was the first Park Management Contract where the contractor was responsible for the events management, sports development and maintenance in the Borough.
- 7.2. The contract specification covers grass cutting, pruning and planting, the clearance of litter and graffiti specifically within the public parks, building and infrastructure maintenance, security, events and other aspects of parks management. The contract specification is output based in that it specifies the standard to be met rather than the way in which the service is to be provided. However, Glendale have agreed to be bound to their Method Statements, requested at Invitation to Tender, which give detail of how various tasks will be undertaken.
- 7.3. The 3 underlining principles of the original 2000 Green Space contract were also applied to the new contract:
- There must be a transfer of risk to the contractor
  - Payments must be performance related
  - There must be a rigorous monitoring system in place
- 7.4. The contract term is for 10 years, commencing 1<sup>st</sup> March 2010 however the Council has an express right to terminate the contract on the 5<sup>th</sup> anniversary (28<sup>th</sup> Feb 2015) of the commencement date at its own discretion. The contract is for Parks and Open Spaces (£2.8m) and Housing Grounds Maintenance (£495k). The Council agreed to adopt the London Living Wage (LLW) and apply it to this contract prior to the procurement process.
- 7.5. Glendale bears most of the risks associated with the contract i.e. if the cost of labour increases over the life of the contract, or changes to British Standards, then they will bear that risk. Unless specifically and expressly provided in the contract conditions all risks associated with the provisions of the service under the contract shall be borne by Glendale, this is referred to as the "catch all" clause.
- 7.6. The contract is currently monitored by 3 Green Scene client officers, reporting to a contracts manager, by way of a 'random sampling' process. At all times the Council is entitled to make a performance deduction where the Contractor fails to meet the performance standards set out in the Specification. The random sampling can be undertaken jointly by the client and Glendale and, on request, by members of the public. The default points mechanism is set out in a 'facilities database', which lists all the services to be monitored, and the points to be deducted. The points are translated into a default performance score, which will, in turn, equates to a financial deduction from the Contract Payment. There are a variety of methods available to the Council to monitor the performance of the contract:
- A number of important service areas are monitored every month as 'Actual Inspections'.
  - The Council can serve a Targeted Inspection Notice if it considers that Glendale are not performing properly in a particular part of the service.

- If the Council is still not satisfied with the service, or a particular aspect of the service, it can issue a Defective Service Notice. If Glendale do not remedy the problem the Council can step in and remedy the problem itself and recover the costs of doing so from Glendale.
- There is a dispute resolution process whereby either party can refer certain matters to an expert for resolution
- If the Contractor goes beyond a certain threshold in terms of performance deductions, namely if it goes below 78% of total performance then the Council may have the right to terminate the contract.

7.7. Glendale has introduced a wide range of events into the parks to encourage community participation and invite local residents to take responsibility for their green spaces. Increasing community involvement and communication with community members reinstates a sense of pride in the local environment and is another cornerstone that makes the Lewisham partnership successful.

7.8. Glendale also invite local schools to use the parks as an educational resource for environmental and conservational subjects. Sessions include pond dipping, building bird and bat boxes, nature walks, habitat and food chain studies.

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