

By: Eric Hotson, Chairman of the Member Working Group on Commissioning
Paul Carter, Leader of the Council

To: County Council – 23 October 2014

Subject: A collaborative approach to Member involvement in Commissioning - Report of the Member Working Group

Summary: The report sets out the findings and recommendation of the Member Working Group on Commissioning, established by the Leader of the Council to consider the future role of non-executive Members in a Strategic Commissioning Authority.

RECOMMENDATIONS:

County Council is asked to:

- (1) Note and comment on the deliberations and findings set out in section 3 of the report.
- (2) Agree that a cross-party informal advisory board, chaired by a backbench Member, should consider commissioning decisions in depth and advise Cabinet Committees accordingly before Key Decisions are made, with the arrangement reviewed after a 12 month period
- (3) Agree that given the majority of significant commissioning decisions facing the council over the next 12 months will come from the Facing the Challenge transformation programme, that the advisory board should also take on the responsibilities of the Transformation Board, with the arrangement reviewed after a 12 month period
- (4) Delegate to the Head of Democratic Services, in consultation with the Group Leaders, the establishment of a cross-party advisory board as set out in this report

1. BACKGROUND:

1.1 The Commissioning Select Committee, chaired by Mr Angell and considered by County Council at its meeting in May, made a total of twenty-seven recommendations. Recommendation 26 stated that: *“Further work is undertaken to the member role and what mechanism would best strengthen member oversight of commissioning, procurement and contract management; and member involvement earlier in the process and pre market engagement; and members are supported through training”*

1.2 Subsequently, the Leader asked me to Chair a cross-party Working Group to consider the role of Members in a strategic commissioning authority and make recommendations.

2. MEMBERSHIP, TERMS OF REFERENCE AND ACTIVITY:

2.1 The Membership of the Working Group on Commissioning is set out below:

- Mrs A D Allen, MBE
- Mr M J Angell
- Mr M Baldock
- Mr A H T Bowles (Vice-Chairman)
- Mr N J D Chard
- Mr G Cowan
- Mr E E C Hotson (Chairman)
- Mr R A Latchford, OBE
- Mr C R Pearman
- Mr C Simkins
- Mr R Truelove
- Mr M J Vye
- Mr M E Whybrow

2.2 The terms of reference for the Working Group were:

- (a) *To consider and make recommendations as to:*
- (i) *The role of the Members at each stage of the commissioning cycle;*
 - (ii) *How the Member role in commissioning can be discharged including changes to the way Cabinet Committees and other council committees might change to support the member role in commissioning; and*
 - (iii) *The skills needed by Members to support their role in each stage of the commissioning cycle and any other subsequent training priorities for Members.*
- (b) *Link to the Market Engagement Reviews and ensure proposals coming forward clearly prioritise and embed the member role in commissioned services; and*
- (c) *Oversee the overall effectiveness of the member role in commissioning, and the process established to discharge that*

2.3 The Working Group has met four times through July to October 2014, considering a range of issues and receiving a number of presentations from officers. One of the meetings was a joint meeting held with the officers responsible for developing the Commissioning Framework for KCC. This was productive and allowed for a frank exchange of views from both the Officers and Members on the challenges that we face in becoming a strategic commissioning authority.

3. DELIBERATION AND FINDINGS:

3.1 From a hesitant start, the Member Working Group has supported cross-party discussion as to how KCC can become an *effective* strategic commissioning authority whilst ensuring the leadership role for all elected Members of the County Council is enhanced. Members have had the opportunity to give their own views and listen to the views of others. Strong opinions have been put forward from across the

party political divide with a significant degree of openness and honesty. Such engagement is a strong foundation upon which to build.

Strategic Commissioning as policy

3.2 There is clear recognition that it is the policy of this County Council to become a Strategic Commissioning Authority. The need for urgency is a response to the very significant challenges faced from increased demand for services against falling Government grant - a scenario which is expected to continue until at least 2019. This has been explained, considered and agreed upon by all Members through the papers brought to County Council by the Leader, and is reiterated by Cabinet Member for Finance at every possible opportunity.

3.3 In recognising the need for urgency, there is cross-party appetite to ensure that KCC becomes an effective Strategic Commissioning Authority, and recognition that all Members have a role to play in making this a success.

3.4 That is not to say that that we will always agree across party political lines on the final decisions that are made about the future commissioning of KCC services. Political differences will always exist, and it is right that they influence how Members vote when final recommendations are put to them for consideration. Political differences are the very basis on which the Kent electorate voted for each Member of this County Council, and it is right that they are aired and guide Members.

High levels of trust:

3.5 However, in becoming a Strategic Commissioning Authority the process by which decisions are made or arrived at regarding the future delivery of our services should be more openly debated, discussed and considered by all Members before recommendations are finalised. Making this happen in a practical and sensible way is the problem that must be solved. If we get it right, the opportunity exists to:

- Support Cabinet Members in undertaking their role more effectively
- Full consideration of all options open to the County Council in commissioning services
- Lead to better decisions being made, that have been rigorously discussed and debated
- Make better use of all the skills and extensive knowledge across all elected Members

3.6 To achieve the above and to become an effective strategic commissioning authority, there must be a collaborative approach to commissioning within KCC. A collaborative approach can only be built on high levels of trust between everyone involved in commissioning, including:

- Officers and Members trusting residents and services users to help co-design services, and that they can bring as much value to commissioning as the 'professional'
- Backbench Members trusting Cabinet Members to have an open mind and discuss the opportunities for shaping services in a different way
- Cabinet Members trusting that backbench Members can add value to the commissioning process, bringing personal, professional and local expertise

- Officers and Members understanding that providers of our services, whether from the voluntary, public or private sector can bring innovation and new ways of working to services, and that they have an important role in supporting commissioning decisions.

3.7 Increasing levels of trust can drive cultural change across the organisation between officers, Cabinet Members and backbench Members, in particular so that they increasingly work together. .

Earlier and better engagement:

3.8 A consistent issue raised across the party political divide was the need for backbench Members to be engaged far earlier in commissioning of services. Whilst the move to pre-scrutiny of Key Decisions through Cabinet Committees allows backbench Members to consider issues before formal decisions are taken, the general view was that by the time decisions do reach Cabinet Committee, it is difficult for Cabinet Members to row back from the recommendations given financial and non-financial resources already expended.

3.9 Backbench Members need to be engaged in the design of commissioning and procurement specifications as they are being developed, not once they are finalised. This engagement needs to occur as early as possible in the commissioning cycle, ideally at the analyse stage, when officers and Cabinet Members are first considering the fundamental options about how they might commission, de-commission or re-commission services.

3.10 These discussions should be focussed on issues such as:

- Does the service contribute to the outcomes and priorities of the council
- What are we seeking to achieve through the delivery of this service and what is the best way of achieving those outcomes? Is there a different / better way?
- Whether services are better commissioned and delivered at a countywide or a more local level
- Whether services targeting the same residents or attempting to meet the same outcomes might be better jointly commissioned with other services in KCC and/or with our partners (e.g. District Councils, NHS)
- Whether sub-contracting is allowed or encouraged and what steps KCC would take to protect the supply chain, especially where Kent VCS or SME are involved
- How social value might be driven from the commissioning of services
- Understanding the market for external providers from the voluntary or private sector
- The benefits or otherwise of external or in-house of delivery of services
- Local intelligence and knowledge about local resident/community needs and potential smaller scale local providers

3.11 Earlier and better engagement in commissioning decisions will drive further benefits throughout the commissioning cycle, including:

- Members understanding of why services and contracts are designed as they are
- Stronger member understanding of who is providing services for their residents, whether in-house or from the wider voluntary, public or private sector

- Better understanding of contract performance requirements, including who to contact if they feel performance issues arise
- Greater ability to undertake contract and performance management further through the commissioning cycle

3.12 The lists above are not exhaustive, and it is not possible to predict all the issues that might need to be considered with a particular service or contract. However, it does give a flavour of the quality of conversation and discussion that needs to take place with backbench members in order to engage them appropriately.

3.13 In this, backbench Members are almost completely reliant on Cabinet Members and Officers to pro-actively engage them in such discussions at the appropriate time, and the quality of engagement crucially hinges on the commitment of Cabinet Members to lead high quality engagement of their Member colleagues.

3.14 Crucially, earlier and better engagement with backbench Members will likely entail the sharing of information which, if inappropriately used or distributed, may place the authority at increased risk, e.g. information which is commercially confidential or which has been shared with the authority in confidence. There will need to be discipline and commitment from all Members to use such information for the purposes of engaging in discussions about commissioning options and decisions, and not for narrow party political interests.

Social value:

3.15 The importance of social value, and the Member role in determining social value through commissioning was an important issue for all Members across the political divide. This builds on the Commissioning Select Committee recommendation that KCC should “...*maximise and give greater recognition to Social Value, incorporate consideration of social value questions in tender evaluation criteria and procurement decisions where possible...*”

3.16 Whilst KCC has a good track record in driving social value from its contracts and commissioned services, the authority must continue to ensure that it is fully meeting the requirements of the Social Value Act to consider social value through the commissioning of its services. In particular, KCC must become smarter at determining social value and being explicit about social value in our commissioning specifications, especially where the council may be seeking to gain specific added social value (such as providers taking on apprenticeships) from the contracts it provides, and there is a clear role for backbench Members to ensure the requirements of the Act are being met, and what added social value should be gained through effective commissioning.

3.17 However, the consideration of social value also needs to go beyond the definitions and requirements of the Act. At its heart, social value is considered by full consideration of the balance between the price the council is willing to pay for services vs. the volume of services required vs. the quality of services it wants. KCC is not simply a business, and the services which it provides have a social purpose. The cheapest may not be the best and the search for value for money must involve considerations about when it might be better for Kent for KCC to agree a more expensive contract, or to commission a smaller provider, or to split the contract into smaller local lots.

3.18 The fine balance between price vs. volume vs. quality fundamentally drives consideration of social value, and it should be the 'anchor' point around which Cabinet Members engagement with backbench Members is based.

Performance and contract review:

3.19 Whilst much of the discussion within the Member Working Group was focussed on how to improve Member engagement in the earlier stages of the commissioning cycle, there was also discussion about how to improve the Member role once services have been commissioned. In particular about how backbench Members can help support better contract management by KCC of commissioned and contracted services.

3.20 There was a clear acceptance that primary responsibility for performance and contract management sits with the Cabinet Member, appropriately supported by Officers. As the effective contract owner, they have responsibility for addressing specific issues or underperformance, whilst backbench Members have a performance scrutiny role through Cabinet Committees.

3.21 However, as we move to a commissioning authority with the aim for there to be little difference in the commissioning and performance management of external and internal providers of services, there was agreement that there should be a more direct line of sight between the providers of services, especially external providers, and backbench Members through Cabinet Committees. Specifically, Members should be able to hold to account external providers in the same way they do in-house services, and that this should be made clear through commissioning and procurement specifications.

3.22 There is actually nothing preventing Cabinet Committees from asking providers to attend to discuss their performance now, but simply that it is not current practice for Cabinet Committees to do so. However, in a commissioning authority, Members should actively engage both providers and commissioners of services, and there are emerging examples of good practice (such as the Property Sub Committee agreeing a six month contract review meeting with three providers for the new Total Facilities Management contract) which should increasingly be emulated.

Commissioning and transformation:

3.23 Becoming a strategic commissioning authority underpins KCC's transformation programme, *Facing the Challenge*. However, the pace at which Facing the Challenge has progressed since September 2013 has left some Members feeling left behind, struggling to understand how they can engage with the programme, even if no final decisions about the services under review have yet been made.

3.24 At the same time, there was recognition from across the party political divide that through the Transformation Board, there had been a genuine effort to brief Opposition Leaders on the progress of *Facing the Challenge*, and provide early warning of the issues, options and decisions that were likely to be put to Members.

3.25 However, concern was expressed about whether the Transformation Board in its current guise is working effectively, given the agenda was set by the Leader (who

also Chairs the meeting) which limits the ability to explore wider issues relating to the transformation programme, and some confusion as to what information provided to members of the Transformations Board can be shared with their colleagues. As a result, the Transformation Board is not acting as a conduit for information about the transformation to backbench Members.

3.26 Many of the most significant strategic commissioning decisions facing KCC over the next 12 months are being driven through the Facing the Challenge programme, and there is clear agreement across the Working Group that backbench Members must have a stronger voice in the delivery of the transformation programme.

Cabinet Committees role in commissioning:

3.27 There was significant discussion and debate about the role of Cabinet Committees and whether they are an appropriate mechanism for engaging Members in commissioning. There are some strong arguments in favour of focussing backbench Member engagement in commissioning through Cabinet Committees, including:

- The Cabinet Committee system is known and understood by Members and Officers
- It is inclusive, in that all Members attend Cabinet Committees
- They are already part of the Executive decision-making process

3.28 However, a number of concerns were expressed about whether Cabinet Committees could, given how they currently operate, be the primary mechanism for Member engagement in commissioning. Issues raised include:

- Limited meeting schedule in 'fast-paced' commissioning and transformation environment
- Too many 'For Information' and 'For Noting' items overloading the agenda
- Limited ability for backbench Members to set the meeting agenda
- Not all Members across Cabinet Committees have necessary skills
- Need to ensure that the Member engagement in commissioning does not become overly bureaucratic, given the Select Committee on Commissioning recommendation that "bureaucracy kills commissioning"

3.29 Given the volume of commissioning and transformation decisions facing KCC over the next 12 months, the unanimous view of the Working Group was that Cabinet Committees are not yet in a position to be the primary mechanism for ensuring Member engagement in commissioning.

4. RECOMMENDATIONS: AN ADVISORY BOARD ON COMMISSIONING:

4.1 Given the above, the unanimous recommendations of the Member Working Group are:

- that a cross-party advisory board, chaired by a non-executive Member, should consider commissioning decisions in depth and advise Cabinet Committees accordingly before they consider Key Decisions

- that given the majority of significant commissioning decisions facing the council over the next 12 months will come from the Facing the Challenge transformation programme, the advisory board should also take on the responsibilities of the Transformation Board

4.2 The new advisory board will:

- Be cross-party in membership and chaired from outside of the Executive
- Working with the Leader / Cabinet set its own agenda and meeting schedule necessary to discharge the volume of business
- Work on a non-partisan basis to support genuine debate and discussion
- Focus on the options, planning and oversight of service/contract specifications ahead of procurement
- Support consideration of how to maximise social value from contracted and commissioned services
- Be responsible for acting as a conduit for information on the transformation programme to backbench Members
- Ensure that Members involved are suitably trained to contribute effectively to the committee's business

4.3 To be clear, Key Decisions on commissioning of services will still go to the relevant Cabinet Committee for endorsement, however the in-depth scrutiny and consideration will be undertaken by the advisory board with its recommendations reported to the Cabinet Committee for consideration.

4.4 Importantly, the Council should commit to this arrangement for a period of 12 months before a review is undertaken to see whether they are still necessary. In particular, the aim throughout the year should be to embed the principles of early engagement in commissioning through the advisory board, and also further develop Member understanding and awareness of commissioning, with the aim of Cabinet Committees becoming the primary mechanism for Member engagement throughout the commissioning cycle in the future.

5. NEXT STEPS:

5.1 Given the necessary pace of transformation it is important that, subject to the agreement of the recommendations made in this report, that the advisory board is established quickly. The Head of Democratic Services will work with the Leader, the Chairman of the Working Group and Opposition Group Leaders to reach consensus on:

- Chairmanship
- Membership
- Terms of Reference
- Administrative support
- Work programme

5.2 The work programme will be particularly intensive in the short-term, as there will be a need for the advisory board to 'catch-up' on the issues and progress against the Phase 1 services within Facing the Challenge, before wider commissioning and transformation of services is built into the work programme.

Appendices: None

Background Documents:

- Commissioning Select Committee 'Better Outcomes, Changing Lives, Adding Social Value', County Council, May 2014
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- 'Facing the Challenge: Towards a Strategic Commissioning Authority', County Council, May 2014.