

Wiltshire Council

Overview and Scrutiny Management Committee

3 December 2019

Scrutiny of council contracts and contractors

Purpose

1. To present the outcomes of discussions between the Overview and Scrutiny (OS) Committee chairmen and vice-chairmen and Executive members regarding arrangements for the scrutiny of council contracts and contractors.

Background

2. In June 2019, OS Management Committee considered the new Statutory Guidance for Overview and Scrutiny (OS) published by Central Government. Overall it was agreed that the new Guidance reflected a culture and approach already well-embedded in Wiltshire. However, the new Guidance also contained a suggestion that OS have powers to hold council contractors to account for the delivery of public services:

“Scrutiny committees will often have a keen interest in ‘following the council pound’, i.e. scrutinising organisations that receive public funding to deliver goods and services.

Authorities should recognise the legitimacy of this interest and, where relevant, consider the need to provide assistance to scrutiny members and their support staff to obtain information from organisations the council has contracted to deliver services.

In particular, when agreeing contracts with these bodies, authorities should consider whether it would be appropriate to include a requirement for them to supply information to or appear before scrutiny committees.”

3. Management Committee resolved that the select committee chairmen and vice-chairmen should meet to discuss this with the relevant Executive members and officers. This meeting took place on 17 October 2019 with the following in attendance:

Cllr Graham Wright
Cllr Jon Hubbard
Cllr John Smale
Cllr Bob Jones OBE
Cllr Chuck Berry

Chairman, OS Management Committee
Chairman, Children’s Select Committee
Chairman, Environment Select Committee
Vice-chairman, Environment Select Committee
Chairman, Health Select Committee

Cllr Gordon King	Vice-chairman, Health Select Committee
Cllr Philip Whitehead Cllr Simon Jacobs	Leader of Wiltshire Council Cabinet Member for Finance
Deborah Hindson Greg Lewis Paul Kelly Henry Powell	Interim Director for Finance Acting Head of Strategic Procurement Head of Democracy Scrutiny Lead

History of contract and contractor scrutiny at Wiltshire Council

4. Until 2011 each of the four select committees had their own Major Contracts Task Group reviewing the performance of all contracts over £1m per annum (or multiple contracts with a single supplier) in their respective areas. This was built into the Corporate Procurement Strategy with contractors required to produce an annual report and to engage with the scrutiny process. At the time this approach was regarded as best practise and reflected in national publications.
5. However, thinking moved on and the dedicated contracts task groups were abolished. In 2011 a more streamlined approach was adopted, with scrutiny of procurement and commissioning dealt with by a single Procurement and Commissioning Task Group. The focus of work moved away from individual contracts to the overall procurement and commissioning programme as a component of the Business Plan. The change reflected a shift away from process towards outcomes and reduced officer resource.
6. However, the select committees retained (and retain) the ability to respond to outsourced and commissioned service issues by exception. Recent examples have included scrutiny of delivery for highways and streetscene, waste management, ICT, children and adolescent mental health services (CAHMS) and highspeed broadband. This has often included direct engagement with service deliverers, although, as the final decision-maker, the Executive has remained the principle object of scrutiny challenge. Liaison with the contractors has been facilitated through officers and the Executive in the interests of relationship management. This has also been the case when Scrutiny engages with partners, for example, on Military-Civilian Integration.

Key discussion points

Contractor engagement with OS

7. It was agreed that, historically, contracted providers had been willing to engage directly with OS on request, without a contractual requirement to do so in place. Providers were generally keen to engage in the OS process to give 'their side of the story' and perhaps considering it just another aspect of the client-provider relationship. Although the situation would be reviewed if necessary, it was agreed that at present there was no need to introduce contractual clauses explicitly requiring contractor engagement with OS.

Scrutiny engagement with the contract tendering process

8. Contracts over £1m per annum (or £4m over the life of the contract) are defined as key decisions, so generally require Cabinet approval. Typically this is initiated by the Council reviewing service policy and seeking improved delivery. Cabinet will agree the change in policy and the method of delivery following any market analysis and/or consultation, leading to a tendering exercise. Cabinet will subsequently also agree the outcome of the tendering exercise (unless it has delegated that authority to the relevant Director, typically in consultation with the Cabinet Member). OS has access to these Cabinet considerations, but is often invited by the Executive to engage early in the policy-setting process by constructively challenging the evidence to support the intended action. OS views are taken into account along the way, which gives confidence and credibility to the final decision.
9. This approach will continue and fits well with its overview responsibilities. There is no intention or evident desire for OS members to be directly involved in the tendering process.

Scrutiny of contract performance

10. The opportunities available for non-executive councillors to monitor contract performance were discussed. It was agreed that, other than by requesting ad hoc reports on specific contracts, or by receiving feedback from constituents (by which point concerns may be significant), there was limited transparency on contract performance.
11. In response it was reported that in the New Year a section on contract performance would be added to the quarterly budget, performance and risk reports brought to Cabinet. The new section would present high-level performance information for all 'platinum' contracts; the council's top fifty contracts in terms of value. This information will comprise a summary of the success of the portfolio of relevant contracts in delivering good performance, to budget and on time. Individual contract information will be produced by the relevant contract manager responsible for delivery to support a simple narrative and RAG-rating of each of the platinum contracts. This is to be derived from their assessment of the contract performance monitoring meetings held, and data received by the contract manager. In effect it will create a 'heat map' across the portfolio to highlight areas of good and poor performance.
12. The quarterly reports are already considered pre-Cabinet by the Financial Planning Task Group. It is therefore proposed that (once the contract section is introduced) Financial Planning Task Group monitors the contract performance information and, when appropriate, refers concerns to the relevant select committee for further investigation. This task group mechanism would be in addition to the other usual routes through which OS pursues issues, e.g. Select committee chairmen and vice-chairmen monitoring reports to Cabinet and raising issues with the Cabinet member; OS members raising matters with their chairmen for investigation or requesting items on the next agenda etc.

Proposal

13. To note the discussions had with officers and the Executive regarding contract and contractor scrutiny.
14. To agree that, due to a longstanding culture of providers engaging with Wiltshire OS on request, no contract clause requiring this is necessary at present, but to review this in the future if appropriate.
15. To note that, from the New Year, there is an aspiration to add a new section to the quarterly budget, performance and risk reports to Cabinet giving high-level performance information on the council's 'platinum' contracts.
16. To agree that, once performance information is included in the quarterly reports to Cabinet, Financial Planning Task Group will refer any areas of concern to the relevant select committee when appropriate.

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