

Overview and Scrutiny Committee Supplementary Agenda

Tuesday, 11 June 2019

7.00 pm, Committee Rooms 1 & 2

Civic Suite

Lewisham Town Hall

London SE6 4RU

For more information contact: Charlotte Dale (020 8314 8286)

This meeting is an open meeting and all items on the agenda may be audio recorded and/or filmed.

Part 1

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Overview and Scrutiny Committee			
Title	Declarations of Interest	Item No.	1a
Contributor	Chief Executive		
Class	Part 1 (open)	11 June 2019	

Declaration of interests

Members are asked to declare any personal interest they have in any item on the agenda.

1 Personal interests

There are three types of personal interest referred to in the Council's Member Code of Conduct:-

- (1) Disclosable pecuniary interests
- (2) Other registerable interests
- (3) Non-registerable interests

2 Disclosable pecuniary interests are defined by regulation as:-

- (a) Employment, trade, profession or vocation of a relevant person* for profit or gain
- (b) Sponsorship –payment or provision of any other financial benefit (other than by the Council) within the 12 months prior to giving notice for inclusion in the register in respect of expenses incurred by you in carrying out duties as a member or towards your election expenses (including payment or financial benefit from a Trade Union).
- (c) Undischarged contracts between a relevant person* (or a firm in which they are a partner or a body corporate in which they are a director, or in the securities of which they have a beneficial interest) and the Council for goods, services or works.
- (d) Beneficial interests in land in the borough.
- (e) Licence to occupy land in the borough for one month or more.
- (f) Corporate tenancies – any tenancy, where to the member's knowledge, the Council is landlord and the tenant is a firm in which the relevant person* is a partner, a body corporate in which they are a director, or in the securities of which they have a beneficial interest.
- (g) Beneficial interest in securities of a body where:-
 - (a) that body to the member's knowledge has a place of business or land in the borough; and
 - (b) either
 - (i) the total nominal value of the securities exceeds £25,000 or 1/100 of the total issued share capital of that body; or
 - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person* has a beneficial interest exceeds 1/100 of the total issued share capital of that class.

*A relevant person is the member, their spouse or civil partner, or a person with whom they live as spouse or civil partner.

(3) Other registerable interests

The Lewisham Member Code of Conduct requires members also to register the following interests:-

- (a) Membership or position of control or management in a body to which you were appointed or nominated by the Council
- (b) Any body exercising functions of a public nature or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party
- (c) Any person from whom you have received a gift or hospitality with an estimated value of at least £25

(4) Non registerable interests

Occasions may arise when a matter under consideration would or would be likely to affect the wellbeing of a member, their family, friend or close associate more than it would affect the wellbeing of those in the local area generally, but which is not required to be registered in the Register of Members' Interests (for example a matter concerning the closure of a school at which a Member's child attends).

(5) Declaration and impact of interest on members' participation

- (a) Where a member has any registerable interest in a matter and they are present at a meeting at which that matter is to be discussed, they must declare the nature of the interest at the earliest opportunity and in any event before the matter is considered. The declaration will be recorded in the minutes of the meeting. If the matter is a disclosable pecuniary interest the member must take no part in consideration of the matter and withdraw from the room before it is considered. They must not seek improperly to influence the decision in any way. **Failure to declare such an interest which has not already been entered in the Register of Members' Interests, or participation where such an interest exists, is liable to prosecution and on conviction carries a fine of up to £5000**
- (b) Where a member has a registerable interest which falls short of a disclosable pecuniary interest they must still declare the nature of the interest to the meeting at the earliest opportunity and in any event before the matter is considered, but they may stay in the room, participate in consideration of the matter and vote on it unless paragraph (c) below applies.
- (c) Where a member has a registerable interest which falls short of a disclosable pecuniary interest, the member must consider whether a reasonable member of the public in possession of the facts would think that their interest is so significant that it would be likely to impair the member's judgement of the public interest. If so, the member must withdraw and take no part in consideration of the matter nor seek to influence the outcome improperly.
- (d) If a non-registerable interest arises which affects the wellbeing of a member, their family, friend or close associate more than it would affect those in the local area generally, then the provisions relating to the declarations of interest and withdrawal apply as if it were a registerable interest.

- (e) Decisions relating to declarations of interests are for the member's personal judgement, though in cases of doubt they may wish to seek the advice of the Monitoring Officer.

(6) Sensitive information

There are special provisions relating to sensitive interests. These are interests the disclosure of which would be likely to expose the member to risk of violence or intimidation where the Monitoring Officer has agreed that such interest need not be registered. Members with such an interest are referred to the Code and advised to seek advice from the Monitoring Officer in advance.

(7) Exempt categories

There are exemptions to these provisions allowing members to participate in decisions notwithstanding interests that would otherwise prevent them doing so. These include:-

- (a) Housing – holding a tenancy or lease with the Council unless the matter relates to your particular tenancy or lease; (subject to arrears exception)
- (b) School meals, school transport and travelling expenses; if you are a parent or guardian of a child in full time education, or a school governor unless the matter relates particularly to the school your child attends or of which you are a governor;
- (c) Statutory sick pay; if you are in receipt
- (d) Allowances, payment or indemnity for members
- (e) Ceremonial honours for members
- (f) Setting Council Tax or precept (subject to arrears exception)

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Agenda Item 2

Overview & Scrutiny Committee		
Report Title	Mayoral response to referrals from the Committee - Legal advice pertaining to Cabinet Member Question and Answer sessions and on the Council's Procurement Procedures	
Key Decision	No	Item No. 2
Ward	All	
Contributors	Executive Director for Resources & Regeneration (Head of Business & Committee)	
Class	Part 1	Date: 11 June 2019

Reasons for lateness and urgency

This report is late due to the schedule of meetings – the responses contained in this report were agreed at Mayor and Cabinet on 5 June after the original despatch.

The report is urgent and cannot wait until the next meeting of the Overview and Scrutiny Committee as the Committee expects a timely response to its referrals and the next meeting will not take place until 29 October 2019.

1. Summary

This report informs members of the responses given at Mayor and Cabinet two referrals made by the Committee at its meeting held on 7 March 2019.

2. Purpose of the Report

To report to members the response given at Mayor and Cabinet to recommendations made by the Committee regarding Legal advice pertaining to Cabinet Member Question and Answer sessions and on the Council's Procurement Procedures.

3. Recommendation

The Committee is recommended to receive the Mayor & Cabinet responses to the Committee's comments on Legal advice pertaining to Cabinet Member Question and Answer sessions and on the Council's Procurement Procedures.

4. Background

4.1 The Mayor and Cabinet considered the attached reports at the Mayor & Cabinet meeting held on 5 June 2019.

5. Mayor & Cabinet Response

5.1 The Mayor and Cabinet received an officer report on each referral and a presentation from the Deputy Mayor, Councillor Chris Best.

- 5.2 The Mayor and Cabinet unanimously resolved for both referrals that they be approved and forwarded to the Overview & Scrutiny Committee.

BACKGROUND PAPERS

Mayor & Cabinet minutes 5 June 2019

If you have any queries on this report, please contact Sarah Assibey, Committee Support Officer, 0208 314 8975

MAYOR AND CABINET		
Report Title	Response to comments by the Overview and Scrutiny Committee on Legal advice pertaining to Cabinet Member Question and Answer sessions	
Key Decision	No	Item No.
Ward	Borough wide	
Contributors	Head of Law	
Class	Part 1	Date: 5 June 2019

1. Purpose of Report

To consider the report of the Head of Law responding to matters raised by the Overview & Scrutiny Committee on 7th March 2019 as requested by the Mayor and Cabinet on 13th March. This paper sets out the response.

2. Recommendations

2.1 It is recommended that Mayor and Cabinet:

- (a) Note officer comments as set out in this report; and
- (b) Consider whether to provide a response to the Overview & Scrutiny Committee in line with those comments.

3. Background

3.1 On 7 March 2019, Overview & Scrutiny Committee questioned Executive members on their portfolios. Having done so and following discussion, the Committee resolved:

That the updates be noted and that a referral be sent to Mayor and Cabinet requesting that a report be prepared by the Head of Law explaining why written reports had not been prepared for this meeting, including a timeline of events; outlining the current legal advice pertaining to Cabinet Member Question and Answer Sessions; and explaining the procedure going forward.

3.2 This report sets out the response from the Head of Law.

4. Why written reports had not been prepared for the meeting of the Overview and Scrutiny Committee on 7 March 2019, including a timeline of events

4.1 After the January meeting of the Overview and Scrutiny Committee a request was made for written reports from Cabinet members at Question

and Answer sessions rather than verbal updates. There was also a request that follow-up questions and responses to those questions and any actions agreed should be published.

- 4.2 Following further communications on 21 February for written briefings from Cabinet Members and any response to issues raised at Overview & Scrutiny in preparation for the forthcoming meeting on 7 March, those briefings to be received by 25 February if possible, the Head of Law was asked about the appropriate procedure on 27 February.
- 4.3 When she was asked about the appropriate procedure she advised that this approach – production of written briefings by Cabinet members, and publication of follow-up questions and responses to those questions was unusual but not specifically permitted or prevented in the Constitution. She also advised that any report tabled should be as an update and for information only and include financials and legal implications. Her legal advice was also that either the report should be prepared by officers and cleared by the Cabinet member (which would be the usual approach) or if the Cabinet member provided their own report without officer input, officers would need sight of it and be able to table a concomitant report if necessary.
- 4.4 The Head of Law's concern was that published written statements by Cabinet members in response to questions without any officer input could have implications for the Council corporately. It was therefore essential that a process be put in place to ensure that published statements did not have adverse implications for the Council. A formal approach to Question and Answer sessions at Overview and Scrutiny needed to be considered so that all parties understood the appropriate process to be followed and the Council's formal position protected.
- 4.5 Accordingly, the committee clerk for Overview and Scrutiny Committee was asked to hold the reports which had been prepared by Cabinet members, and responses, pending further guidance.

5. An outline of the current legal advice pertaining to Cabinet Member Question and Answer Sessions

- 5.1 The advice given on 27th February remains accurate.
- 5.2 There are a number of provisions in the Constitution which already pertain to the relationship between the Executive and Overview and Scrutiny. They include the following-
 - There is provision for members and officers to attend Overview and Scrutiny to give account, so that decisions and actions can be scrutinised and reviewed, including reviewing documentation. The person requested to attend can be required to produce a report and enough time will be given for preparation of that report;

- More generally, all decisions will be made in accordance with the principles of decision making which are:
 - (a) the decision will be made following an evaluation of options.
 - (b) the decision maker will take professional advice (including financial and legal advice where the decision may have legal and/or financial consequences)
 - (c) the decision will be taken following a consideration of all relevant matters and disregarding irrelevancies
 - (d) reasons for the decision will be recorded as will details of options considered with reasons for their rejection
 - (e) action taken will be proportionate to the result to be achieved
 - (f) respect for human rights will be balanced with the Council's duty to the wider community
 - (g) a presumption in favour of openness, unless there are compelling lawful reasons preventing the consideration of matters in public
 - (h) consultation appropriate to the matter under consideration
 - (i) clarity of aims and desired outcomes
 - (j) the highest standards of ethical conduct, avoiding actual, potential and perceived conflicts of interest;
- Where a decision is being made, that will be done on the basis of written reports which contain service, legal and financial implications;
- Where a meeting is being held, copies of any reports will be open to the public at least five clear days before the meeting unless an exclusion applies;
- Overview and Scrutiny members have particular rights of access to documents relating to executive matters, with information to be supplied as soon as reasonably practicable and in any event within 10 days of the request;
- Overview and Scrutiny Procedure Rules anticipate that there will be liaison between Executive and Select Committees/Business Panels as appropriate;
- When a decision is called-in by a Business Panel, the Business Panel will set out its reasons in writing, which will be brought to the attention of the decision maker. The decision will then be reconsidered.

5.3 However, although there are procedures set out for response by Mayor and Cabinet to formal referrals from Overview and Scrutiny, there are no explicit procedures for Question and Answer sessions and any resultant follow up.

6. **A proposed procedure**

6.1 Given the lack of clarity about the appropriate procedure to be put in place to prevent any further uncertainty, a proposed procedure was discussed between Executive members and the Chair of Overview and Scrutiny with officers present. As a result of that meeting, a proposed procedure emerged. It was suggested that the procedure should operate on a trial basis and if successful should be considered by Constitution Working Party for inclusion in the Constitution. It is suggested that this consideration should be integral to the deliberations about the future role of Overview and Scrutiny suggested by the Local Democracy Review.

6.2 The proposed procedure (which reflects current provisions in the Constitution in relation to formal referrals from Overview and Scrutiny to Mayor and Cabinet) is:

- Where a Cabinet member is to attend Overview and Scrutiny to give account, they may be required or requested to produce a written report or other document.
- The document / report prepared will as appropriate involve input from officers (including from finance and legal where it might have implications for the Council). Enough time will be given for preparation of that document / report.
- The document / report prepared will be published as part of the agenda for the relevant meeting of the Overview and Scrutiny Committee.
- If there are questions or matters arising from the document / report or from discussion during the session when the person is giving account, these matters will be referred to Mayor and Cabinet for response. If necessary, Mayor and Cabinet may ask officers to prepare a written response for their consideration.
- The Mayor and Cabinet response will in turn be provided to Overview and Scrutiny and will be published
- This reflects the procedure adopted in relation to any referral from Overview and Scrutiny to Mayor and Cabinet. It simply extends it to the Question and Answer sessions which have become a more regular feature of Overview and Scrutiny practice in Lewisham

6.3 There are a number of questions which were put in response to Mayor and Cabinet members in Question and Answer sessions to date. Many have already been responded to. At the time of drafting a composite officer report dealing with any outstanding issues is in preparation for submission to Overview and Scrutiny.

7. Financial Implications

None arising.

8. Legal Implications

There are no specific legal implications. If any constitutional changes result from future considerations following a trial period, further legal implications will be addressed.

9. Crime and Disorder Implications

There are no specific crime and disorder implications arising from this report.

10. Equalities Implications

There are no specific equalities implications arising from this report.

11. Environmental Implications

There are no specific environmental implications arising from this report.

12. Conclusion

Mayor and Cabinet is recommended to consider the issues set out in this report and respond to Overview and Scrutiny

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MAYOR AND CABINET		
Report Title	Response to comments by the Overview and Scrutiny Committee on the Council's Procurement Procedures	
Key Decision	No	Item No.
Ward	Borough wide	
Contributors	Head of Law; Strategic Procurement and Commercial Services Manager	
Class	Part 1	Date: 5 June 2019

1. Purpose of Report

- 1.1 To consider and respond to matters raised by the Overview & Scrutiny Committee and initially considered by Mayor and Cabinet on 13 March 2019.

2. Responses to comments by the Overview and Scrutiny Committee

- 2.1 On 13th March, Mayor and Cabinet considered comments of the Overview & Scrutiny Committee on matters including Procurement Procedures. Mayor and Cabinet considered officer reports.
- 2.2 Mayor and Cabinet agreed that:
- i. the Overview & Scrutiny Committee's comments be noted.
 - ii. the Head of Law be asked to provide responses on those matters.
- 2.3 This paper sets out the responses.

3. Recommendations

- 3.1 It is recommended that Mayor and Cabinet:
1. Note officer comments as set out in this report; and
 2. Consider whether to provide a response to the Overview & Scrutiny Committee in line with those comments; and
 3. Consider whether to provide a report to the Public Accounts Select Committee.

4. Overview & Scrutiny Committee comments

- 4.1 Overview & Scrutiny Committee have requested that Mayor and Cabinet consider the matters set out below. This paper contains the response to those matters, for consideration by Mayor and Cabinet.

4.2 The Council's Procurement Procedures

4.2.1 On 7 March 2019, Overview and Scrutiny Committee considered a referral made by the Overview and Scrutiny Business Panel on 19 February 2019. The Business Panel referral was in the following terms:

Business Panel:

1. *Notes that the scoring system and the balance between quality and price is not robust nor transparent when awarding contract to organisations.*
2. *Calls for the Council to re-examine its process of quality versus cost, and ensure there is a thorough examination of the factors within both price and quality.*
3. *Is not convinced continuity or proximity of provision are given sufficient thought in the transition period as part of the evaluation and that needs to be weighted accordingly.*
4. *In accordance with the Administration's Manifesto commitments to use an in-house provider and secure services locally whenever possible, prominent sections of the process should examine the advantages and disadvantages of in-house and local provision.*

[Business Panel] proposed that:

- *The scoring system should be very clear and easy to understand.*
- *Mayor and Cabinet should take time to consider proposals from officers before making a decision.*
- *Sufficient time and consideration must be given to responses to scrutiny in recognition of the need for parity of esteem.*
- *In future: quality, location, continuity and in-house consideration should feature largely when awarding contracts.*

4.2.2 Overview & Scrutiny Committee considered the above referral and asked that it be forwarded to Mayor and Cabinet for consideration. In addition, Overview & Scrutiny Committee asked that Mayor and Cabinet:

... asks officers to consider best practice, including with regard to social value, from other local authorities and report back to Mayor & Cabinet and the Public Accounts Select Committee. Salford City Council is cited as a potential example of good practice.

5 **Officer comments**

Officer comments upon those items of referral are set out below.

5.1 The scoring system should be very clear and easy to understand

- 5.1.1 The Council has agreed procedures and delegations setting out how to conduct procurements – these are set out in the Constitution (Contract Procedure Rules), supplemented by an internal three gateway process and the procurement handbook, and supported by additional advice from the procurement and legal teams as required / requested. Use of those procedures should result in a clear scoring system which is easy to understand. The adopted system will be that which is appropriate dependant on the size and complexity of the procurement.
- 5.1.2 That scoring system will be set out clearly in the procurement documents, so that potential suppliers will be informed of the approach including the weightings to be attributed to each item of the scoring system.
- 5.1.3 The Council adopts a consistent approach to assessment of bids and allocation of scores (and has developed standardised documentation), including discussion and adoption of a final moderated score which is agreed by the panel members involved in evaluation of bids for each tender submission.
- 5.2 Mayor and Cabinet should take time to consider proposals from officers before making a decision
- 5.2.1 Where decisions are to be taken by Mayor and Cabinet, the report will be made available to Mayor and Cabinet in accordance with the requirements for publication of reports. Officers will be available to answer questions on those reports.
- 5.3 Sufficient time and consideration must be given to responses to scrutiny in recognition of the need for parity of esteem.
- 5.3.1 It is accepted that sufficient time and consideration must be given to responses to scrutiny by Mayor and Cabinet.
- 5.4 In future: quality, location, continuity and in-house consideration should feature largely when awarding contracts
- 5.4.1 The matters referred to - quality, location, continuity, and in-house consideration – are taken into account throughout the procurement process. The relevance of each of those factors may be greater or lesser depending on the service involved; and the stage at which it is appropriate to consider them may vary. For example:
- **Quality**
The quality of the service will always be a major factor to be considered. The over-riding procurement policy requirement is that all public procurement must be based on value for money, defined as “the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought”. This delivers against the Council’s overall duty when procuring works, goods and services

to obtain best value, and obligation under the Public Contracts Regulations 2015 to award contracts to the bidder who submits the Most Economically Advantageous Tender (MEAT).

For each contract, consideration is given to how MEAT should be assessed. One factor is that the Council sets a price:quality ratio as the criteria it will use to assess bids. Following adoption of the Council's Procurement Social Value Policy a default weighting of 50:50 for price:quality is adopted which can be varied depending on the appropriate factors including social value factors. Application of that approach may present risks, and consideration is given to whether any adjustment needs to be made, whether to the weighting or to other factors, in particular cases.

If application of the default weighting may present risks to quality, consideration will be given to how that risk might be addressed. That might be done by applying minimum thresholds to elements of the quality scoring; and/or checking for and rejecting Abnormally Low tender prices; and/or altering the default weighting (which is possible and is approved by the Strategic Procurement and Commercial Services Manager).

- **Location**

There may, depending on the service to be delivered, be a need for the contractor to provide a service from a location within the borough. That is an issue which will be addressed by the specification for the particular procurement.

- **Continuity**

Continuity of provision will again be a matter to be considered. Where this is a material issue for the particular procurement, the bidders will be asked to set out their approach (for example, to mobilisation of the Service) in their response. For every contract, there is a transition period between award of and commencement of the contract. This will be used to address both mobilisation and any relevant handover issues; that is when issues regarding continuity are likely to be addressed in practice.

This will also involve, where applicable, sensitive and responsible management of any staff transfers from the outgoing provider to the incoming provider (under the provisions of the Transfer of Undertaking (Protection of Employment) Regulations 2006 - TUPE).

Further, final due diligence checks will be carried out; and officers will manage the transition period, and closely monitor service delivery during the transition and into the new contract.

- **In-house**

The Corporate Strategy states that "*When we are considering whether to commission services, we will have an assumption that the*

Council is our preferred provider and in-source our contracts.”

Officers have developed and implemented an options appraisal framework (based on an Association of Public Sector Excellence APSE model) which will allow all services currently under contract to be assessed at the appropriate point of the procurement cycle via the internal three gateway process. This assessment will be undertaken at a minimum 12 – 24 months prior to the end of the current arrangements by the service responsible for the contract, and presented to the appropriate decision making forum as required under the Council’s regulations. This will ensure that there is sufficient time to plan for or re-tender and implement the chosen service delivery model.

This approach has been used in various cases. One example is the consideration of the Council’s facilities management contract which has been partly in-sourced.

- 5.5 Officers to consider best practice, including with regard to social value, from other local authorities and report back to Mayor and Cabinet and the Public Accounts Select Committee
- 5.6 The Corporate Strategy sets out that *“We will review public sector procurement to maximise investment in local independent businesses and support local inclusive growth”*.
- 5.7 On the 6 February 2019 the Council adopted a new Procurement Social Value Policy. The new policy extends the current consideration of social value for the procuring service to include when inviting tenders. Is a step change in that it now provides for a greater and specific weighting for social value within all tenders in excess of £50k, ranging from 5% - 10% and which clearly identifies a range of Key Performance Indicators (KPIs) which providers are expected to meet as part of their service delivery, where that approach is legally possible (only those social value objectives which are relevant to the subject matter of the particular contract may be considered). Maximising investment in local businesses and supporting local inclusive growth are reflected in the defined KPIs. The KPIs are regularly reviewed. This approach supports and delivers on the Corporate Strategy and will also defend against the potential for future challenge to contracts being let.
- 5.8 In drawing up the new policy, best practice elsewhere was considered and taken into account.

6 Financial Implications

- 6.1 None except as set out in the body of the report.

7. Legal Implications

7.1 None except as set out in the body of the report.

8. Crime and Disorder Implications

8.1 There are no specific crime and disorder implications arising from this report.

9. Equalities Implications

9.1 There are no specific equalities implications arising from this report, but equalities issues are taken into account in relation to each procurement process and were considered during the development of the policies referred to in this report.

10 Environmental Implications

10.1 There are no specific environmental implications arising from this report but environmental implications are taken into account in relation to each procurement process and were considered during the development of the policies referred to in this report..

11 Conclusion

11.1 This report sets out the matters to be considered by Mayor and Cabinet with regard to the matter referred for consideration by Overview and Scrutiny Committee, so that Mayor and Cabinet can decide whether to provide a response to the Overview & Scrutiny Committee in line with those comments, and can Consider whether to provide a report to the Public Accounts Select Committee.