

KENT COUNTY COUNCIL

SELECT COMMITTEE - COMMISSIONING

MINUTES of a meeting of the Select Committee - Commissioning held at Wantsum Room, Sessions House, County Hall, Maidstone on Tuesday, 21 January 2014.

PRESENT: Mr M J Angell (Chairman), Mr M A C Balfour, Mr H Birkby, Mr N J D Chard, Mr G Cowan, Mr T Gates, Mr C R Pearman and Mr M J Vye

IN ATTENDANCE: Mrs P Cracknell (Research Officer Scrutiny & Evaluation, Business Intelligence), Ms D Fitch (Democratic Services Manager (Council)), Mrs A Taylor (Scrutiny Officer) and Ms J Sage (Assisting Research & Business Intelligence)

UNRESTRICTED ITEMS

6. 10.00 am - John Burr, Principal Director of Transformation (KCC)
(Item. 3)

1. Mr Burr explained that the Council was mid way through phase 1 of the transformation process. 12 areas of service were being investigated through engagement with the market to determine whether there were alternative ways of delivering services. Some areas of Kent County Council were more forward thinking than other areas and the Council was in the process of determining outline options, one of which would be to leave the service as it is. The options would then be submitted to the transformation group who would select their preferred option and a detailed business case would be worked up, to include costs and risks and this would then be reviewed by the Transformation Board (a cross party group) and then reviewed by the Transformation Advisory Group (which, it was noted, was not a formal decision making body. The option would then proceed through the formal governance processes of the Council. No decisions or recommendations had been proposed yet, there was always an option to keep and expand services by raising revenue.
2. Phase 2 would begin with a provisional list of services to review for the next financial year. The focus was on doing things better and once the top tier had been realigned the directorates would be moved into the right areas then the work would begin on looking for further efficiencies over the next 12-18months. Most savings from working in different ways – need 20 -30%
3. Being a Commissioning authority meant having an educated client with top level awareness of what the authority was aiming to achieve and the ability to specify it to someone who would be able to deliver it. KCC not always clear – need to be clear to provider, and good specification, may be in house KCC provider or external provider, but depend on service. The Corporate Programme Office had a role in monitoring and ensuring delivery of projects and make sure save and do what we say we are going to.
4. In response to a question around the 12 areas or 300 services to be reviewed Mr Burr explained that the 12 areas were business which had put themselves forward for market engagement, libraries and HR for example. The 300

services were teams within the County Council, the suggestion would be to continue with larger but fewer teams as they are developed and streamlined as part of the transformation.

5. In response to a question about the areas in which KCC was doing well at Mr Burr explained that KCC's legal services team was very forward thinking, generated external revenue and was very highly regarded nationally. Property Services was another area which was doing very well with a forward thinking business model and potential to run as a business arms length in year or so time. Areas which were more challenged were business behaviours and finance - this included Kent Scientific Services, which did not currently make a profit (base trade figures from finance but not account for costs as a private sector would – with salary multiplier of 1.7 – 2% compared to KCC 2.4%). If externalise officers are on protected salary and pension. KCC costs are higher than first think – no commercial understanding. Need to understand true cost.
6. A Member asked about the role of the voluntary sector, Mr Burr explained that most voluntary companies are not for profit but still have costs, but may not need 3-4% return. Many were run with volunteers e.g. ramblers phone in issues, voluntary bus drivers/trips to hospital, which are both very successful but if the service was needed from 7.30am – 6.30pm this became a job and there was a need for pay. Very few organisations were prepared to undertake scheduled regular work without being paid.
7. In relation to procurement practices it had been difficult to find, for large areas, organisations to tender for or meet obligations that KCC set. For example Highways - wanted to award contract to/with SMEs but they didn't work/want to work together and wanted 20 – 30 contracts, so went to one main supplier who subcontracts. Have tried to underwrite risk as many voluntary organisations don't carry indemnity insurance and did not have high public liability insurance. KCC had to determine whether it was prepared to underwrite some of the risk involved for voluntary organisations. To make it easier for the voluntary sector to engage, but they also have to compete in like for like basis.
8. The Chairman asked for suggestions of how the procurement practices could be improved and requested some written advice to be provided to the Select Committee on this issue.
9. A Member commented that for a number of years KCC had been focussing on outsourcing which was concerning due to the lack of flexibility and lack of exit strategy. It was now a commissioning authority but there were concerns about whether this was a one way direction of travel or a cycle. Was the Council factoring in future proofing? Mr Burr confirmed that there was no agenda to outsource for the sake of it, the focus was on how teams could be more efficient, and there were no plans to outsource problems as a provider would then take profit in this. Needed to get better then decide if there was a more appropriate way of doing something – in house/or outsourced. Regarding the risk aspect there was a need to have some commercial understanding and the ability to write good contracts (write good price yr 1 and for subsequent years, deductions, progression of KPI difficulty). In relation to contracts there may be ways of obtaining cheaper contracts but if it didn't work for KCC it would not be feasible, there was often a difference between what the public wanted and what the public needed. It was necessary to have this commercial contract insight

but it could result in political conflict. Need to balance KPIs and need to fix e.g if KPI objective 99.5% street lights on and contract for 5 yrs and one goes at 99.6% won't fix it.

Need to build flexible contracts, work out what is controllable overhead, what is fixed overhead – (one objective was to ensure salary multiplier doesn't increase). Kent multiplier was often higher than providers.

10. In response to a question about whether the Council had considered franchising outside of the Kent boundary Mr Burr confirmed that property was one area which would operate outside the county boundary, Norfolk had a very successful property business.
11. Concerns were raised regarding the transformation project and the related insecurity, fear, risk aversion and delays, had the project been humanised? Mr Burr explained that he worked closely with the Corporate Director of Human Resources, a range of programmes had been utilised to engage staff, caution was advised and it was considered important to create a need for change, there was a need for a balance. The theme of the transformation project was to be straight talking, open and honest.
12. Members considered that the culture within KCC led officers to be accepting of small failures as long as they were not critical, this empowered officers and members to take risks and needed enforcing.
13. In response to a question about the continued involvement of Members, Mr Burr confirmed that this was a definite; success would be measured by the satisfaction levels of members and customers. Possibility of Scrutiny/advisory group was raised. There was a commitment to involve members as much as possible. Wanted to bring ideas in more structured way.
14. Mr Burr confirmed that it was no longer possible to specify subcontractors or products to be used by companies, but it was possible to encourage a supply chain that when need to top up ask to use SMEs. The Council wanted companies that listened and add key points to bid docs, show willing regarding social value and encourage supply chain and can then contract for this. Council need companies with ideas and challenge, there was a need for more experience to promote varied ideas and practices. The role of the procurement team within KCC was to get the best deal for KCC. The Commissioning role would be to determine which services was required, what level of risk the Council was prepared to accept and then determine whether the supplier should be internal or external.
15. A Member asked how it was possible to have control over an outsourced service which was not providing the expected service. Mr Burr explained that it was necessary to have the right client officers, knowledge and culture, this was not currently the case all across KCC, and there were inconsistencies in contract management. It was necessary to buy from the right company – needed to be robust and be happy to be judged by success. Have to be judged as service is judged not just contractually – need the company with mindset to share risk. It was possible to write information into contracts - outcomes, number of apprentices, value added etc and contract incentives: with penalties for not meeting targets. In the newer contracts there was no automatic right for

a contract extension, it was possible for companies to meet their objectives but for the Council to be dissatisfied with their work. It was vital to build in flexibility around perception and reputation – so included a contract clause to deal with this as protection, but it was hoped that this would not be used. Mr Burr was able to terminate contracts at any point if the need arose - without a contractual reason.

7. 11.00am - Mark Lobban, Director of Strategic Commissioning (KCC)
(Item. 4)

Mr Mark Lobban – Director of Strategic Commissioning was in attendance for this hearing.

1. Mr Lobban explained his role to the Committee, he was responsible for strategic commissioning across Families and Social Care (Adults and Children), he also lead on Adult Social Care Transformation and managed the day to day relationship with Newton Europe (efficiency partner). 4 teams – safeguarding, performance, accommodation solutions, and community support. Approx. 90 Commissioners in team.
2. In May 2012 the County Council approved a blue print for adult social care transformation. There was a need to manage demand and ensure that people were not inappropriately pulled into adult social care.
3. Relationships with providers are transactional. If receive £5m – 10k we treat them the same, no difference, limited strategic relationships – which does not make commercial sense.
4. Adults were 1/3 of non school budget so would have to significantly contribute to the Council's budget deficit – recent analysis shows can do a lot around efficiencies and work smarter/differently. Need to manage demand and not keep people in adult social care when they do not need to be – so key role to look at how prevent need for someone coming in /staying in, so key to work with vol sector to ensure right services for this – (which do not have at the moment).
5. Clear need to look at what should happen and importantly what actually happens on the ground – big difference. Need to remove silo working – need flexibility to work, but also need to move at pace and deliver consistency and same standards (thanet/west kent)
6. 3 roles for Mr Lobban = Director of commissioning, role for transformation, integration (internally joined up and with partners (District, Boroughs and NHS)).
7. Transformation important to commissioning - 3 key areas within Adult Social Care
 - optimisation, making best use of staff and resources
 - care pathways, to ensure people get the right service at the right time
 - commissioning- services we buy (at the right cost)

There was a need to focus on all three and recognise the links.

e.g could commission the best enablement service, but if the hospital was under pressure, a person who could benefit from enablement could go

straight to residential care which is not the right outcome for the individual and a greater cost to KCC.

8. One of the initial tasks for the ASC service was to carry out an audit of the projects underway, there were 150 projects running simultaneously and officers were struggling with prioritisation and sequencing (if all 150 are a priority then nothing is).
9. Integration meant joined up services around an individual - irrespective of who was providing the service. Invest to save – but need to focus on the 3 areas (optimisation, care pathway, commission), otherwise it was like pouring water into a leaking bucket – so get Optimisation **then** think about investment.
10. Adult social care programme being approached in 3 phases. Wave 1. The service has been working on making the best use of existing resources and matching staff to demand. e.g. utilization of enablement service was only 40% - so need to match staff/demand, either prevent going into hospital or on coming out. What didn't show/measure previously was no of failed visits - where someone not come out of hospital yet and worker been deployed. Another example - the business process was being redesigned, and waiting times had been improved for contact with social services (in dover had been 28 days to see someone and now was only 5days. Approach has been largely transactional. 140 providers – spend 75% with 20 providers. The remaining 25% of the spend with 120 providers, gives issues re safeguarding as difficult to communicate with so many providers. If paying £5m want value for money – what else are we getting? Up till now no conversations along these lines as transactional - Wave 1 was about making best use of existing resources and determining where the service could work differently with providers. The market was consolidating without KCC's intervention, (e.g. company taking over another with £1m contract – expect some benefits to this). Some of the residential care contracts were 12 years old and it was a priority to work with providers to re-let residential care contracts.
11. Wave 2 focussed on considering increasing the breadth of the services and Wave 3 focussed on integrating the service with the NHS. At end of each wave there were two things to ask 1. Had we made it better? 2. Had we made savings?
12. Wave 2 design was about increasing breadth of services. Domiciliary care had been time and task – (someone gets ½ hour in morning ½ hour at night/times not suitable/call cramming/no travel time). The Care Bill says cant do this anymore and so it was essential to move to an outcome focussed homecare system. How did we do this with 140 providers? Older people/clients are not choosing their provider it is social workers. An exercise was undertaken to map workers, their visits and travel. This showed criss-crossing of workers enroute to their clients, large travel times/distances – showed clear need to look at volumes of work and services in area, rather than provider led, so can improve service and flexibility for clients and make timings and travel more efficient for workers. Extra Care Housing has dedicated team on site providing support as and when needed, so client sometimes may need more or less support- is a good model but don't provide this in community. Need to think about dedicated community team for Domiciliary care area.
Then can start to think about what else could we ask them to do ...telecare etc. if move away from more traditional service to more outcome focussed.

13. There were barriers between service provision and there was a need to remove those barriers. 90% of social care services was currently outsourced, and there was a barrier between KCC's social workers and the providers/care staff – with providers often saying that they couldn't get hold of social services. Much of professional staff time was spent on paperwork, data entry attending meetings etc rather than on core business (face to face with service users). (80-20%). It was necessary to reduce bureaucracy to allow Social Workers to spend more time out in the community – how integrate provision of social services with providers – consider putting staff out there. Incentivise how they would work with the VCS/subcontractors. Very exciting link to wave 3.
14. Wave 3 – NHS has clear commissioner provider split. KCC had a mix. KCC fragmented service, NHS big providers. If KCC can create a firm foundation of consolidated service – becomes attractive to NHS as potential to integrate in community. The Chairman asked how the culture of the NHS was managed, Mr Lobban explained that this was improving, there was a need to focus on the sustainability of social care and the Council was committed to improving outcomes and saving money. The council had a statutory responsibility to provide care for older people. Can only cut non statutory services e.g. voluntary sector, enablement, which were the services we needed to be investing in if we were to be successful in managing demand and making the required savings.
15. Members raised concerns about receiving value for money, a mixed economy was considered to be most efficient with flexibility and leverage. With regard to the integration with the health service was support but Members considered there were uncertainties about the NHS's readiness and commitment and as there were problems in the NHS adult mental health services, and this then provided a reputational risk to KCC. There was a brief discussion around CAMHS, this was being discussed at the HOSC meeting on 31 January 2014.
16. The proportion of investment was a factor i.e. joint health and social care responsibility but NHS invest 14m and KCC 1m Members suggested real danger not thought through before change.
17. Mr Lobban considered that if the Council was exploring the possibility a joint commissioning team for children's commissioners with the NHS KCC should have a single team for health and social care hosted by KCC. With regard to mental health the NHS spend was significantly more than KCC's spend on social care, which would normally result in the NHS leading however KCC would have to be assured of the risks and confident in the capability of the NHS to lead.
18. Members asked Mr Lobban to give thought to how the Select Committee could help the service to achieve what it needs to achieve.
19. In response to a question around the key challenges Mr Lobban explained that key was approach taken. Eg. contract to re-let the domiciliary care was critical as it was the platform for further transformation, focus not about reducing providers from 140 to less but about moving towards an outcome focussed model of care, giving choice and control to older people, a consequence of which may be less providers. About outcomes not about number of providers.

20. If social care is to be sustainable then we need to integrate with the NHS, it would be necessary to have pooled a joint 'better care fund' of £101m by 2015 for integration of health and social care, and prevent people going into hospital and to allow them to come home as quickly as possible, reporting to the Health and Wellbeing Board. CCGs were also required to set out their 5 year vision and a 2 year detailed plan. Need NHS to plan their waves so are ready at the same time as Kent. E.g KCC needs to say when ready with enablement service to test market; NHS need to get ready with their intermediate service at same time. There were problems around the language used by KCC and the NHS, using 'care pathways' as an example NHS regarded care pathways as disease specific, KCC regards care pathways as ensuring right service at right time.
21. In response to a question around how it was possible to monitor and manage a commissioned service which was not up to scratch. Mr Lobban explained that this was linked to the cost and quality of the service, and whether serious concerns had been raised or any safeguarding alerts. A retendering process was underway for carehomes for older people, and there would be a constant evaluation between price and quality.
22. Barriers – Res care- none, people have a choice of accommodation and could move anywhere providing it was within the resources of the Local Authority, KCC could offer x bed, y bed or z bed. Dom care – had put in place a lotting strategy so big and small companies could bid for different lots/geographically. There was also a private market for care and direct payments– not all provided by KCC/directly funded – needed to ensure these people had right advice, to make an informed choice if own income.

8. 12.00 noon - Henry Swan, Head of Procurement (KCC)
(Item. 5)

1. The Chairman welcomed Henry Swan to the meeting and invited him to give the Committee an outline on how his role supported Kent Businesses and to answer questions from Members of the Committee.
2. Henry stated that as Head of Procurement he was responsible for procurement across the whole of the County Council. He set out the following key aims
 - to save money
 - to manage risk
 - to support Kent businesses
3. Henry explained that half of the money spent externally was with Kent businesses. The majority of this went to: medium sized businesses (32%), small and medium sized businesses (SME's) (22%) and micro businesses (17%). Compared with other counties Kent was doing well.
4. Henry informed the Committee that KCC used to advertise contracts via the South East Business Portal but they had procured a Kent Portal and all tenders over £50k were advertised on it. Suppliers could register on the Portal for a particular category and receive an email alert when a tender for that category was posted on the portal. Kent District Councils, and Kent and Medway Fire and Rescue and Medway Council were also able to advertise via the portal. The cost to KCC of the Portal was £22k. There were currently

5,600 suppliers registered on the Kent Portal, 3,060 were Kent suppliers. He confirmed that Kent had a good supply base.

5. Henry confirmed that his role was to ensure that procurement was carried out legally.
6. Henry explained that for every procurement over £50k there was a procurement plan. The plan gave options for carrying out the procurement, and checklist - set out how Kent businesses would be considered within the tender. The Procurement Board met monthly and the question of how Kent businesses were being considered was always asked by the Leader. Henry stated that sometimes the answer to this was to say if the tender was broken down to smaller contracts it would be more advantageous to Kent businesses.
7. Regarding European procurement rules, there were times when KCC knowingly pushed the boundaries of the rules in cases where it was considered unlikely that there would be a challenge, the level of risk was outweighed by the benefits, KCC will take risks, procurement will advise decision makers on the level of risk that has been evaluated. Part of the role of the procurement team was to give advice on this level of risk.
8. Henry confirmed that he met regularly with the Federation of Small Businesses (FSB). He had also tried to standardise procurement documents across the County Council and as part of this process had got feedback from the FSB to make the procurement process better for these suppliers. Tenders should then look similar online. The outsourcing of the Youth Service had been carried out via the Kent Portal and there had only been two complaints about the use of this facility. He stated that everything his team did was focused on Kent businesses.

Question – Do the FSB have particular problems with KCC tendering process?

9. Henry replied that the move to standardised documentation would make it easier for them. Part of the feedback on the documents from FSB was that these should be in plain English. There was also information about consortiums which had been incorporated, plus information on whether a financial assessment was required or not. Issue highlighted re consortiums and need for companies to work together and form a Joint Venture Company if they were successful in tendering.

Question – What is the cost of making a bid?

10. Henry stated that the main cost of submitting a bid was in time to the business, we aim to make this as easy as possible for them.

Question – Regarding the Social Value Act, is social value something that is quantifiable? Is there more that we can do to facilitate third party procurement? Is it possible for the Kent Portal to be use by all bodies outside of Kent?

11. Henry replied that there was a lot of misunderstanding about the Social Value Act, it was not something that could be used for all procurements. Central Government had come out with a law or guidance which did not tie in with European law. The legal interpretation of the Social Value Act was that we should consider it when thinking HOW we do the procurement and carried out our procurement but not when we carry out our evaluation of the tenders because this would be unfair to European bidders. He confirmed that the social value was taken into consideration anyway and that there had not been need for an act which had not been helpful.
12. Henry explained that it was possible to infer things that KCC would like to be included, such as apprenticeships, in conversations but not in the tender specification document. However, suppliers could include this in the bid and we could then pick up on that on contract on that basis.
13. Regarding the Kent Portal, Henry stated that it was the intention to extend the use of this by other non Kent based businesses, so that they could use it to advertise for Kent sub-contractors.

Question – In your two and a half years experience at KCC, if there were three things that you could change about the way that procurement is carried out in the public sector what would they be?

14. Got to get it right at the beginning. Henry stated that there were benefits from being in the public sector, the evaluation process was good, and it was not possible to change your mind about the tender halfway though as happened in the private sector. In the public sector it was not possible to negotiate the contract (with final 3 providers) as you would in the private sector. However, in the private sector you are not given the best price as it was expected that there would be negotiation. Henry referred to the reverse auction process which he was using where suppliers bid against each other and the lowest bidder was awarded the work. The suppliers were able know whether they were 1st, 2nd and 3rd in the scale of tenderers but not the price bid.

Question – How do you manage risk?

15. Henry stated that it was important to ensure that what people tendered for is what we/they actually wanted. At the beginning of the process officers were encouraged to talk to suppliers. Use PIN notice to engage with Market. At the end of the process if there are two lowest bidders, we would talk this through with the manager of the contract, we can not get the tenders to change anything but it was important to ensure that the understanding of the contract manager and the tenderer were the same, before the contract was awarded.

Question – What barriers to participation have the FSB identified?

16. Henry replied that the SME's had identified the need for clear advertisements and tenders in smaller lots where possible. These were things which KCC tried to do but there was a balance to be struck. KCC sometimes needed to upscale contracts for financial reasons. Sometimes small but not always better; Need standardisation, clear advertising, smaller lots.

Question – What are the barriers to voluntary sector infrastructure support groups?

17. In relation to the Voluntary and Community Sector (VCS) Henry stated that he was working with these groups and acknowledged that there was more work to be done with this sector. If KCC worked with the voluntary sector and used volunteers it should be more competitive as they did not have the same costs. He confirmed that we would need to use the third sector more.

Question – What about Not for Profit (NFP) organisations?

18. Henry stated that NFP organisations could move forward, should be more competitive (as use volunteers or not for profit) but that was not always the case.

Question – How do you evaluation sustainability?

19. Henry confirmed that this related to delivering the contract in the required period. He explained that if an abnormally low bid was received there was a duty to investigate to make sure it was sustainable. They would ask for a breakdown of price from the tenderer. If we were satisfied with the breakdown we could challenge them to deliver to that.

Question – Regarding the Kent Portal is there a directory of services available to organisations?

20. Henry replied that there was not, it was a means of advertising tenders and it held the contracts register, there were currently 2.5k contracts on it. It was also a method to communicate to suppliers. Some are not accurate but in progress to improve.

Question – What is the one major thing that the organisation could do to improve procurement/commissioning?

21. Henry stated that KCC could implement the report that he had taken to Corporate Directors on Monday 20 January 2014. The key parts were 1) to have the right people in the right places and roles and 2) contract management - to make sure that there was clear contract management and clear roles. The Committee asked Henry to supply them with a copy of the report. Henry stated that a good example of contract management was where the Head of Commissioning in Public Health saw that Kent Community Health NHS Trust was not doing what they were required to do under the contract she challenged them and got a credit of £690k. Service performance sits with Commissioners and their role is to have an understanding of contract management.

Question – De- commissioning and re- commissioning – how well do we do that and what are the real issues?

22. Regarding re-commissioning and de-commissioning this does not sit with procurement, but with commissioning. He emphasised the importance of looking across the whole of the county council when commissioning for

example there was a tender for infant feeding, which when it went to Procurement Board the question was then raised about Children's Centres and their role.

Question – In relation Kent businesses is there a limit regarding economies of scale?

23. KCC target for 60% Kent business (1st and 2nd tier). Henry stated that KCC was getting close to that limit now. It was now more about taking into account second tier sub contractors. The Council could only do so much. KCC was ahead of the game compared to other Councils.

Question – One of the weaknesses is enforcing and monitoring contracts. It is important not to be outsmarted by the private sector and are we too soft in enforcing control?.

24. Henry agreed that there was vast scope for improvement. Procurement were now responsible for the contract side, in the past this had rested with Legal Services. Key is what needed, by when and standard. There was a standard form of contract, with key provisions and other provisions which could be included as appropriate. The start of the process was crucial as there was no scope for changing the tender specification once the tender process had started. When a client produced a contract colleagues in procurement challenged it in relation to clarity etc. The contract manager needs to be involved in the process all the way through – this is now happening. Need to be right before procure. Henry confirmed that there was a big push on contract management.

Question – Are procurement involved early enough in the process?

25. Henry stated that procurement were now involved in nearly every procurement. He gave the example of Mark Lobban who had involved procurement nice and early in the process for adult social care procurement. Henry emphasised that procurement colleagues were not there to stop commissioners or to give legal advice but their role was to help managers do the right thing in relation to procurement and help do legally as much as possible and advise on risk

Question – How do you get the best out of a contract?

26. It is important to consider how long a contract needed to be, in local government there had been a tendency to have contracts of 5 years or longer. We should have the contract for whatever length is best for the Council. (so if need to award yearly make process easier not contract longer e.g. commodities) At the moment there was an edict to 1) make sure that there is a budget for the procurement and therefore contract managers must speak to finance to confirm this and 2) to try to limit contracts to 2 years at the most, as uncertainty of future budgets. He acknowledged that there would always be times when there was a need to have longer contracts where capital investment by the contractor was required..

Question – Do you get more tenderers for a longer contract than for a shorter one?

27. Henry explained that this depends on what type of contract it was, it was necessary to talk to the market and to decide on the best way forward e.g. the telecare contract was for 18 months, as within that period a larger solution would become available and this system could become part of that.
28. The Chairman thanked Henry for helping the Committee with their work and for answering questions from Members.