

Divisions: NA

## **AUDIT & GOVERNANCE COMMITTEE – 3 MARCH 2021**

### **PROCUREMENT & CONTRACT MANAGEMENT REVIEW & IMPROVEMENTS**

**Report by Corporate Director for Commercial Development, Assets and Investment and Corporate Director for Customers and Organisational Development**

#### **RECOMMENDATION**

1. **The Audit & Governance Committee is asked to:**
  - (a) **Consider the management response and action plan resulting from the Marston Holdings Ltd case, as detailed in this report and Annex 1;**
  - (b) **Comment on the improvements highlighted in this paper; and**
  - (c) **Note the thematic findings following the review.**

#### **Executive Summary**

2. Following the successful challenge from the existing contractor as a result of the parking enforcement procurement award process, the Chief Executive commissioned an overarching fact-finding review of the procurement and subsequent litigation actions, settlement and costs associated with the challenge.
3. The purpose of the fact-finding review was to ensure that any lessons learnt are identified and addressed, and to inform decision making with regards to required next steps, whether any further investigation was required, including any disciplinary process. The review was conducted by an independent third party.
4. The key recommendation from the fact-finding review was that a full management response and action plan is prepared by the Corporate Director, Commercial Development, Assets and Investment and agreed by the Commissioning Officer, Chief Executive and Interim Monitoring Officer.
5. A number of steps have already been taken and implemented to ensure that lessons have been learnt. These are outlined in the main body of this report and Annex 1.
6. In 2018 PwC was commissioned to support Oxfordshire County Council to establish a revised operating model. This work identified areas of business improvement for each service area, including procurement and contract management.
7. The proposed organisational structure for procurement and contract management was approved by CEDR in June 2020. What is now referred to as the Provision Cycle Programme, was immediately launched and this paper, details the improvement work which has been achieved to date.

8. This improvement work was made ever more urgent, following the successful challenge from Marston Holdings Ltd, as a result of the parking enforcement procurement award process.
9. It is not appropriate to share the independent review report, as much of the information contained was gathered confidentially and it relates to individuals. However; the response to this case, costs, timeline, and action plan, are summarised in this report and appendices, for the committee to review.
10. This has been a long drawn out process, due to the need to negotiate through the legal process and the complexity of the issues under review. The challenges of conducting an investigation during the Covid 19 pandemic, should also be noted, document collection, seeking the location and participation of staff that have left the organisation, comparative review and the process by which contributions are checked, validated and clarified resulted in a review taking several months. A summary timeline appears as Annex 2

## **Exempt Information**

11. The public should be excluded during consideration of Annex 3 because its discussion in public would be likely to lead to the disclosure to members of the public present of information in the following categories prescribed by Part I of Schedule 12A to the Local Government Act 1972 (as amended):
  3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)
12. It is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that such disclosure would be to the detriment of the Council's ability properly to discharge its fiduciary and other duties as a public authority.

## **Background to the Marston Holdings Ltd Case**

13. Following the successful challenge from the existing contractor as a result of the parking enforcement procurement award process, the Chief Executive instigated an internal review of the matter. This review was undertaken by the deputy Chief Fire Officer. Following this internal review and its findings the Chief Executive then commissioned an externally led, full review of the procurement and subsequent litigation actions, settlement and costs associated with the challenge.
14. The Chief Executive allocated the Corporate Director of Customers and Organisational Development to act as the commissioning officer for this work. The role of the commissioning officer was to identify and engage a suitably qualified investigator, to set the investigators terms of reference, and to ensure the investigator had full access to information required to conduct the fact-finding review. The commissioning officer took a close oversight role, ensuring the investigator remain on track and able to

access both the necessary documentation and those individuals requested to participate.

15. The role of the commissioning officer was also to receive the report and make a judgement with regards to any next steps. The commissioning officer was supported by the Director of Human Resources and the Council's external employment law and governance advisors Bevan Brittan. The commissioning officer and the Director of Human Resources took legal advice at several stages during the process, to quality assure the draft report and, on finalisation, to consider potential next steps with regards to further action.
16. The purpose of the fact-finding review was to ensure that any lessons learnt are identified and addressed, and to inform decision making with regards to required next steps, whether any further investigation was required, including any disciplinary process. The review was conducted by an independent third party.
17. The investigator has previous experience of this type of review work and was sought via a referral from the Council's external legal advisors and had previously undertaken similar reviews on behalf of the LGA and NHS.
18. The key recommendation from the fact-finding review was that a full management response and action plan was prepared by the Corporate Director, Commercial Development, Assets and Investment and agreed by the commissioning officer, Chief Executive and Interim Monitoring Officer.
19. Many actions have already been taken to ensure that lessons have been learnt and to prevent such a situation arising again. These are outlined in the main body of this report and annexed action plan.

## **Summary of the Marston Holdings Ltd Case**

20. In June 2019, Marston Holdings Ltd, alleged that the procurement of the parking enforcement contract had been undertaken contrary to the procurement regulations (Public Contracts Regulations 2015).
21. The initiation of proceedings effectively barred the Council from awarding the contract. The Council countered proceedings in order to lift the stay whilst making an urgent application for the progression of the case. The application to lift the stay was expedited by the Court and considered on 7 August 2019.
22. A detailed disclosure exercise was undertaken with a subsequent conference with Counsel, a leading QC. Counsel identified significant failings in the evaluation exercise and provided a detailed advice identifying the specific issues of concern.
23. Counsel identified the Council's chances of success in defending the challenge as being poor and that Marston Holdings Ltd chances of success were in the region of 75% - 85%. A complex negotiation process was undertaken by the parties in preparation for a costs hearing before the Court. The Council in preparation for a costs hearing presented detailed points of dispute, which together with a robust negotiation

strategy, ensured that the original costs claim was significantly reduced. The relevant Portfolio Holder was kept fully informed throughout this process.

24. As a result of the Council's decision to settle the case, the Council also became liable for the legal costs incurred by Marston Holdings Ltd in bringing the claim. The original bill of costs identified a cost claim of £649,972.05 which was in the opinion of the cost draftsman instructed, excessive and without merit.
25. On advice of Counsel and in consultation with the relevant Portfolio Holders a final settlement figure was agreed.
26. The total cost to the Council was £1,607,338.57. A full breakdown of the costs and settlement figure appear as exempt Annex 3.

## **The Investigation**

27. An external investigator was recommended by Bevan Brittan and is an experienced and recognised investigator used by the LGA. The individual was selected on the basis of their experience investigating serious issues and senior and statutory officers in both the local government and health sectors. The use of this approach was instigated by the Chief Executive following an internal fact-finding review where it was clear that the complexity and seriousness of the issue warranted independent investigation and a recognition that disciplinary investigations could be taken as a result of its findings.
28. The investigation included within its terms, the engagement of staff who have left the organisation, staff who had been employed on temporary or agency terms and members of staff currently employed. Contacting and interviewing individuals who had left the organisation was an important element of the review, and the commissioning officer recognised and accepted that this would add time to the investigation, especially given that the investigation was commissioned just prior to the first lockdown and was undertaken during lockdown.

## **Methodology**

29. A number of existing and previous employees (including individuals employed as agency workers) and councillors were interviewed by the investigator so as to establish the facts. All interviews were conducted virtually to ensure compliance with Covid 19 restrictions.
30. In addition, to gain an understanding as to how other Councils conduct their procurements, the investigator approached three different Local Government organisations. He presented the parking procurement to them as a scenario, which allowed him to understand how they would have conducted the procurement. At no time during his conversations would any of them have known which Council he had been referring to and the regional LGA is in a different region to the Council.
31. The Corporate Director of Customers and Organisational Development acted as the commissioning officer for this investigation. The reason for this selection was because as a member of the senior leadership they had no previous role in either the procurement itself or the subsequent legal or governance decisions made as part of

the legal action or settlement. The Corporate Director of Customers and Organisational Development also sits outside all of the directorates/service areas subject to investigation.

32. The Director of Human Resources, was involved from the human resources perspective, recognising that the ultimate outcome of the investigation could have been a formal disciplinary investigation, including of statutory officers. The Director of Human Resources sought the advice from Bevan Brittan with regards to action resulting from the investigation. Including whether a clear disciplinary case could be made.
33. The investigation took several months to complete from commission to the receipt of the final advice note from the Council's legal advisors to formal acceptance by the commissioning officer and the Director of Human Resources. The investigator had to track down and secure the cooperation of individuals who had left the organisation. The investigator also identified and spoke to third party procurement practitioners to ascertain specific issues.
34. On completion of the investigation the leader of the council and portfolio holder for human resources and governance matters were fully briefed on the matters arising from the report. Thereafter the Chief Executive Officer was briefed, following this the council's leadership was briefed with the request to consider and challenge the action plan
35. Following these individual briefings, the Corporate Director for Customers and Organisational Development, the Director of Human Resources and the Interim Monitoring Officer, briefed Cabinet. Following this the focus has been on the actions taken as a result of this work to address the issues identified in the thematic recommendations.
36. It is important to recognise that the issues associated with this investigation began at the outset of the procurement (pre-tender work) which commenced in November 2017. The council had already recognised that procurement was an activity that required significant development and support as part of the transformation business case adopted in 2018. The review of procurement (and the wider commissioning cycle) was instigated as part of the second tranche of the council's transformation projects. The issues considered in the investigation therefore spanned several services areas and a number of years.
37. The review identified a series of themes with issues and lessons emerging from each theme, these are set out below.

Investigation Theme	Finding
1. The process prior to the tender being issued.	The report found that the quality of the initial preparations for the tender process and the resulting documents was weak.
2. The process between the tender being issued and awarded. This included both the guidance and the process followed.	The report identified a series of issues, some minor and some more significant around record keeping, procurement

	guidance, the experience of some involved and the clarification sessions undertaken as part of the process.
3. Management oversight throughout the process. This included both oversight from the service area and from procurement.	The report found that inconsistent management and the use of agency and temporary workers within both the service and procurement teams prevented full oversight and the appropriate escalation of risks and issues.
4. The quality of the procurement guidance.	The report found that there were issues with regards to the procurement guidance in use by the council, this resulted in poor process, particularly with regards to records keeping.
5. Briefing of the relevant portfolio holders.	There were a series of assumptions and miscommunications by officers that led to both portfolio holders not being properly briefed with regards to the settlement of the case.
6. The extent to which the Chief Executive's (CEO) member briefing requirements were met.	The report found no ill intent but that the CEOs expectations around how Cabinet members should be briefed throughout the process were not met or fully understood.
7. The briefing and engagement of the Chief Executive (CEO).	Whilst the decisions made relating to the case and its settlement were within the framework of the council's constitution and delegations the report found that the extent to which the CEO had been effectively and proactively briefed fell below reasonable expectations.

## Key Issues Identified in the Marston Holdings Ltd case

38. Following receipt of external legal opinion, the report made a number of recommendations which have been translated into a management response and action plan.
39. These recommendations are set out below for completeness;
  - a) No disciplinary investigations are commissioned, the nature of the findings is such that a systemic failure occurred over a prolonged timeframe. There was not enough evidence to suggest this was the consequence of a lack of competence or purposeful action by clearly identifiable individual or group of individuals.
  - b) That the Chief Executive, Leader and Portfolio Holder are fully briefed on the findings of the review by the Commissioning Officer and the Director of HR.

- c) That a full management response and action plan is prepared by the Corporate Director, Commercial Development, Assets and Investment and Interim Monitoring Officer (and agreed by the Commissioning Officer, Chief Executive and Interim Monitoring Officer to include:
- i. Addressing issues associated with procurement including guidance, management and governance.
  - ii. Management and oversight issues within the commissioning service (communities directorate)
  - iii. Governance, delegations and decision making, including with regards to key decisions (governance review)
  - iv. Briefing of Portfolio Holders (interface with members)
40. These recommendations have been developed into an action plan (Annex 1), which highlights the management response to this review.
41. It would also be the expectation that relevant audit activity would be identified and included within the council's audit plan. Likewise, the expected practice would be a post-implementation review of the changes made to the procurement service, resulting from the implementation of the fundamental service redesign.

## **Procurement and Contract Management Review and Improvements**

42. **Service structure & recruitment:** As part of the Provision Cycle programme, a full review and fundamental redesign of the service has been undertaken. This includes increased capacity in a central procurement hub to oversee and develop a strong procurement service. The new hub structure went live on 4th January 2021 and strong working relationships are already being built between Category specialists and senior management in service areas.
43. A new permanent Head of Procurement and Contract Management starts in March. Recruitment continues to complete the full structure, with some key appointments made through February. Very targeted recruitment for remaining unfilled roles continues.
44. **Enhanced senior oversight:** The service redesign includes enhanced capacity at the senior level to manage and lead the service. The permanent procurement lead will report directly to the Director of Law and Governance. Heads of Category for each service area, have begun work with senior management to ensure the revised procurement processes are embedded in service areas and across the procurement hub. A number of reports will be run on a systematic basis, to provide CEDR with oversight of procurement activity across OCC and CDC, and to support the management of risk.
45. **Briefing of Portfolio Holders (interface with members):** All Corporate Directors meet at least fortnightly with relevant portfolio holders to fully brief them on current and emerging issues affecting their directorate. In addition, regular meetings with the Cabinet and Political Group Leaders are held to ensure members are kept fully informed.

46. **Training & Processes:** In Autumn 2019, Counsel provided further training to procurement officers. This training addressed the procurement process, the need to keep evidence and the failing of the procurement exercise in the Marston Holdings Ltd case. Directly responding to the issues within this case.
47. All procurement and contract management processes have been reviewed and 're-mapped' at workshops run by our Business Improvement Team. These workshops included procurement specialists and staff from service areas. Not only did they serve as the forum to ensure processes are accurately defined, but as excellent engagement events for staff who will be using the new processes.
48. A procurement Handbook has been produced in collaboration with PwC, which will be used as the key source of guidance for procurement staff and staff in service areas, conducting procurement activity. A number of 'Introduction to the Provision Cycle' workshops took place in January, providing staff with information on the new structure and the Handbook. 67 members of staff took part in these workshops and procurement Category Managers are also briefing staff at team meetings. Service area input on the Handbook has been received and integrated into a final version. Alongside targeted written communications, engagement with staff is going extremely well and a single, user-friendly source of guidance is welcomed.
49. A new Competency and Training Framework will be used with staff to identify any skills gaps and put in place the necessary training. Workshops are due to run with staff in March, alongside newly recruited staff to the Health, Education and Social Care (HESC) commissioning structure.
50. New on-boarding material has been produced for new recruits joining the services, to ensure they understand the revised processes from day 1.
51. **Behaviours & Culture:** Key behaviours for procurement and commissioning activity, have been agreed for the new Procurement Hub and the Health, Education and Social Care (HESC) commissioning service. These behaviours have been communicated to staff during briefings and used as criteria in the application and interview process. They will continue to be used as ongoing objectives for both services, and success measured on an individual and team basis.
52. **Third Party Spend Programme:** in collaboration with PwC, a third party spend programme is being undertaken. The overall programme aims to produce a single view of 3rd party savings opportunities, including those already in flow or planned in the service areas, and new opportunities. The outputs will include a single, coherent plan, allowing Category Managers to support the work collaboratively with service areas.
53. Category managers are currently meeting with Service Managers to review opportunities. Detailed baselining has commenced with service areas to identify opportunities to reduce third party spend, now and in future years.
54. Implementing best practice Procurement & Contract Management (including management of tail and off-contract spend) within service areas, will enable us to start making savings in the shorter-term.



## **Budgetary Implications**

55. The total cost to the Council was £1,607,338.57. A full breakdown of the costs and settlement figure appear as exempt Annex 3.  
The contract is a 5yrs + 1yr + 1yr contract with a total contract value of £10,475,142

## **Legal Implications**

56. Local authorities are required to have in place and maintain a sound system of internal control, risk management, and corporate governance. Corporate governance and sound decision making is integral to the maintaining sound system of internal control as identified within this report.
57. The Monitoring Officer has a statutory duty to ensure that there is clarity around the decision-making process. A review of the Financial Scheme of Delegation, Officer Scheme of Delegation together with a Review of the Constitution is currently underway to support the decision-making process. Additional support has been put into place by way of a training session and support for the Provision Cycle Programme. Additional support has been put into place by way of a training session and support for the Provision Cycle Programme.

## **Equalities Implications**

58. There are none as a result of this report

## **Risk Management**

59. A full review of the risk register, both at strategic level and operational level has been undertaken as a result of this case. A comprehensive review of working practices has been undertaken and a staff handbook, setting out protocols to be followed has been produced to reduce the risk of any future successful challenges.

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Annexes: Annex 1 Action Plan  
Annex 2 Summary of timeline  
Annex 3 Breakdown of Costs and Settlement (Confidential annex containing exempt information).

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