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Commissioning: Staff Terms and Conditions Report

1. Background and purpose of the Scrutiny

1. The aim of the scrutiny was to examine what influence the Council has to ensure that those it commissions from are fair employers.
2. In July 2015, the Overview and Scrutiny Performance Board agreed to scrutinise the way the

cycle, processes, the Procurement Code, options for delivery models and draft commissioning plans.

7. The Task Group went on to meet with those responsible for commissioning services within each service area (Strategic Commissioning Officers), as well as some of the managers who oversee specific services.
8. An important part of the scrutiny process was to hear from some of the companies commissioned to provide services for the Council, and discussions took place with a small group of providers including the account managers for IT, customer service and a domiciliary (homecare) provider.
9. Information was also sought on Trans

legislative requirements, including those relating to employees including compliance with regulations relating to payment of the National Minimum Wage (NMW). The NMW applies to all employees regardless of age whereas the National Living Wage (NLW) only applies to employees aged 25 and over. The NLW for these employees is the same as the NMW so we have referred throughout the Report to the NMW as this is the most appropriate description.

16. The Regulations relating to public sector procurement are stringent although traditionally, there is an increasing emphasis being put on the social value of award criteria. Social value is viewed as how the money a council spends on external contracts can help and support the local community. Examples could include volunteering by supplier members of staff, apprenticeships, work experience, using the local supply chain, or sponsoring a sports event.

20. Once an invitation to tender is published there is no ability to change it, except in limited circumstances, therefore market engagement is vital. The regulations in relation to tendering are tight and aspects could be challenged if not adhered to.

21. The social value aspect of the procurement process is increasing nationally and the Director felt that criteria may change in time to reflect a greater emphasis

33. However, the example of highway maintenance was highlighted, where there are staff have remained on their original terms and conditions after 3 or 4 contract transfers, helped by the fact that their skills are in demand.
34. The Council can and does require providers to pay at least the NMW. Commissioners are clear on expected outcomes. There is also an annual review of performance against objectives with measured steps taken for any issues.
35. Commissioning Managers are clear that once a contract is in place, these elements are not proactively monitored, mainly because this would mean a 'huge resource commitment' for example, the Directorates covering Adult Services and Health deals with over 70 providers.
36. However, service monitoring takes place through various channels, for example visits, spot checks, mystery shopper exercises and data analysis. Commissioning managers expect providers to demonstrate a culture of quality assurance.
37. Subcontracting is more common as part of large contracts, particularly for specialised services. Contracts contain a number of controls and the Council's reputation is an important factor.
38. The Commissioning Managers who met with the Task Group would expect an open culture from providers, although a culture which enabled employees to report certain types of wrongdoing (whistleblowing) was not referred to in actual contracts.
39. Commissioning Managers pointed out that it was absolutely in the employers' interests to treat staff well and generally there was a relationship between how an organisation treats staff and the quality of work produced.
40. The providers who met with the Task Group were open in their praise for the Council monitoring teams and the good working relationships they build with council officers. Both the providers we spoke with and the Commissioning Managers reported that new employee's terms and conditions may be more favourable.
41. Although staff could remain on original terms andew

unannounced visit the next day, and checks through the Care Quality Commission. Action taken would depend on the circumstances and sometimes problems were resolved by raising quality assurance. Suspension of business was an option used if necessary. The provider would need to prove it was once again compliant, although repeated fails prompted questions about whether the provider should continue to be used.

H. Scrutiny's Role in Quality Assurance

45. The S

agreement of both parties either on an individual basis or through a collective agreement (ie: agreement between employer and employee or their representatives).

52. Opportunities exist for contractors to speak to the Council informally and there are clauses within contracts to ensure shared understanding. However, the contract is between the Council and the provider.
53. The Director responsible for commissioning felt that building good relationships with providers was the key to success.

J. Feedback from Unison Commissioning Expertise

54. Scrutiny and monitoring of contracts requires a high level of in-house expertise and detailed knowledge and this was acknowledged to be an issue. The Directorate of Adult Services had recently reviewed its commissioning structure and quality assurance capacity. The Economy and Infrastructure Directorate maintained its in-house design team and had to keep in mind the long-term management of the Council's assets.
55. The Council's reluctance to interfere directly with contracted employees' terms and conditions was questioned by Unison, West Midlands office. Their understanding was that Councils could stipulate that contractors complied with specific clauses, such as complying with the living wage. Unison advised that a number of public sector employers were including this as a requirement in contracts.

K. Feedback from Providers

56. Having heard from the Council's officers, it was important to hear from some providers themselves, and we met with three providers of different services (customer service, IT support and home care).
57. Providers were involved in regular, often monthly meetings to monitor performance, and those we met could see no reason why performance information could not be shared with councillors. They saw it as a transparent process.
58. Recruitment was highlighted as an issue for the homecare market, which in general was not seen as a profession, and suffered from low pay rates in comparison to other sectors, such as retail. This perhaps explained the number of staff from other countries, which have different work ethic values.
59. Commissioning managers told us that staff training was expected by providers; however a homecare provider told us that whilst training had a high value within their own company, and helped staff retention. Anecdotally, elsewhere it could be an area which is overlooked when finances are stretched.
60. A homecare provider has said that the contract rate for homecare had not increased over time, yet more is expected in terms of service delivery.

61. Travel time is a complex issue, especially for rural areas of Worcestershire, where there may be

4. Recommendations

In drawing up the recommendations, the Task Group has been mindful of what the County Council can and cannot influence. Although not socially ideal, there is a clearer understanding that the County Council is the Commissioner and responsible for outcomes, the provider is responsible for delivery and both parties are responsible for monitoring performance.

The Commissioning: Staff Terms and Conditions Scrutiny Task Group therefore recommends that the Cabinet Member with Responsibility for Transformation and Commissioning

1. Ensures that appropriate mechanisms are in place for the monitoring of the Council requirement for domiciliary care providers to ensure that staff salaries are no less than the NMW, including travel time and taking into account variances in approach but ensuring that the average overall was no less than the NMW.
2. Advise in relation to Homecare how contract rates are being updated to take account of the duty of care within the recent Care Act legislation
3. Develop a Social Value Policy and Framework that • š • } μ š š Z } μ v] o [• %o %o Œ } value, addressing the value of weighting of social value for economic, social and environmental wellbeing and ensuring value/3()-3(f)6(or)-6()-3(e)(n)-2(4(i)6(n)-4(s)5(to)-4(

Appendix A - Documents reviewed as part of the Task Group Review

Document
Extracts from the Council's Procurement Code
Extracts from Standard Council Contracts requiring compliance with the Law
Contract Monitoring Information from the Council's Website (Example Of Domiciliary Care) Contracts From Domiciliary Care Contract, Service Specifications and Guidance to Providers on monitoring

Officer Support

Emma James