

**AGENDA ITEM:**

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Meeting	Audit Committee
Date	8 <sup>th</sup> December 2011
<b>Subject</b>	<b>Procurement Controls and Monitoring Plan Progress Report – November 2011</b>
Report of	Assistant Director of Finance, Audit and Risk Management
Summary	Members are asked to note the Progress Report and Appendices.

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Officer Contributors	Maryellen Salter, Assistant Director of Finance – Audit and Risk Management
Status (public or exempt)	Public
Wards affected	None
Enclosures	Appendix A Review of the Procurement Controls and Monitoring Action Plan Appendix B Procurement Controls and Monitoring Plan RAG status Appendix C Residential and Nursing Care Review
For decision by	Audit Committee
Function of	Council
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

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## **1. RECOMMENDATIONS**

- 1.1 That the Committee note the progress that management has made in implementing the agreed actions against the Procurement Controls and Monitoring Action Plan.**
- 1.2 That the Assistant Director of Finance – Audit and Risk Management continue to report to the Audit Committee on the further implementation and embedding of these controls.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 At the Audit Committee meeting on 16<sup>th</sup> June 2011 Members agreed that the Deputy Chief Executive and Chief Finance Officer report to the Committee how these deficiencies are being addressed and the actions being taken regarding audit arrangements with suppliers.
- 2.2 At the Audit Committee meeting on the 6<sup>th</sup> September 2011 agreed that the Assistant Director of Finance – Audit and Risk Management would report to the December Audit Committee providing assurance that the Procurement Controls and Monitoring Plan has been actioned according to plan.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 Having an adequate Procurement Function supports the council's priorities in the 2011/13 Corporate Plan of delivering 'better services with less money' and a 'successful London suburb'.

## **4. RISK MANAGEMENT ISSUES**

- 4.1 Without an effective procurement and contract management function there is the risk to the Council of failure to deliver value for money and having uncommercial contracts with suppliers. There are also potential safeguarding risks if adequate procurement due diligence has not been followed. The Procurement Controls and Monitoring Plan was devised to respond to identified risks.
- 4.2 Implementing recommendations is fundamental to an improved internal control environment, where risks can be managed more effectively.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 5.1 The Equalities Act 2010 states that:

*Public sector organisations will be judged on outcomes and therefore have a responsibility to consider equality as part of every procurement.*

(Equality Act 2010, Part II Advancement of Equality Chapter 1 Public Sector Equality Duty Clause 149 (2)).

The duty applies to a person, who is not a public authority but who exercises public functions and therefore must, in the exercise of those functions, have due regard to the general equality duty. This includes any organisation contracted by a local authority to provide services on its behalf.

- 5.2 Pursuant to the Equalities Act 2010, the council is under an obligation to have due regard to eliminating unlawful discrimination, advancing equality and fostering good relations in the contexts of age, disability, gender reassignment, pregnancy, and maternity, religion or belief and sexual orientation.
- 5.3 Implementation of the Procurement Controls and Monitoring Plan will ensure that the Council addresses any non-compliant contracts, taking action to ensure that all contractors comply with the general equality duty set out above.
- 5.3 The Council's Equalities policy will also form part of the formal evaluation of all future providers' proposals. Any contracts will include explicit requirements fully covering the Council's duties under equalities legislation.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 The Procurement Controls and Monitoring Plan supports the delivery of value for money from procurement activity. This report notes the progress of the controls designed to improve the control environment relating to Council procurement activity.

## **7. LEGAL ISSUES**

- 7.1 Section 3(1) of the Local Government Act 1999 imposes a duty on Local Authorities to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.' The Procurement Controls and Monitoring Plan would, amongst other things, assist the Council in performing the above duty as well as meeting its general fiduciary duty to the tax payer, to ensure effective utilisation and monitoring of its use of resources.

## **8. CONSTITUTIONAL POWERS**

- 8.1 The Constitution Part 3 Responsibility for Functions section 2 allows the Audit Committee the ability to monitor the effective operation of risk management and corporate governance in the Council.

## **9 BACKGROUND INFORMATION**

- 9.1 Previously the Audit Committee were given assurance by the Council's external auditors that the control weaknesses in contract management, whilst significant, are not so fundamental to result in a qualified value for money opinion (Source: ISA260 report, September Audit Committee). In addition, for the high risk areas of Adults and Children's non-compliance they found that the Council's annual inspection process for both venue and resident was in operation and provided a control over safety, quality and fraud.
- 9.2 With this in mind, work has progressed across the Council in ensuring compliance with Contract Procedure Rules (CPRs) retrospectively, and designing a control framework to enable management and Corporate Procurement Team (CPT) to effectively monitor compliance going forward. This has involved collaboration between all services. Internal Audit sought to review these pieces of work and assess adequacy of design of the controls. Testing of the effectiveness of the controls designed by Corporate Procurement Team (CPT) was not possible in some cases as there was not sufficient time for these controls to be embedded across the Council before the conclusion of this review. Therefore we could not test how well services are performing in understanding the new control framework. As a result Internal Audit will report back in April after testing the system in full.
- 9.3 There are three elements to this report:
- 1) the task that the Committee requested – the action plan and the assurances for each task (Appendix B);
  - 2) A report on other aspects of reviewing the contracts register for completeness, accuracy and validity, and from discussions with Service Leads across the Council (Appendix A); and
  - 3) A report commissioned by the Assistant Director of Finance – Audit and Risk Management following the report by management to the Audit Committee in September to review Residential and Nursing Care within Adults Social Care and Health and Children's Service.
- 9.4 Drawing upon all of these reports it is clear that there has often been a disconnect between commissioners, procurement colleagues and legal advisers in ensuring compliance with Contract Procedure Rules in the past. There is a need to continue in working together to consolidate understanding and achieve clarity of requirement. Completion of the Action Plan will only partly achieve this; a commitment to working jointly across the Council will be on-going. In addition, a major piece of work has started to centralise the procurement function across the Council and as a result of this the control environment will need to be re-evaluated once functions have been centralised.
- 9.5 Key points to note are:
- Some of the tasks within the Procurement Monitoring and Controls Action Plan were in the design phase and had not had sufficient time to embed, as such assurances will continue to be forthcoming to the Audit Committee until such

time we are satisfied that the controls are operating effectively.

- The Annual Review of Contract Procedure Rules (CPRs) will need to take into consideration the findings from our review into Residential and Nursing Care and advice from the steering group;
- Further work is required to ensure the Contracts Register is complete and accurate, with relevant information included. This piece of work will be on-going with delivery of individual Directorate Action Plans; and
- Whilst Services are working to make contracts compliant it should be structured in a way that value for money is considered equally to be achieved through this process.

9.6 Internal Audit has also included within its annual audit plan a review of contract monitoring and management with Environment, Planning and Regeneration (EPR), this will be reported to the Committee in April 2012.

## **10. LIST OF BACKGROUND PAPERS**

10.1 None.

Legal: JEL  
Finance: MC/JH

**London Borough of Barnet**

**Review of the Procurement Controls  
Monitoring Action Plan**

**Maryellen Salter, Assistant Director of Finance – Audit and Risk Management**

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A: Procurement Monitoring and Controls Action Plan

B: Residential and Nursing Care Review

## 1. Executive Summary

<p><b>Introduction</b></p>	<p>The Audit Committee received the Annual Internal Audit Report in June 2011 where contract management was mentioned as a key theme to rectify in 2011/12. An action plan was developed by the Commercial Directorate titled ‘Procurement Controls and Monitoring Action Plan’.</p> <p>To take forward a number of these issues a working group was formed, having representatives from all directorates, to provide solutions to the recommendations.</p> <p>A Member task and finish group also continued to meet over the course of the year to discuss progress against strategic procurement.</p>
<p><b>Background</b></p>	<p>The Audit Committee received an update from officers in September discussing progress against the plan. The Committee decided that the Assistant Director of Finance – Audit and Risk Management would report back to the Committee on assurances for delivery of the actions.</p> <p>In addition, the Assistant Director of Finance – Audit and Risk Management commissioned a review of Residential and Nursing Care for commissioning services within Adults Social Care and Health and Children’s Services. This piece of work was to address the disjoint between the current contract procedure rules (CPRs) and social care purchasing.</p> <p>External audit reviewed work completed by the Council in consideration of their value for money opinion for control weaknesses in contract management. The Council received an unqualified value for money opinion in September, noting progress in implementing actions to strengthen controls in contract management. However external audit made reference to the fact the Council should carefully manage the completion of a number of current actions to improve contract management.</p>
<p><b>Corporate objectives and risks</b></p>	<p>This work supports the corporate priorities of Better Services, Less Money and Sharing Opportunities and Responsibilities.</p> <p>There is a risk that having a fragmented approach to procurement could result in a non achievement of value for money, and that appropriate safeguards are not in place for the delivery of quality in care and services/works.</p>



## Key Findings

Over the course of a six month period there has been progress made in improving controls in relation to procurement. Some of the achievements to date include:

- All over-arching actions have been in place, acting as a Statutory Oversight of the procurement controls;
- A resource plan was established for making contracts compliant in the short-term;
- A central contracts register is in place, which all services have contributed to;
- Service/Directorate action plans with trajectory of compliance has been prepared and is being monitored;
- The analysis of contracts has produced a forward plan on procurement activity;
- Weaknesses noted within Vendor Master Data controls had been rectified;
- HMRC confirmed the VAT position after review of all Metpro invoices in favour of the Council;

In addition, a Member Task and Finish group has been meeting and discussing improvements to be made in developing a strategic approach to procurement.

### **Progress:**

There has not been enough time to fully embed the monitoring role for the Corporate Procurement Team (CPT) to ensure spend is reviewed for the various thresholds within the Contract Procedure Rules (CPR), and against category of spend. Whilst the devolved model is in place the defined monitoring role at the hub is crucial in creating oversight and ensuring compliance with contract procedure rules as they now stand. It is clear some Services have been monitoring spend on an ad-hoc basis however without the clarity of purpose this will have limited effectiveness.

The detailed review of the contracts register by officers and internal audit has resulted in a better understanding of the reasons for non-compliance and hence a targeted training programme for all staff can be enhanced. At this stage the training requires further roll-out to ensure responsibility and accountability is better understood and compliance with the CPRs going forward can be achieved.

An action plan is a useful tool to remain focus for the working group, however it is important that the working group reviews the outcomes of pieces of work and redefines tasks from the feedback received. From the piece of work undertaken by management to prepare central contracts register it was clear that the current contract procedure rules were not felt to be fit for purpose in relation to social care purchasing. Contract procedure rules need to be revised to ensure flexibility and choice rather than restricting social care purchasing. As a result of this finding, Internal Audit conducted another review of commissioning behaviours to assist in developing a more appropriate framework, Appendix C highlights a number of recommendations management should consider.

Part of the quality assurance process of the contracts register was to obtain quality assurance statements from each directorate that they have an appropriate audit trail to support their contract register. We undertook to review 20% of each directorates compliant contract register

at of end of September with a view of gaining assurance on audit assertions of validity, accuracy, and completeness. Two directorates did not have an audit trail in a common location, as such we are not confident that they had carried out sufficient checks in order to sign off their quality assurance statement. As a result those two areas were requested to review their audit trails in detail and reconfirm the quality of that data. This process resulted in some contracts originally considered as compliant being re-rated as non-compliant.

In terms of having valid contracts in place Corporate Procurement Team (CPT) issued guidance that a compliant contract is one that is signed by both parties, for the purposes of collating the contracts register. Implied within that definition was that officers, by signing a contract on behalf of the Council, had followed Contract Procedure Rules. There were a number of points to address from our review of the contracts register that have been fed back to the Services to action:

- The contract register required a link to the relevant Delegated Powers Report (DPR) or Committee report seeking authorisation and acceptance in accordance with the Contract Procedure Rules, this most commonly was not recorded in the contracts register, within our sample a number of authorisations could not be located. The risk is that without this key information documented we are not able to understand whether appropriate authorisation and acceptance took place with those listed as compliant contracts. As a result of this management have taken, or are planning to take, to Cabinet Resources Committee (CRC) waivers to contract procedure rules;
- Some contracts listed as compliant were signed, however in some cases not by officers with authority to sign. This Service has now got in place an approved Scheme of Delegation to mitigate this risk;
- At the time of our review, some contracts were called-off from a framework contract however the original authority to use the framework could not be located on the Committee papers system. CPT now has a list of frameworks that they are able to call off;
- Where authorisation could be found through Delegated Powers Reports (DPRs) and Committee Reports the actual spend sometimes exceeded the contract value that was accepted and approved. In these cases either another authority should have been sought or the contract should have been re-tendered to ensure compliance with EU regulations. Action plans are in place with individual Directorates to mitigate these risks, in addition the control framework has been strengthened by placement of order limits via SAP. Any variation of these limits required approval by CPT;
- In some cases there was evidence that a tender process had been carried out and contracts had been drafted however the final document had not been kept by the Service as they said they had been forwarded to the Legal Service. In these instances, the Legal Service could not locate the signed version of the contract. Guidance has been issued on a electronic repository system and Legal Services have a case management system to mitigate instances of this occurring in the future;
- There was confusion in some Directorates on the use of purchase orders and whether they constituted a contract for spend under £25k, and whether these could be recorded as separate contracts on the contract register for public works. Within the Public Contracts Regulations 2006/9 there are quite complex procedures for calculating the

value of a contract and requirements for ensuring that contracts are not purposely split or sub-divided with the intention of trying to keep below thresholds and therefore not follow prescribed requirements in respect of the regulations. It is recommended that any future training is tailored to this area and guidance be issued in the interim;

- A number of fields within the contracts register had not been completed by Services, and some of the minimum requirements of the Code of Recommended Practice for Transparency in Local Government had not been requested from Services. For example, the Code requires publication of contract numbers, however there was not a uniformed approach to issuing a contract numbers to each new contract by CPT and Legal Services. A system will be in place to issue contract numbers for the purposes of publishing the contracts register;
- From a review of those compliant contracts, some of the Council's major contracts are owned at a manager level. Going forward there should be consideration for recording in the contracts register the operational owner of the contract and the strategic owner who has responsibility for managing the relationship and renegotiating rates.

A number of these issues noted above are historical and indicative of a control framework that did not have sufficient oversight of devolved operations. Having a fit for purpose contracts register and an effective monitoring system established within Directorates and at the corporate centre will provide an effective mechanism for achieving compliance. Protocols have been put in place by CPT to ensure that the central contracts register remains up-to-date and accurate.

### **Change in procedures**

From attendance at the Procurement Control and Monitoring Steering Group meetings in November it is clear that Directorates want a control environment that can assist them in identifying non-compliance with CPR's. Resources had been deployed by CPT to review how compliance could be best achieved under the devolved model until centralisation has occurred. The Procure to Pay (P2P) process has now been documented and designed with a view of minimising risk of non compliant and aggregated spend. This however needs to be rolled out to managers and considered in the overall training programme to ensure there is clarity on expectations. On that basis we could not carry out an effectiveness review at this stage as the system improvement had not been in place for a sufficient period of time, these elements of the Procurement Controls and Monitoring Action Plan are therefore rated as Amber. We could however test the payments cycle of the P2P process and were able to give satisfactory assurance on the operation of these controls.

In August procedures changed in relation to ordering and invoicing, the Accounts Payable team would no longer process and pay invoices for goods/services that did not contain an official SAP purchase order number. Since April 2011 there has been a 34% decrease in the level of retrospective ordering across the Council. All Directorates have received reports pertaining to their area to investigate reasons for retrospective ordering. Managers will continue to report to their Senior Management Teams on retrospective orders and the reasons for these, this will be monitored by Statutory Officers.

We carried out completeness checking for 10 vendors per Directorate for spend over £25k to check whether these were recorded on the contracts register. This type of checking is what is envisaged the monitoring role will carry out in future months. Through this process we

identified a few instances whereby the contract had not been recorded in the central contracts register either as compliant or non compliant. This evidences that procedures still need embedding for the contracts register to be considered a complete listing of all contractual relationships. Centralisation of procurement functions have begun in order to shape the future provision of procurement advice and guidance. Monitoring by category will also enable the service to best understand what that future model should look like in order to provide better value for money and extract further savings and efficiencies. The centralisation process is still in its infancy stages and is expected to materialise by June next year. The Action Plan that was agreed by the Audit Committee will need to evolve as further information is gathered through this centralisation process as controls in place now may not be appropriate under a centralised model.

**Conclusions**

Work has progressed with the action plan, and it is clear that all Directorates have contributed to the effort, however there needs further roll-out and embedding of the control environment in particular for the monitoring arrangements.

In addition, there is a clear need to redefine social care purchasing and work with those areas to reach a model that ensures flexibility in choice for service users and doesn't become over-restricted. Our recommendations included within Appendix C have been provided to management to consider when reviewing the Contract Procedure Rules.

Overall, the Council needs to consolidate all of its work so far and continue to collaborate across Directorates to achieve the necessary control framework that is well understood and engrained within the culture of the organisation.

<p><b>Management Comments</b></p>	<p>Management have agreed a Contract monitoring framework, which is available on the Intranet. This framework illustrates to the Council the monitoring roles, processes and timelines for monitoring all contracts that have a minimum value of £25k. As this framework has just been agreed there has not been enough time to fully embed a transparent monitoring role for the Corporate Procurement Team (CPT) to ensure spend is reviewed for the various thresholds within the Contract Procedure Rules (CPR), and against category of spend. Though it's important to stress that prior to the framework being agreed, CPT have demonstrated their monitoring role at a corporate level as being crucial in creating oversight and ensuring compliance with contract procedure rules as they now stand.</p> <p>The detailed review of the contracts register and collaboration working between CPT, Service Areas and Legal Services has resulted in a better understanding of the reasons for non-compliance within a devolved procurement environment. To support procurement in accordance with Contract Procedure Rules a procurement training programme for all staff was rolled out in September/October. Going forward, training is being arranged for those that were unable to attend previously and an in-house training portal will support varying levels of procurement training exercises from new starters to advanced users</p> <p>Whereas six months ago there was no Corporate Contracts Register, CPT are now able to report on the number of Contracts (£25k and above) that are held by the Council, the value of contracts and a forward plan of procurement activity. In addition, procedures are in place so that compliant and non compliant contracts are reported on a weekly basis. Via forensically reviewing each non compliant contract CPT have also devised a trajectory of non compliance so the Council can estimate when zero non compliance will be reported</p> <p>CPT has worked in partnership with Legal Services and Service Areas to identify the levels and area of resource required to support compliance work. Via this partnership work CPT have been able to identify, appoint and allocate dedicated resource to enable Service Areas with the technical expertise required to support compliant work. By extracting this information CPT are able to support Service Areas in taking a strategic view of their approach towards managing existing contracts and procuring future contracts.</p>
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## **2. Statement of Responsibility**

We take responsibility for this report which is prepared on the basis of the limitations set out below.

The matters raised in this report are only those which came to our attention during the course of our internal audit work and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Recommendations for improvements should be assessed by you for their full impact before they are implemented. The performance of internal audit work is not and should not be taken as a substitute for management's responsibilities for the application of sound management practices.

We emphasise that the responsibility for a sound system of internal controls and the prevention and detection of fraud and other irregularities rests with management and work performed by internal audit should not be relied upon to identify all strengths and weaknesses in internal controls, nor relied upon to identify all circumstances of fraud or irregularity. Auditors, in conducting their work, are required to have regards to the possibility of fraud or irregularities. Even sound systems of internal control can only provide reasonable and not absolute assurance and may not be proof against collusive fraud. Internal audit procedures are designed to focus on areas as identified by management as being of greatest risk and significance and as such we rely on management to provide us full access to their accounting records and transactions for the purposes of our audit work and to ensure the authenticity of these documents. Effective and timely implementation of our recommendations by management is important for the maintenance of a reliable internal control system.

	Actions	Tasks	Lead Officer	Internal Audit Assessment	RAG	Management Comments
Over-arching theme	Establish compliance with corporate systems as key measure of senior officer performance.	<ul style="list-style-type: none"> <li>Include a 2011/12 personal objective of compliance with all corporate governance systems and procedures for Directors, Assistant Directors and Heads of Service.</li> </ul>	JMcG	Internal Audit testing confirmed Corporate Management Group (CMG) included an objective for corporate governance, for those who had an appraisal completed.	Green	
Over-arching theme	Introduce Directorate Annual Governance Statement	<ul style="list-style-type: none"> <li>Directors to sign Annual Governance Statement for each Directorate to support corporate Annual Governance Statement.</li> </ul>	MO	All internal control areas and AGS issues will be included in Directorate risk registers, in addition key lead officers will be providing assurance half yearly to statutory officers on key control areas. Process was approved by Statutory Officer's in September and has been in operation since October.	Green	
Over-arching theme	Governance monitoring at Statutory Officers Group	<ul style="list-style-type: none"> <li>Monitoring of governance framework at Statutory Officers Group, including monitoring of the implementation of internal audit report recommendations.</li> </ul>	CE	Procurement Controls Action Plan standing item on Statutory Officer Group Agenda. Audit Recommendations are also reviewed on a quarterly basis.	Green	
	1 Contract Procedure rules should be followed by all services to procure works, supplies and services.	<ul style="list-style-type: none"> <li>Write to all Directors, ADs, and Heads of Service reiterating requirement for compliance with Contract Procedure Rules, enclosing this action plan.</li> </ul>	DCE	Communication sent	Green	

	Actions	Tasks	Lead Officer	Internal Audit Assessment	RAG	Management Comments
		<ul style="list-style-type: none"> <li>· Arrange training programme with mandatory attendance for all relevant officers.</li> </ul>	MiS/CC	Training has been arranged however low attendance noted and a number of sessions were cancelled due to sickness absence. Mop up sessions have been arranged by CPT covering those staff not previously trained, non attendance to result in functionality in SAP being switched off.	Green	
	A SAP solution should be explored by Corporate Procurement team to enter vendor limits in accordance with the contract procedure rules thresholds.	<ul style="list-style-type: none"> <li>· Amend SAP and associated system to control and monitor spend in line with CPRs .</li> </ul>	AG	System improvements not requiring re-programming identified. Logica proposal received for Business Warehouse reporting enhancements. Solution will not be received for another 12 weeks, therefore interim solution needs to be determined. IS has developed reports for use in Services - 1) purchase order report, 2) Block vendor set-up and 3) aggregated spend, these can all be used by services now. How-to guides and training needs to be developed around these reports.	Amber	Implemented for new vendors. Solution created in-house. Solution is permanent and means Logica package is not needed, resulting in savings of up to £54,660. Guidance is being prepared and reports are being finalised Should be in place by date of Audit committee.
			MiS	Resources plan was approved by the end of August, this will need to however take account of additional training requirements recognised by the Services.	Green	
2	Formal written contracts should be established for all services commissioned by the Council as required by the Contract Procedure Rules.	<ul style="list-style-type: none"> <li>· Put in place contracts for all current spend for all vendors where spend exceeds £25k and no contract currently in place.</li> </ul>	Ds/ADs	All Directorates established local contracts registers for all compliant and non compliant contracts.	Green	
			MIS/HJK	A forward plan has been drafted with the following: <ul style="list-style-type: none"> <li>· a pipeline of procurement activity for the remainder of this FY</li> <li>· Pipeline of activity for FY12/13</li> <li>· Number of OJEU Procurement Projects</li> <li>· Number of Non OJEU Projects</li> <li>· Risk assessments and RAG statuses on both to prioritise projects</li> </ul>	Green	



	Actions	Tasks	Lead Officer	Internal Audit Assessment	RAG	Management Comments
				<ul style="list-style-type: none"> <li>Possible frameworks available to limit/reduce procurement activity and speed up project delivery</li> </ul> Exit strategies to be reviewed with each Service Area as part of Action/Forward Plan	Green	
		<ul style="list-style-type: none"> <li>Institute key control whereby new vendor records cannot be set up without confirmation of CPR compliance .</li> </ul>	MiS	Procurement now authorise and set up all new vendor requests	Green	
3	All directors should maintain a complete register of contracts as required by the current Contract Procedure Rules (CPR). This should assist with the completion of a Corporate contract register, which should be placed on the Council's internet to meet the transparency agenda.	<ul style="list-style-type: none"> <li>Directors/ADs to submit service scheme of delegation and contracts register to AD Commercial Assurance .</li> </ul>	Ds/ADs	All schemes of delegation received from all directorates. As per the financial regulations each Corporate Director is required to maintain a scheme of financial delegation in accordance with the minimum standards as determined by the Chief Finance Officer as Section 151 Officer or Nominated Deputy, and which accords to the financial limits included within the overall scheme of delegation and contract rules. Schemes of delegations were formally approved.	Green	
		<ul style="list-style-type: none"> <li>Directors/ADs to compile and hold audit trail for all entries on contract register .</li> </ul>		Internal audit reviewed 20% of each Directorate's contract register and agreed to a valid contract and that there was an audit trail, i.e. for each contract the contract was either obtained in a central location either in hard copy or soft copy. This would have been collated as part of the quality assurance procedures of each Directorate. All Directorates who were found not to have an audit trail were requested to re-submit quality assurance statements.	Green	

Actions	Tasks	Lead Officer	Internal Audit Assessment	RAG	Management Comments
Corporate Procurement should undertake an oversight function to ensure that contracts are in place where expenditure in Services exceeds the stipulated CPR thresholds. Complete and accurate Directorate contract registers should enable this monitoring to take place.	<ul style="list-style-type: none"> <li>Validate completeness of contract registers by cross-checking 2010/11 and 2011/12 to other data sources .</li> </ul>	Ds/ADs	Completeness checking is still on-going by Corporate Procurement Team. A monitoring role has been established by Corporate Procurement that has been process mapped this is to be rolled out to services so that expectations are clear.	Amber	The Contracts register is a live document therefore completeness checking will ongoing. Services will report contract activity on a monthly basis and this will be cross checked and validated by procurement. The monitoring role has been defined within Contracts Register Protocols and a process map to support has been developed.
	<ul style="list-style-type: none"> <li>Compile corporate contract register from service contract registers as amended.</li> </ul>		First corporate contracts register is now in place.	Green	
	<ul style="list-style-type: none"> <li>Notify all vendors £25k plus with no contract that service will be market-tested in accordance with CPRs.</li> </ul>	MIS	There has been agreement that vendors are to be treated on a case by case basis. Formal agreement sent to Steering group as confirmation. Letter has been drafted and sent to Services for them to send out to those suppliers being market tested.	Green	
	<ul style="list-style-type: none"> <li>Forward all contract documents to Head of Legal to be held in corporate repository.</li> </ul>	Legal	Protocol for the repository has been determined and sent to Services as agreed process, some contracts have been sent for inclusion on repository however not entirely complete.	Amber	Protocols for uploading contract documentation has been issued to all Services. IS will provide access to the repository when requested to by services. Services are in the process of scanning and uploading contracts into the repository. This will be an ongoing process and more contract are re-tendered and this will be monitored by CPT on a monthly basis
	<ul style="list-style-type: none"> <li>Publish corporate contracts register.</li> </ul>	CPT	A list of all compliant contracts issued since January 2011 has been collated from the Central Contracts Register and has agreed to be published.	Green	
	<ul style="list-style-type: none"> <li>Establish, document and monitor updating arrangements.</li> </ul>	Legal	Final guidance has been issued by Legal and Procurement on requirements for updating repository. Limited information has been included on the repository to date.	Green	
4 A fit for purpose contract service specification should be developed for tender evaluation purposes and monitoring service delivery.	<ul style="list-style-type: none"> <li>Complete tendering of corporate security contract in line with CPRs.</li> </ul>	CC	Tender exercise for Security Services underway and progressing. Tenders received and are been evaluated.	Green	

	Actions	Tasks	Lead Officer	Internal Audit Assessment	RAG	Management Comments
5	The Corporate Procurement Team should establish a process for identifying and monitoring expenditure by category by service across the Council to ensure that current levels do not exceed Contract Procedure Rule limits.	<ul style="list-style-type: none"> <li>Establish monitoring of corporate vendor limits in SAP.</li> </ul>	MIS	There has been guidance issued on how the Director of Commercial Services will carry out monitoring expenditure by category in the interim whilst reporting enhancements are pending. However these arrangements are not considered embedded.	Amber	Report to monitor spend by category have been produced and CPT will be actively monitor spend on category and with supplier. Limit orders are now in place on SAP and have been tested in a live environment to demonstrate that spend beyond set limit will not be available. CPT will need to authorise all such requirements to spend beyond initial contract limits set.
6	<p>Independent checks of amendments to key Vendor Master Data records, such as bank data, should be undertaken routinely for an appropriate number of records.</p> <p>Checks should ensure that appropriate checks are made to confirm details and validity of the requested changes from related parties.</p> <p>Management should retain all supporting data for vendor set-up and amendment checks. In particular, necessary records to confirm the checks undertaken for amendments for key data fields, such as Bank details, should be retained.</p>	<ul style="list-style-type: none"> <li>Review, amend as necessary, and monitor procedures for amending vendor master data</li> </ul>	MIS	Master file vendor approval form updated to include additional checks. VAT and company details checked for all new vendor requests prior to approval and set up. The Accounts Payable audit included within the scope to review all of these areas to give assurance that this control was implemented, PwC reviewed these processes and confirmed as implemented.	Green	
7	There should be review carried out to calculate the exact figure the Council has overpaid VAT on this vendor, and immediately contact HMRC.	<ul style="list-style-type: none"> <li>Resolve Metpro VAT issue in conjunction with HMRC.</li> </ul>	MC	HMRC were sent all invoices pertaining to the Metpro companies for them to independently review VAT compliance. They confirmed that these were complaint for VAT purposes.	Green	
	Officers should, as standard, refer all name changes on supplier's invoices to the Central Procurement Team who should obtain the advice of the VAT officer for confirming compliance with the VAT regulations before a change can be processed	<ul style="list-style-type: none"> <li>Procedures for establishing and amending vendor master data to cover VAT status.</li> </ul>	MIS	Reviewed as part of accounts payable audit and achieved satisfactory assurance.	Green	

	Actions	Tasks	Lead Officer	Internal Audit Assessment	RAG	Management Comments
	Training provided to officers should focus on the implications of name changes on supplier's invoices and how those should be addressed for the purpose of compliance with the HMRC's VAT requirements.	<ul style="list-style-type: none"> <li>Include VAT issues in mandatory training .</li> </ul>	MiS	Training was given to Finance staff specifically by the VAT officer. VAT was included within training however as mentioned above overall training needs completion by those in scope.	Green	
8	Contract extensions should be undertaken in line with CPR requirements.	<ul style="list-style-type: none"> <li>Directors/ADs to amend contract registers in respect of all extensions and variations, forwarding amended contract documents to Head of Legal and Head of Procurement .</li> </ul>	Ds/ADs	All service now have a contracts register, with quality assurance on-going and actions plans now in place. All action plans have varying degrees of delivery for compliance, this is subject to weekly reporting.	Green	
	Changes to conditions of service should be formally documented for referral by all parties who may be required to certify delivery and payment.	<ul style="list-style-type: none"> <li>Directors/ADs to hold audit trail for all extensions and variations .</li> </ul>	Ds/ADs	All services have confirmed quality assurance has taken place on their contract registers and an audit trail is in existence.	Green	
9	Standard practice should be re-enforced through-out the Council, specifically:					
	<ul style="list-style-type: none"> <li>Changes to contract terms should be formally approved and documented for referral by those involved in certifying delivery per invoice.</li> </ul>	<ul style="list-style-type: none"> <li>Purchase orders to be raised against all formal contracts</li> </ul>	Ds/ADs	All services were advised of changes in processes for having approval of invoices, requiring a purchase order. We reviewed arrangements prior to, and after, August when the changes took place. Within the Internal Audit sample there was a 33% improvement in retrospective orders from pre to post August. Whilst this Direction of Travel is positive there will need to be focus by Services to reach the desired compliance with Financial Regulations. Reports are prepared for management to investigate non compliant with financial regulations. We will continue reporting back to the Audit Committee on this aspect.	Amber	This process in place and is being monitored monthly and now be reported to the Statutory Officers Group monthly.
	<ul style="list-style-type: none"> <li>Invoices should be initialled as evidence of confirmation of service delivery in line with current terms and calculation check</li> </ul>	<ul style="list-style-type: none"> <li>Directors/ADs to hold evidence of service delivery and record on SAP against purchase order .</li> </ul>	Ds/ADs	The goods receipt system is a three way match between order, invoice and goods receipt note. This process negates a need to physically note on invoices service delivery.	Green	

	Actions	Tasks	Lead Officer	Internal Audit Assessment	RAG	Management Comments
	<ul style="list-style-type: none"> <li>Supporting documentation should be provided to evidence service delivery.</li> <li>Delivery should be confirmed with officers who are able to comment on delivery as part of their respective role.</li> <li>Purchase orders should be approved and before delivery of the service to ensure that expenditure is valid and in line with agreed terms.</li> </ul>	<ul style="list-style-type: none"> <li>Invoices to be paid against goods-receipted purchase orders only .</li> </ul>	MC	Invoices cannot be paid on SAP unless there is a three way match between invoice, order and goods receipt note. This was tested satisfactorily in recent review of accounts payable.	Green	
10	<ul style="list-style-type: none"> <li>Directors/Heads of Service must ensure that systems are in place to manage and monitor contracts</li> </ul>	<ul style="list-style-type: none"> <li>All contracts to be monitored, with arrangements documented in service schemes of delegation</li> <li>Directors to report compliance with scheme of delegation through monthly performance monitoring process</li> <li>Performance monitoring - Format and to whom this should be reported to be determined</li> <li>Contract monitoring - Guidance and training required for contract monitoring to be put in place</li> </ul>	<ul style="list-style-type: none"> <li>Ds/Ads</li> <li>Ds/ADs</li> <li>MiS/CA</li> <li>MiS</li> </ul>	<p>All Services have a Scheme of Delegation in place, however they have only recently received guidance on expectations on contract management and monitoring. Training discussion is taking place on what is expected of Directors and Assistant Directors.</p> <p>Directors and Assistant Directors, since July, are monitoring contracts through their monthly monitor. Reports on spend is currently being undertaken on a ad hoc basis, guidance has established what is the best practice will be going forward but this has not been in place for enough time for us to sufficiently assure ourselves it is embedded.</p>	Amber	Procedures have now been developed and are being rolled out with a training programme to build up expertise across all services.
<p>Initials: JMcG – Jacquie McGeachie, MO: Monitoring officer, CE: Chief Executive, DCE: Deputy Chief Executive, MiS – Mick Stokes, CC – Craig Cooper, AG – Andrew Gee, HJK – Haroon J Khan, MM – Margaret Martinus, MC – Maria Christofi, SS – Sheila Saunders; CA – Colin Atree; Ds/ADs – Directors and Assistant Directors</p>						

# *Nursing and residential care review*

## London Borough of Barnet

Review of purchasing arrangements for nursing and residential care

15 November 2011

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## Introduction

The Annual Internal Audit Report of June 2011 identified contract management as a key theme for the Authority to address in 2011/12. An action plan was developed by the Commercial Directorate entitled “Procurement Controls and Monitoring Action Plan”.

PwC was commissioned to undertake a review of social care purchasing to examine the reasons why there is a disconnect between social care purchasing and compliance with the Authority’s Contract Procedure Rules (CPR), and to make recommendations for improvement. The CPR are attached to this report as an Appendix.

The review focussed on placement based contracting in the context of special educational needs (SEN); residential care for children; and residential/nursing care for adults. The Terms of Reference outlines the details of our scope and is set out in the Appendix to this report. PwC would like to thank all those who contributed to this review (listed in the Appendix to this report) for their support, which contributed to our understanding and the outcomes of this review.

## Executive Summary

We considered the following main supplier contracts for residential and nursing care in children and adults social care:

<b>Adults</b>	BUPA Care Homes Ltd
	Caretech Community Services
	Dimensions Ltd
	Jewish Care
<b>Children</b>	Cornerstone Care Homes Ltd
	Ethelbert Specialist Homes
	Integrated Services Programme

We facilitated a focus group/workshop to help us to understand:

- How the Authority interacts with its customer (and how this drives commissioning behaviours);
- How the Authority interacts with its suppliers (and how this drives contract and supplier relationship management); and
- How the Authority manages both interfaces (the ability to reconcile the differences between (a) and (b) above in terms of corporate compliance and commercial logic).

From this, we sought to identify recommendations that might be made in order that commissioners might be compliant with the Authority’s procurement rules and yet still have the flexibility they need. Our findings and recommendations are set out in the table below.

The most significant point that came out of this review is that the bulk of social care provisioning (and all of the contracts considered as part of this review) is delivered through the placement of Individual Placement Agreements (IPAs) from framework

agreements. The practitioners that were part of the focus group were unsure what their obligations were under the CPR in respect of these IPAs. Consequently, the majority of our recommendations relate to improving clarity in this area. That clarity can be achieved primarily through skills development and communication together with some re-writing of the CPR. This will necessitate commissioners, procurement colleagues and legal advisers working together to consolidate understanding and achieve clarity of requirement.

## *Findings*

### *How the Authority interacts with its customer (and how this drives commissioning behaviours)*

In both children and adults services, once eligibility criteria are satisfied, service user choice is a high priority. This is especially true of SEN where parents are legally entitled to specify their preferences for placements and for adults where the plurality of the market - 220 block beds plus 350 other placements – means that user choice is considerable.

Choice is not unfettered, however. Each service balances user choice against available resources and in the context of their professional opinion of what is best for the service user, taking into account all the appropriate regulatory and statutory obligations which their respective services demand. Sometimes placements are court ordered e.g. SEN and children and so the decision is taken away from them.

It was clear that the commissioners have to navigate a complex legal and regulatory environment when making placements. Special meetings are convened to discuss user needs and placement options. Minutes are taken and an audit trail is preserved.

### *How the Authority interacts with its suppliers (and how this drives contract and supplier relationship management)*

The social care provisioning considered as part of this review, and indeed in the majority of instances, is delivered through the placement of IPAs from framework agreements. A framework agreement is an agreement with providers which sets out the terms and condition under which contracts (“call off contracts”) will be awarded throughout the term of the agreement. An IPA is a call off contract. A framework agreement can be with a single supplier or with multiple providers but the protocol for placing IPAs is the same. The framework agreement provides the mechanism for separate IPAs to be made in respect of named individual service users. Each IPA is based on the terms and conditions of the framework agreement but contains specific requirements tailored to the needs of the service user. Each IPA is terminable in its own right without terminating the framework contract or any other IPA placed.

The adult residential/nursing care market has grown organically over the years, but now the Authority is beginning to use the weight of its purchasing power to influence the market and, in particular, to negotiate rates. An old block contract dating back to 1996 and the issues raised by the Pembrokeshire<sup>1</sup> judgment have been challenges but the service is working with an external organisation to analyse the unit costs, markets and demand with a view to creating a new framework agreement and purchasing strategy for adult residential and nursing care.

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<sup>1</sup> R (on the application of Forest Care Homes Ltd and others) v Pembrokeshire County Council. A successful application for judicial review in respect of a local authority residential care home, with the Administrative Court finding that the defendant local social services authority had erred in law in a number of respects in how it had set the fee rate that it paid to independent residential care homes in respect of residents which it had placed there.

Conversely, the children's service places relatively few numbers in externally provided residential care (just 21 children). As a consequence the service negotiates every single placement individually and never just accept the rates set out in the framework agreement. The same applied for SEN where the individuality of children's needs facilitates bespoke negotiation.

Contracts in all instances are reviewed annually. Care plans are obviously reviewed much more frequently and to the extent that they reveal any issues with the provider, then the Authority will inspect or undertake further monitoring.

*How the Authority manages both interfaces (the ability to reconcile the differences in terms of corporate compliance and commercial logic)*

There is no doubt that the professional judgement of care practitioners is very important. Placement teams keep a handle on budgets and social workers keep an eye on users' care plans. The two teams work together to ensure that changes made operationally are reflected contractually and vice versa; and that invoices raised are validated accordingly. There is recognition that performance management of contractors' performance outside of care plan provisioning, for example, in relation to achievement of KPIs is an area for development going forward, especially in relation to residential/nursing care for adults.

The focus group identified some issues with the CPR:

- What authorisation is required for "business as usual" placement work? What does paragraph 7 of the CPR mean in this context?
- How do practitioners determine contract value for IPAs?
- Contracts over £156,422 must be sealed – does this mean IPAs?
- SEN is not specifically mentioned, although "social care and temporary housing" is.
- As social care procurement is "Part B" purchasing the CPR is not clear about what should happen.
- The Authority requires a performance bond which is not always appropriate.
- Practitioners are working at arm's length from legal services and corporate procurement colleagues, when sometimes their input and support are required.

The aim of the CPR is expressed as being threefold:

- *"To ensure value for money and propriety in the spending of public money;*
- *To enable services to be delivered effectively and efficiently without compromising the Council's ability to influence strategic decisions;*
- *To ensure that the Council is not exposed to necessary risk and likelihood of challenge arising from non compliant tendering activity."*<sup>22</sup>

So it is clear that financial prudence and operational effectiveness are as important as compliance with procurement law. What is not clear, however, is how those drivers translate into the social care commissioning context.

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<sup>22</sup> Contract Procedure Rules May 2011, paragraph 1.3

## Recommendations

### Commentary

### Recommendations

**Finding:** *There is a lack of clarity amongst practitioners on how to apply paragraph 7 of the CPR to placement contracts.*

Social care provisioning is delivered through the placement of Individual Placement Agreements (IPAs) from an overarching agreement with a particular provider of residential/ nursing care. This overarching agreement is a form of framework agreement. A framework agreement is an agreement with one or more providers which sets out the terms and condition under which contracts (“call off contracts”) will be awarded throughout the term of the agreement. So long as the framework agreement has been appropriately procured in compliance with procurement law, the call off contracts (IPAs) do not need to be separately procured. They do, however, need to comply with the rules on frameworks (regulation 19 of the Public Contracts Regulations 2006).

The Authority should consider amending the CPR to cross refer paragraph 7 to paragraph 6.9 Framework Agreements and provide clarity regarding call off contracts in social care. CPR does not apply to IPAs in the context of procurement law. However, to the extent that authorisation is required to ensure financial probity, the CPR should make clear what practitioners are obliged to do (if anything) in respect of IPAs.

Staff using IPAs should be trained so that they understand what contracts need to be procured and how to use framework contracts, particularly if they are established by organisations other than the Authority.

Social care professionals, legal and procurement colleagues should work more closely together to understand the strategic importance of framework agreements and update/clarify the CPR to reflect expected practice.

**Finding:** *There is also a lack of clarity about the required procedure for “Part B” contracts generally*

“Part B” services within the definition of the law are not subject to the full rigour of procurement law, although some parts will still be relevant. In particular, a sufficient degree of advertising and due process to satisfy EU principles of transparency, non-discrimination and equal treatment, mutual recognition and proportionality may still be required. As a broad rule of thumb, the higher the value of the contract, the more attractive it is likely to be to the market and so it is more likely that the procurement for such contracts will be challenged and found to be wanting if those principles have not been complied with. Paragraph 7 of the CPR attempts to do this by only requiring formal tendering for contracts over £500,000 as it is a matter for each authority to set its own procedures for Part B services.

The Authority should consider amending the CPR rules to make it clear that the Part B procurement rules will apply to one off contracts over the £500,000 limits, not IPAs.

Framework agreements for Part B services must also follow regulation 19 of the Public Contracts Regulations 2006.

Are there many contracts of this magnitude in the social care context which are not framework agreements?

Communication and training plus support from legal and procurement colleagues will improve understanding.

**Commentary****Recommendations**

**Finding:** Paragraph 7 of the CPR makes special provision in relation to social care and temporary housing contracts but not SEN

SEN contracts exhibit similar hallmarks to social care placement contracts, insofar as they are predominantly based on a central framework of provider(s) where the needs of an individual service user are dealt with in an IPA.

The provisions of paragraph 7 of the CPR (once amended) should be extended to cover SEN contracts also.

**Finding:** Contracts with a value exceeding £156,422 must be made under seal unless the Assistant Director – Legal specifies otherwise. There is a lack of clarity amongst practitioners as to when/whether it is necessary to have contracts sealed; and when contracts are sealed, the process causes complication/delay.

Subject to any legal advice to the contrary, framework agreements should usually be sealed.

At the time an IPA is placed, the annual value of the contract may be less than the threshold, in which case it does not need to be sealed. However, over the course of the placement, the total paid to the contractor could very easily exceed the threshold. Is it expected that once an individual IPA starts to exceed £156,442 that it should be sealed? The CPR is not clear what the obligation is.

The sealing of documents has legal significance and must be affixed to those documents which in the opinion of the Authority's legal advisers (in accordance with standing orders) should be sealed. However, other authorities have applied significantly higher thresholds, where sealing is mandatory – e.g. Essex County Council (£1m); LB Brent (£500k) and the Authority may wish to consider a higher threshold.

Advice should be sought from the Assistant Director – Legal as to the position regarding IPAs that exceed the threshold over their lifetime.

**Finding:** The standard terms of contracting require the provision of a performance bond by the contractor

A performance bond ensures payment of a sum of money in the event that the contractor fails in the full performance of the contract e.g. through insolvency. The monies are used by the client to complete the contract e.g. in works/construction contracts so that the client is not out of pocket. In social care purchasing, failure of the contractor usually means that the service user is moved to another facility and carries minimal financial exposure. Consequently, a performance bond may not always be required. Additionally, because a performance bond is underwritten by an independent bank or insurer, it represents an additional overhead of the contractor, the cost of which is simply passed back to the Authority as part of the fees.

The Authority should consider reviewing the blanket application of a requirement for performance bonds as they are unlikely to be appropriate in every case and in a social care context may not be relevant at all.

Some indication from the focus group was that waivers were capable of being granted and had been so granted in previous instances. Clarity of the position would be beneficial. For example, LB Brent requires a performance bond only for contracts over £500,000 unless the Director of Finance agrees otherwise.

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# *Appendices*

- Terms of Reference for this engagement
- Contract Procedure Rules
- Attendees at the workshop were:
  - Maryellen Salter
  - Karina Umeh
  - Eryl Davies
  - Jo Pymont
  - Claire Sloan
  - Ashley John
  - Val White





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