



## Report of the Cabinet Member for Care, Health & Ageing Well

### Adult Services Scrutiny Panel – 24<sup>th</sup> September 2019

#### Procurement Practice and Assurance in Social Care

<b>Purpose</b>	<ul style="list-style-type: none"> <li>To provide a briefing requested by the Board about Procurement Practice and Assurance in Social Care.</li> </ul>
<b>Content</b>	<p>This report provides a summary of :</p> <p>The role of procurement in commissioning social services; Procurement Rules and regulations; How the procurement function contributes to meeting other legal duties, effective performance management and market development.</p> <p>The report concludes that existing arrangements are fit for purpose.</p>
<b>Councillors are being asked to</b>	<ul style="list-style-type: none"> <li>Endorse the conclusions of the report</li> </ul>
<b>Lead Councillor(s)</b>	Cllr Mark Child (Cabinet Member for Care, Health and Aging Well)
<b>Lead Officer(s)</b>	Deborah Reed, Interim Head of Adult Services
<b>Report Author</b>	<p>Peter Field (Principal Officer Commissioning for Adult Services)</p> <p>Lee Morgan (Category Manager, Procurement)</p>

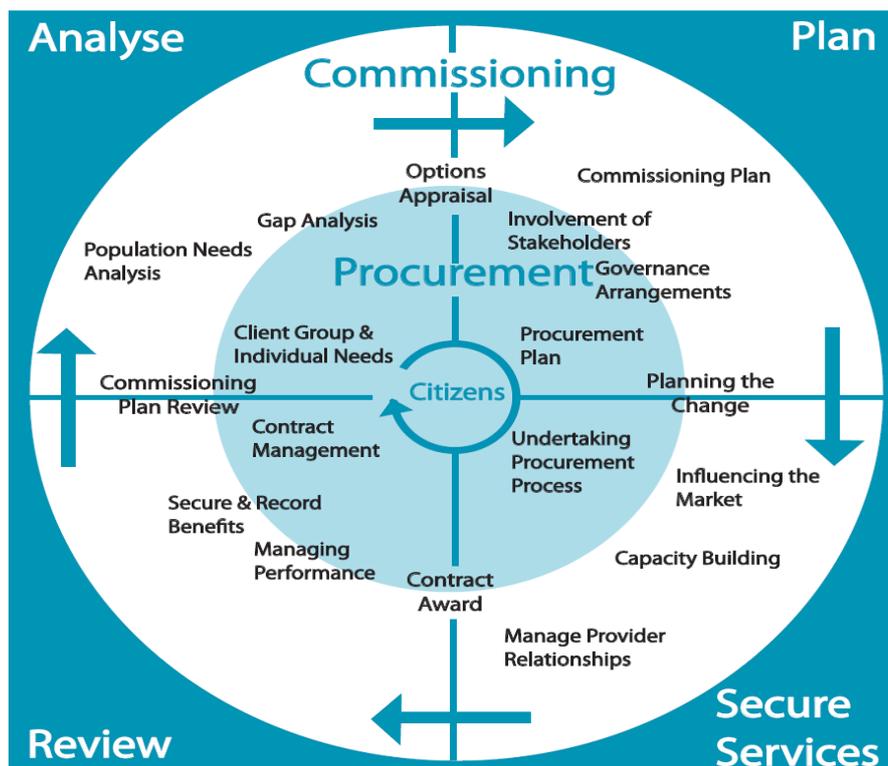
## **1. Introduction**

- 1.1 The Council operates a Category Management approach to organising its spend. This is a strategic method of procurement which involves grouping related products and services and organising procurement resources to focus on each specific category.
- 1.2 The Council has nine categories of spend. These are grouped into three overarching categories: Social Care, Construction and Corporate Resources. The commissioning of Social Care services is supported by a dedicated Category Manager and a Procurement Officer. These staff will provide essential guidance and support to implement the procurement processes which apply to all services falling within the Social Care category.
- 1.3 Social care is a major category of spend for the Council which is characterised by unique complexities which present a procurement challenge. As well as achieving commercial objectives relating to value and efficiency, it must also focus on the individuals who receive social care services. The requirement is to achieve a personalised approach that delivers legal obligations within available resources.
- 1.4 The procurement function doesn't exist in isolation. It serves as part of a wider commissioning process that operates in partnership with a range of individuals and organisations to ensure the needs of individuals are met.
- 1.5 The Institute of Public Care (IPC) attempts to describe the activities that operate to enable effective commissioning by grouping functions into four key activities (Analyse, Plan, Secure Services, and Review).
- 1.6 The diagram below provides context for the role that procurement plays within the cycle of activity that enables successful commissioning.

1.7 Represented by the inner circle, the diagram shows how Procurement contributes to the Analyse, Plan, Do, and Review functions. However within a social care context it's the commissioning officers that lead on all of the activities within the commissioning cycle (with the exception of the procurement plan and development of procurement process). Therefore it is the commissioning function that drives procurement activity. Developing services is commissioning led rather than procurement led.

## 2. The Procurement Function

2.1 Procurement is part of the Commissioning function. Commissioning is not Procurement although the words commissioning and procurement are often used interchangeably. Procurement is one potential option which may arise from a



commissioning process and which operates to source, services needed to fulfil commissioning objectives.

2.2 Within Swansea Council there are a number of key procurement features that contribute to effective commissioning. Examples include:

- A dedicated Category Manager and Procurement Officer who is developing experience in Social Care, and is involved throughout the commissioning cycle. This enables Social Services to be sure that practice is compliant with legislation and Council CPRs at all stages of the process.
- Procurement drivers and objectives are aligned with those of the commissioners. This means that in so far as possible we have shared values, work plans and timescales.
- A relational approach to procuring and commissioning is developed. This means developing longer term relationships with Providers and building trust so that services can be developed and improved.
- Recognising that there is overlap between procurement and commissioning activities and that effective practice requires collaboration.
- Procurement approaches are developed to enable or maintain a diverse market which promotes a range of services, enables a safe and sustainable distribution of market share and enables individuals to exercise choice, including through use of direct payments.
- Effective governance arrangements which involve Procurement representation at the People Commissioning Group to ensure there is appropriate senior management oversight and compliance in relation to all procurement activity.

### **3. PROCUREMENT RULES AND REGULATIONS**

3.1 There are a number of rules and regulations that govern the way in which public money is spent and these rules are in place to ensure fair competition but also to protect officers by reducing likelihood of legal challenges.

3.2 The basic principles which Commissioning and Procurement Officers are expected to demonstrate when carrying out procurement activities are:

- Transparency
- Proportionality

- Non-discrimination
- Equal treatment

- 3.3 The rules for procuring all public contracts are determined by the Council's Contract Procedure Rules and the Public Contract Regulations 2015 (PCR). The Legislation has specific rules for the procurement of social care services when the value of the contract (over the lifetime of the contract) is over the current threshold of £615,278. This threshold is reviewed every two years.
- 3.4 Where the value of contracts does not exceed this threshold the Councils Contract Procedure Rules must be complied with.
- 3.5 The PCR creates new arrangements for social care services by introducing a "Light Touch Regime (LTR)" The procurement rules for LTR services are less stringent than for other goods and services. Importantly, the regulations enable councils to design procurement procedures provided they comply with general principles relating to fair completion and transparency.
- 3.6 An example of where we have used this flexibility in the regulations arises in relation to the tendering for Domiciliary Care and Respite at Home Services.
- 3.7 Under the LTR arrangements procurement lots must be advertised via a "contract notice" or a "Prior Information Notice" and tenderers must be invited to confirm their interest. Contract award notices must also be published.
- 3.8 Other requirements we must comply with when we design our procedures for social care services include:
- Conforming to the procedure described in the notice.
  - Setting time limits for completion of processes that are reasonable and proportionate.
- 2.5 The Council does not have to design procurement processes for social care services and has the option to use one of the familiar processes prescribed under the Public Contract Regulations.
- 2.6 In determining what type of procedure to use the Council may take into account any relevant considerations. The regulations provide the following examples (but guidance would be sought from Procurement Officers in relation to each individual situation).
- The need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services.
  - The specific needs of different categories of users, including disadvantaged and vulnerable groups.

- The involvement and empowerment of users.
- Opportunity for innovation.

- 2.7 No specific contract award criteria are prescribed for LTR services within the Regulations. This means the Council is free to decide its own approach. Typically this involves evaluating tender submissions against a price-quality ratio. Judgements about quality are made by assessing Provider's written submissions / or presentations against a set of agreed criteria. A scoring method is used to determine which Provider(s) demonstrate the best blend of quality and value for money. This usually involves setting the bar high in relation to quality and assessing who / which combination of Providers can achieve the quality targets at the most advantageous price.
- 2.8 Under Public Contract Regulations there is no requirement for the Council to follow the same procedures for contracts which are below the financial threshold (since there is unlikely to be sufficient European cross border interest in them). However, the Council's Contract Procedure Rules require public advertisement and competitive tender for all services valued at £25,000 and over. The majority of social contracts will be exceed this value and therefore the LTR procedures as outlined will apply in most cases.
- 2.9 Support from the dedicated Category Manager Social Care procurement officers is provided at each step to ensure that processes are fully compliant with procurement legislation and CPRs.

#### **4. OTHER LEGAL DUTIES**

- 3.1 The Social Services and Wellbeing Act 2014 creates a number of new duties which influence procurement and commissioning practice. These include the following:

##### Outcomes, Person Centred Practice and Co-Production

- 3.2 The Act creates a duty to ensure that services are outcomes focused. This places an emphasis on results rather than activities and Procurement has a significant role to play in ensuring that the design of tender specifications reflect these requirements. Theoretically, by reducing the number of detailed performance requirements in favour of specifying the outcomes required, the risk and responsibility for achieving the objectives shifts from the purchaser to the supplier. In practice a minimum degree of detailed performance requirements may be required to ensure safe practice. Approaches to meeting these duties are being shaped with support from colleagues in procurement. These arrangements will evolve to reflect changing social work practice as it develops to provide more strengths based and outcomes focused assessments, care plans and reviews.

- 3.3 Under the Act the council has a duty to facilitate the market by encouraging improvement and innovations and procurement activity must adhere to these principles.
- 3.4 These principles are consistent with and underpinned by statutory guidance on the LTR which makes it clear that allowing people who use services to choose their provider does not contravene requirements around transparency and equal treatment. Our procurement processes are adapting to enable the perspective of service users to influence what and how we commission.

#### Partnership Working and Collaboration

- 3.5 Part 9 of the Social Services and Wellbeing Act requires Local authorities and Health Board to work more effectively with each other and obliges commissioners to co-operate with relevant partners. These obligations are shaping local and regional procurement options and procurement colleagues are involved in developing shared procurement solutions with partners where appropriate. Support to develop a national commissioning framework for high cost care home placements for younger adults and creation of a local procurement framework which Swansea Bay Health Board can use to commission supported living placements are examples.

### **5. PERFORMANCE MANAGEMENT AND MARKET DEVELOPMENT**

- 4.1 The commissioning function operates to ensure that care markets are sufficient to meet needs. This means ensuring an adequate supply, with a sufficient number of operators to reduce market risks and promote choice, which deliver satisfactory quality, at an affordable price.
- 4.2 The significant majority of this type of market shaping activity is led by the Adult Services Commissioning Team. However procurement has a role to play in a number of important ways, for example, by providing support to:
- Design strategies for apportioning procurements into lots to ensure equitable distribution of market share that reduces provider failure risks, promotes choice and encourages market stability.
  - Develop tender evaluation processes and criteria and provide training and support for commissioning staff to ensure that these are applied fairly.
  - Assess workforce risks arising from TUPE regulations and ensure these are minimised by facilitating transfer of information between incoming and outgoing providers to enable service continuity.
  - Design KPIs and other performance metrics.

- Understand community benefits opportunities and promote social value objectives which encourage economic, social and environmental benefits for local communities.
- Develop processes for engaging people who use services, and their families in the procurement of services.
- Develop market capacity by supporting providers to understand the tendering exercise through training and workshops. This can help to reduce barriers to market for smaller operators who may be deterred by procurement processes.
- Undertake other types of early market engagement activities with potential providers to test assumptions, generate innovation, and assess market appetite.

4.3 Following contract award, the responsibility for ensuring services are delivered according to contractual standards rests with the Adult Services Commissioning Team. Typically this involves working directly with each Provider to assess the quality of services. It will also involve receiving performance related information from other departments and agencies and from service users and their families. Close working with the Regulator of social care services, the Care Inspectorate Wales and the Health Board are an integral part of performance management processes. Where services are found to be underperforming contract compliance action and other performance management processes will take effect. Safeguarding action may be taken where necessary. Significantly under-performing services may be de-commissioned.

## **6. CURRENT COMPLIANCE WITH PROCUREMENT DUTIES**

5.1 In 2018 Social Services introduced a People Directorate Commissioning Group to oversee the People Directorate commissioning programme and ensure compliance with legal duties. This group is chaired by the Director of Social Services and comprises senior managers with commissioning responsibilities and the procurement lead for social care services. The group meets monthly and provides Senior Management governance and oversight to ensure commissioning and procurement responsibilities are met.

The current procurement position relating to specific social care service areas is as follows:

### Residential Care Contracts

5.2 All residential Care Contracts are compliant (an exemption now operates to exclude care homes which except standard fee rates, from contract procedure rules on basis that competitive tendering is not required).

### Domiciliary Care Contracts

- 5.3 A competitive tender exercise has been under in 2019 and a procurement framework has been created for the award of new business. A refresh of the framework will be undertaken in 2020 to add more Providers. There are a small number of Providers who were not appointed to the framework who will continue to deliver services until such time as they are appointed to the framework to enable continuity of services for citizens. Compliant contracts will be awarded in October.

#### Supported Living Contracts

- 5.4 A legally complaint procurement framework has now been created and a re-procurement programme established. Re-procurement via the framework commenced in January 19. Re-procurement will occur in 4 tranches. Contract awards occurred in August 2019 for tranche 1, and are schedule to occur in December'19 for tranche 2, April '20 for tranche 3 and July 20 for tranche 4.

#### Third Sector Contracts

- 5.5 Progress in this areas has been slower than others. Partly due to changes in personnel, staff absences and competing priorities given the relatively low spend on these services. The low spend means that most will not reach the thresholds for triggering rules under Public Contract Regulations but will require re-tendering to fully comply with council CPRs. Timescales for achieving contracts which are awarded in compliance with CPRs are to be confirmed (following commissioning review processes which are underway to examine future requirements).

## **7. CONCLUSIONS**

- 7.1 The procurement function is critical but is only part of the process that operates to ensure services are commissioned effectively.
- 7.2 Procuring social care is different from procuring other goods and services. It requires a more collaborative approach and a greater degree of risk sharing between service purchasers and service providers. This means careful balancing of price, quality and market stability considerations.
- 7.3 In Swansea the procurement and commissioning teams work closely together. Dedicated social care procurement support is provided to ensure processes are fully compliant, and result in services that can meet the needs of people who use them.
- 7.4 Effective senior management governance arrangements are in place.
- 7.5 There are a number of additional legal duties under the SSWBA which the procurement function helps to address. The procurement and

commissioning activity undertaken to comply with these duties will continue to develop as social work practice and ancillary systems evolve.

- 7.6 Responsibility for ensuring commissioned services are fit for purpose is shared amongst a number of departments within the council and external agencies. From a local authority point of view, work to address commissioned Provider underperformance is led by the Adult Services Commissioning Team.