



Future Shape of the Council
**The Flaws in Barnet's
Commissioning and
Procurement Policy**



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Executive Summary

This report identifies radical changes and improvements needed in Barnet Council's commissioning and procurement policies. The Future Shape of the Council project is likely to consider large-scale outsourcing/privatisation to 'shrink the council' yet there are significant gaps and flaws, which make its procurement policy 'not fit for purpose'. If the council's procurement policy is not fit for purpose it exposes the Council to serious financial and service risks. This report also is our detailed response to Barnet's draft Procurement Strategy 2008-2011.

Two contract reviews were completed by the Council prior to the PricewaterhouseCoopers review. The narrow scope of these reviews prompted UNISON to recommend a more rigorous and comprehensive approach in Briefing No 4.

The reviews did not assess contract performance despite evidence that one contractor is not paying the London Living Wage. The review admitted that a monitoring officer had not been appointed. Another contract review concluded the competitive dialogue was the wrong procurement process, the Council had received flawed advice from private lawyers whose costs are expected to be significantly higher than those budgeted. The review concluded "there has been over-reliance on external advice" and recommended a pan-Council review of the use of external consultants.

'Headline review' exposes serious weaknesses

PricewaterhouseCoopers (PwC) carried out a 'headline review' of the lessons learned from previous service outsourcings. The review methodology was very limited taking the original narrow contract review remit. Service users or frontline staff were not interviewed. There is no evidence that service performance was evaluated.

The PwC review is, nevertheless, revealing because even a superficial examination of some of the Council's contracts identifies serious failings and shortcomings in procurement.

The review asked five questions about the Council's procurement objectives, contract performance, resident and trade union views, client arrangement and contract monitoring and relationships with suppliers. Each question was scored between one (significant room for improvement) and four (good practice). There was no good practice – one question received a score of 1, two questions received a score between 1 – 2, and two received a score of 2 – 3.

The review found that there was limited experience of working in strategic partnership with key suppliers, residents were not at the heart of service delivery and that contract and client side management arrangements are inconsistent and in many cases appear inadequate. This implies that the Council lacks the skills, expertise and insight to effectively manage the commissioning and procurement process and existing contracts. PwC's conclusions on managing service improvement and contract management were damning.

Limited cycle

Barnet Council's 'Procurement Cycle' omits key stages in the commissioning process, in particular the Identification of Options and Options Appraisal. The cycle does not recognise more complex procurement processes such as the Competitive Dialogue and Competitive Negotiated procedures. The Council's previous record of 'Monitor and Manage Contract' has been poor. For example, there is little evidence that the Council has been monitoring the employment policies of contractors who employ TUPE transferred staff and its effect on staff moral and their development and therefore on service delivery to users.

Gaps in the Council's procurement policies

The Council's procurement policy does not fully recognise the difference between procurement of services and goods, between small service contracts and multi-service contracts which have a significantly different procurement process, more complex risk, employment consequences and require more extensive contract documentation, client costs, monitoring requirements.

A review of the Council's procurement documentation and guidance reveals a number of significant gaps and shortcomings. There is a lack of appropriate guidance on impact assessment, the inclusion of in-house options and the preparation of in-house bids, service users and community organisation participation in the procurement process, employment options, and on commercial confidentiality and disclosure. In addition, there are shortcomings with some of the existing guidance on evaluation criteria and procurement processes.

The Draft Statutory Guidance for Best Value and Procurement Workforce Matters in Best Value Authority Contracting issued in October 2008 emphasises local authority responsibility for monitoring the Two Tier Code (Department for Communities and Local Government, 2008).

Comprehensive Area Assessment

The Council's monitoring compliance and performance will be assessed in the Comprehensive Area Assessment (CAA) from 2009. The Audit Commission has proposed a series of Key Lines Of Enquiry (KLOE) which include how the Council commissions and procures quality services and supplies, tailored to local needs, to deliver sustainable outcomes and value for money (see Appendix 3). Other key lines of enquiry include how well does the organisation manage its natural resources, physical assets, and people to meet current and future needs and deliver value for money and how well is the organisation delivering its priority services, outcomes and improvements that are important to local people.

Many of the KLOE's will be challenging for Barnet Council if they were applied now in terms of the quality and comprehensiveness of its procurement and contract management policies and procedures. The implementation of an outsourcing/privatisation agenda will expose these inadequacies even further and the Council could lose its high performance status.

The Council's Procurement policy is flawed and not fit for purpose. Since commissioning is "a broader and deeper process of meeting needs for whole groups of service users and/or whole populations" (DCLG and LGA, 2008), it is evident that Barnet Council's commissioning and procurement strategy does not meet the required standards.

Part 3 includes a series of proposals on how the Councils commissioning and procurement policies can be improved with proposals on:

- Service improvement strategies
- In-house options
- Options Appraisal stages and methodology
- Employment options
- In-house bids
- Full impact assessment including impact on Council priorities identified in the Corporate Plan.
- Equalities
- Evaluation criteria
- Information Disclosure
- Sustainable development

-
- Contract management and monitoring
 - Protocols
 - Risk assessment
 - Failing contracts

Recommendations

We recommend that Barnet Council should implement the following recommendations as a matter of urgency:

Commissioning and procurement strategy

- Improved in-house provision should be included in the range of options for all services irrespective of who currently provides the service.
- In-house options must be fully assessed at the option appraisal stage, and if a procurement process is agreed, an in-house bid should be prepared.
- Draw up a comprehensive impact assessment methodology for options appraisal and evaluation of bids which will identify the economic, social, health and sustainable development impact of policies and projects.
- Work with the LSP and other partners to review and strengthen commissioning and procurement policies and strategies in all partner organisations.
- Prepare a series of Protocols for service reviews, options appraisal, competitive dialogue, evaluation criteria, staff and trade union participation and information disclosure.
- The Council should review its use of consultants and advisers during the procurement process and develop a strategy to increase its capability and intellectual knowledge.

Employment options

- The Council should adopt Secondment or TUPE Plus as the employment models to be used in the procurement of services or transfer of functions to arms length or joint venture companies.

Contract management and monitoring

- Fully resource contract management and monitoring so that Elected Members, service users, managers, and staff receive a regular assessment of the performance, quality of service and participation of service users in all contracts.
- The Council should immediately provide adequate resources to monitor the employment policies of all past and future private and voluntary sector contractors and arms length companies to ensure that TUPE Plus, London Living Wage and workforce development policies are fully implemented.

Scrutiny

- Overview and Scrutiny should carry out regular assessments at key stages if any major procurement is undertaken and regularly review the performance of contracts.

Part 1

Introduction

The London Borough of Barnet commenced the *Future Shape of the Council* project in May 2008 to review the organisation of the Council, challenges and changing demands on the capacity of the Council.

The Council has indicated that it plans to 'shrink the council'. This is likely to involve outsourcing services and transferring staff to private contractors, joint venture companies, social enterprises and/or arms length companies. It will retain some direct provision although it is unclear what proportion.

Barnet Council trade unions were consulted on Barnet's draft Procurement Strategy 2008-2011 in October 2008. The strategy is biased towards the traditional procurement of goods and equipment and relatively small service contracts. It does not take account of the potential implications of the Council drawing up large complex multi-service outsourcing by the Future Shape of the Council project.

The European Services Strategy Unit (ESSU) was commissioned by Barnet UNISON to provide research and critical analysis for the Branch in the Future Shape consultation process.

This review of Barnet's procurement policy and strategy is primarily based on documents obtained from the Council's intranet and reports to Cabinet and Committees from the Council's web site www.barnet.gov.uk. None of this information was classified 'commercially confidential'. Additional information was obtained through the Future Shape of the Council project.

Severe time and resource constraints have prevented us from carrying out a more comprehensive assessment of the Council's commissioning and procurement strategy and policies. Senior trade union officers commented on the draft. However, we did not interview procurement officers.

Consultation on Barnet's Procurement Strategy 2008-2011

UNISON and GMB welcomed the opportunity to comment on Barnet's draft Procurement Strategy 2008-2011 but could not make a substantial contribution to the development of the strategy by the mid October timetable. We also stated that the consultation timetable should be delayed until the nine contract reviews being carried out as part of the Future Shape of the Council project had been completed. This report provides our detailed response to the draft procurement strategy.

PwC

This report also draws on the findings of the PricewaterhouseCoopers headline review of outsourcing. Although very limited in scope, the review is revealing because even a superficial examination some of the Council's contracts has identified serious failings and shortcomings in procurement.

Definition of terms

This report refers to contracts, contract management and contract monitoring. There are attempts to rebrand contracts as 'partnerships' and private contractors as 'partners'. We believe these terms are deliberately vague, inaccurate and confusing. A distinction must be made between political partnerships, which are alliances between organisations, and contracts to deliver public services and infrastructure. All procurement concludes with a contract and all 'strategic partnerships' in the public sector are based on a contract.

Structure of this report

Part 2 assesses the contract reviews undertaken as part of the Future Shape project and identifies a number of shortcomings. Barnet Council's procurement strategy and a number of procurement documents were obtained from the intranet and other publicly available on Barnet Council's web site (both accessed between late October and early November 2008). Whilst advice and guidance is provided on procurement rules and procedures, a number of gaps in the provision of good practice guidance were identified.

Part 3 describes how these serious deficiencies can be remedied and makes a number of proposals together with the adoption of good practice protocols. Part 4 makes a series of recommendations.

The Appendices contain example of good practice which could be developed and adopted by Barnet Council.

Part 2

Shortcomings of the existing procurement policy

This chapter assesses the contract reviews undertaken as part of the Future Shape project, Barnet Council's draft Procurement Strategy 2008-2011 and the Council's procurement policies and strategy.

1. Future Shape Contract Reviews

The Future Shape project informed the trade unions in September 2008 that nine contract review were to be undertaken to address the following questions:

- *“what was the Council trying to achieve in setting up the contract?”*
- *has this been achieved?*
- *how do service managers view the contract for performance, cost and ease of working with the contractor?*
- *how do customers view the service?*
- *trade union views*
- *what are the contract management arrangements and are they effective?*
- *data about the size, duration and staffing arrangements for the contracts.”*

(Email from Transforming Service Delivery Director to UNISON, 9 September 2008)

The selected services are indicated in Table 1. The table also included a list of key people to be interviewed for each review.

Table 1: **Procurement reviews under the Future Shape programme**

Service	Department	Contractor
ALMO – Housing Stock	PHER	Barnet homes
Leisure services	Resources	Greenwich Leisure
Meals at Home	Adult Services	Sodexo
Learning Disability Homes	Adult Services	Notting Hill Housing Association
SAP support and other IS services	Resources	Logica
Building cleaning	Resources	Turners & Churchill
Fleet supply and maintenance	E & T	Go Plant
Homecare	Adult Services	Housing 21
Residential care homes	Adult Services	Catalyst

Source: London Borough of Barnet, 2008.

UNISON welcomed the contract reviews. Following the completion of two contract reviews in summer 2008, UNISON recommended that the Future Shape of the Council programme should adopt a more comprehensive contract review process based on five criteria – Performance; Impact on the council, service users and staff; Service integration; Contract management and monitoring; and Employment issues (UNISON, 2008d). We also recommended that each review report should be available to the relevant Committee, managers and trade unions and an overview report be prepared to draw together all the lessons learnt. The recommended scope of Contract Reviews from Briefing No 4 is included in Appendix 3.

The two earlier contract reviews were carried out by the Procurement Manager and made a number of recommendations – see below. However, a review should draw on the views and

experience of all those affected by each procurement process and should be a corporate responsibility, not simply that of the Procurement Manager. The trade unions were not involved in the two earlier procurement reviews.

What the reviews reveal

The two completed contract reviews raised a number of issues:

Contract A: Commenced April 2008 and was divided into four three-year contracts comprising Children's Service and Care Settings (three contracts valued £979,000 per annum) and Corporate Facilities Management (one contract valued £486,000 per annum) divided between two contractors. This review concluded that procurement "had been managed effectively and an acceptable service is currently operating." However, the trade unions are concerned that:

- The review failed to assess contract performance.
- The contractors are not paying the London Living Wage.
- No monitoring has been undertaken, apart from self-monitoring by the contractor, because monitoring officer not appointed (September) to a contract, which began in April.

Contract B: A large ten-year contract commenced October 2008. The review concluded:

- Competitive Dialogue "was not the appropriate procurement method for the fleet contract. Officers were obliged to follow flawed advice, and this has been of high financial cost the LBB." Legal costs are likely to exceed £100,000.
- "There has been over-reliance on external advice" and a pan-Council review of the use of external consultants was recommended.
- "Risk registers should always be an appendix to internal business plans."
- "All future recommendations to use Competitive Dialogue must be supported by a detailed approved business case."

The review concluded that the wrong procurement process had been used and had incurred substantial transaction costs.

The two Contract Reviews concentrate on the procurement process and how the Council managed it but they fail to address the outcomes of outsourcing and the management of contracts. Neither recognise the need to monitor the contractor's employment policies as required by the Code of Practice.

The government and local authorities emphasise the importance of outcomes and claim that 'process' and 'inputs' are not relevant. Yet faced with having to deal with real outcomes the Council reverts to process. The Contract Reviews were too narrow and did not identify all the fundamental gaps in the procurement strategy.

PricewaterhouseCoopers contract review

PricewaterhouseCoopers (PwC) carried out a 'headline review' of the lessons learned from service outsourcing. The review methodology was very limited taking the original narrow contract review remit. The recommendations in UNISON's Briefing No 4 on Contract reviews were ignored. The review interviewed nine Barnet officers (three in Strategic Procurement) and three trade union officers. Service users or frontline staff were not interviewed. There is no evidence that service performance was evaluated.

The PwC review is, nevertheless, revealing because even a superficial examination some of the Council's contracts has identified serious failings and shortcomings in procurement.

The review found that there was limited experience of working in strategic partnership with key suppliers, residents were not at the heart of service delivery and that contract and client side

management arrangements are inconsistent and in many cases appear inadequate. This implies that the Council lacks the skills, expertise and insight to effectively manage the commissioning and procurement process and existing contracts. PwC's conclusions on managing service improvement and contract management were damning.

The review made a series of recommendations to improve working arrangements with providers, to improve clarity and realism of purpose, commitment and ownership, develop and maintain trust and robust contract management and monitoring arrangements.

2. Draft Procurement Strategy 2008-2011

The strategy is biased towards the traditional procurement of goods and equipment and relatively small service contracts. It does not take account of large-multi service and capital programme contracts. Nor does it recognise the scope for, and particular strategies required, in shared services projects with other authorities and public bodies. There is confusion about whether the strategy is intended to cover commissioning and procurement or just the latter. It does neither with any degree of satisfaction.

There are other equally important shortcomings.

Firstly, there is no strategy regarding in-house delivery.

Secondly, no reference is made to the service review process to examine the scope for improvement and innovation, which could mean that procurement is not required.

Thirdly, a distinction needs to be made between the procurement of supplies, services and capital projects.

Fourthly, there is no recognition of participation of staff/trade unions and service users/community organisations in the procurement process for services, regeneration and capital projects.

Fifthly, it states that "the revised strategy revolves around more contracts being let" yet the strategy does not address the implications for different types of procurement.

Finally, it refers to the Audit Commission's report *For Better, For Worse* for guidance and 'current thinking' but this study has been heavily criticised. Ten fundamental flaws were revealed ranging from inadequate methodology, lack of evidence base, employment issues ignored, no audit of private sector investment and no comparison of an alternative in-house approach (Whitfield, 2008).

3. Barnet Council's procurement policies

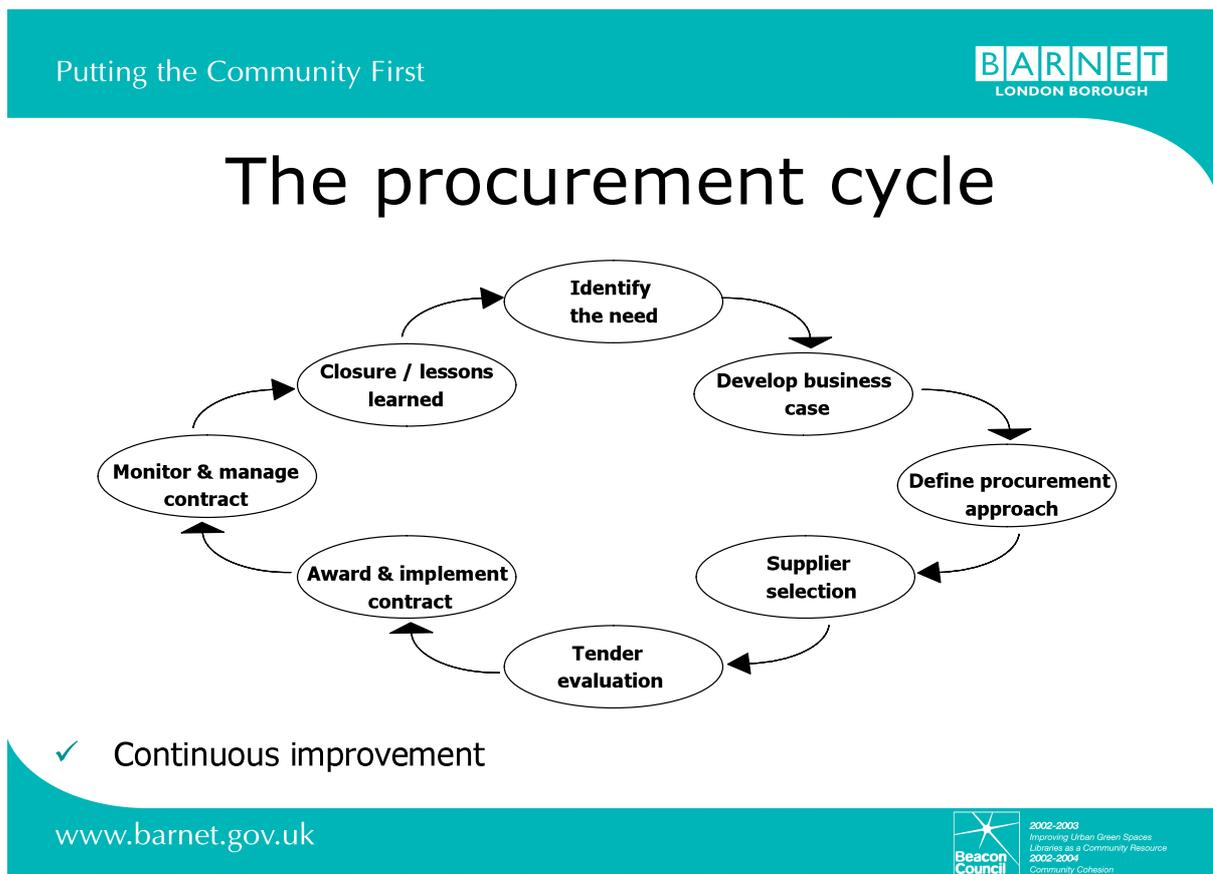
The review of Barnet's procurement policy and strategy is primarily based on documents obtained from the Council's intranet and reports to Cabinet and Committees from the Council's web site www.barnet.gov.uk. None of this information was classified 'commercially confidential'.

The documents included the Procurement Strategy 2003, the Code of Practice (last updated April 2008), Contract Procurement Rules January 2007, Procurement Strategy 2006 (draft), and the Procurement Strategy 2008-2011 (draft).

Barnet Council's 'procurement cycle'

The Council has produced an 8 stage 'procurement cycle' illustrated in Figure 1.

Figure 1: **Barnet Council's procurement cycle**



Comments on Barnet Council's 'Procurement Cycle'

This is a very simplistic 'cycle' and omits key stages:

- It omits key stages in the commissioning process, in particular the Identification of Options and the Options Appraisal process including a robust analysis of the impact of each option.
- No procurement process moves immediately from the 'Identification of Needs' to 'Develop a Business Case'. Furthermore, there should be full consultation on the scope and content of the Business Case.
- The cycle is unbalanced because only five stages are identified for procurement whilst three are included in the award/implementation stages.
- Barnet Council's previous record of 'Monitor and Manage Contract' has been poor. For example, there is little evidence that the Council has been monitoring the employment policies of contractors who employ TUPE transferred staff. The procurement strategy calls for Gateway Reviews six months after a contract commences but we have been unable to obtain copies of any reviews that should be reported to all stakeholders.
- The cycle does not recognise more complex procurement processes such as the Competitive Dialogue and Competitive Negotiated procedures.

Key questions

The National Procurement Strategy for Local Government (DCLG and LGA) required local authorities to improve their procurement policies and strategies so enable them to deliver

significantly better quality public services which meet the needs of the service users and the local community. They were also required to obtain greater value for money and to use their buying power creatively to drive innovation in the design, construction and delivery of services. The National Strategy required the Council to realise economic, social and environmental benefits through their procurement activities. However, there is no evidence that the Council has a comprehensive impact assessment methodology so it cannot identify benefits or negative impacts nor design mitigating action when these occur. Furthermore, creating a successful city suburb is one of the Council's Corporate Priorities, yet without a comprehensive impact assessment methodology it cannot determine the effect of options on this and other priorities.

Procurement extends from commissioning to contract management and monitoring and is not limited to the legal procurement process commencing with an OEJU Notice. Similarly, the procurement of services is often significantly more complex than the procurement of goods and supplies. It is vital that this distinction is made throughout all the procurement guidance, irrespective of the common elements. The policy needs to recognise:

- Difference between procurement of services and goods
- Difference between goods and services, for example buying goods and supplies is relatively straightforward compared to most large service contracts.
- Differences between small service contracts and multi-service contracts which have significantly different procurement process, more complex risk, employment consequences and require more extensive contract documentation, client costs, monitoring requirements.
- Extent to which Barnet Council's procurement policies and strategies take account of these differences.

Corporate objectives

Barnet's Budget 2008/09 and Financial Forward Plan contained the first Medium Term Financial Strategy (MTFS). One of its 'guiding principles' under Sound Governance is *"to comply with all EU and national procurement and contracting regulations, whilst also seeking to be innovative to improve service delivery and value for money;"*

Another Sound Governance principle is *"to recognise the role that partnerships can have in delivering services, but to enter these only when satisfactory arrangements for financial control, risk management and performance monitoring are in place."*

Restructure of Procurement Team

The Procurement Team was restructured in 2006 and 2008. The 2008 restructure was initiated because the *"current structure of the procurement team has not provided adequate leadership and focus in the procurement function to deliver value through procurement and best practice across the organisation"* (Barnet Council, Report to General Functions Committee, April 2008). This would appear to support the findings of this report. The restructure is still not complete as the Council is currently advertising for a Procurement Manager.

Corporate procurement performance 2007/08

The corporate objective to 'increase efficiency of procurement, including savings', under the more choice-better value corporate to achieve better use of resources and delivery of value for money services through sustainable planning for assets, staff and technology, was below target in 2007/08.

The Corporate Services Performance reported:

"We were below our target of £350,000 realised savings. Procurement will realise more savings by taking a more structured approach to activities: spend with suppliers is being

compared to details recorded on the contracts register, and a forward plan of tenders is being prepared that will focus on those that are the largest value and therefore should give the best savings opportunities” (Corporate Services Performance indicators – 4th quarter/ end of year 2007/08).

This seems to be a rather belated response given several years of implementation of the Gershon Efficiency strategy and the National Procurement Strategy for Local Government.

Gaps in the Council’s procurement policies

A review of the Council’s procurement documentation and guidance reveals a number of significant gaps and shortcomings, particularly with regard to services contracts.

- Emphasis on procurement codes and procedures applicable for the purchase of goods rather than services.
- Failure to identify all the employment options and to have policies in place to fully consider each option at the appraisal and tendering stages.
- No reference to service users and community organisation participation in the procurement process for community and regeneration projects and in options appraisal and business case stage for other services.
- No guidance on the inclusion of in-house options and the preparation of in-house bids.
- A lack of guidance on improvement and innovation of in-house services.
- Failure to provide guidance or analysis on changes in the national services and infrastructure sectors as a result of technological change, private sector corporate strategies and economic conditions. Council guidance on sustainable procurement is not expected until 2009!
- Assumption that managers will move between all the documents is not realistic – having one online strategy document with any necessary links to other documents will be much more effective.
- No guidance on Competitive Dialogue which in effect replaces the Negotiated procurement process for more complicated contracts. This process requires more planning and resources. It involves all the shortlisted bidders and thus imposes additional capability and capacity requirements on the Council.
- Evaluation criteria is presented as a ‘one size fits all’ approach when they need to take account of different services and different types of contracts.
- No guidance is available on commercial confidentiality and disclosure – this is essential for the Council, bidders, trade unions and community organisations.
- The available guidance is located in different documents and formats. There is a lack of one or two comprehensive and coherent documents which set out the corporate procurement strategy which all directorates are required to implement.

The Chief Executives report which recommended a new strategic hub for the Council, approved by General Purposes Committee in September 2008, made no reference to commissioning or procurement despite these being key government and Council strategies.

Implications for shared services

The inadequacies of the current procurement policies could hamper the development of shared services projects with other local authorities and public bodies in Barnet and North London.

Monitoring arrangements for the Two Tier Code and audit arrangements

The Draft Statutory Guidance for Best Value and Procurement Workforce Matters in Best Value Authority Contracting issued in October 2008 emphasises local authority responsibility for monitoring the Two Tier Code (Department for Communities and Local Government, 2008).

“Local authorities are responsible for ensuring that they have proper arrangements to meet relevant statutory and other relevant requirements. They are also responsible for monitoring compliance with these requirements. It is, therefore, the responsibility of authorities to ensure that they comply with the requirements of the Two Tier Code, where appropriate, and for monitoring compliance.

Monitoring compliance and performance will be assessed in the Comprehensive Area Assessment (CAA):

The Commission has developed guidance to support the key lines of enquiry, which include characteristics of performance to help auditors reach scored judgements. The guidance refers auditors to the need for local authorities to have appropriate arrangements in place to ensure that authorities consider workforce matters when services are outsourced and, where appropriate comply with the Two Tier Code” (Department for Communities and Local Government, 2008).

Comprehensive Area Assessment

The Comprehensive Area Assessment (CAA) replaces the CPA in 2009. The Audit Commission has proposed a series of Key Lines Of Enquiry (KLOE) which include, under the use of resources, how the Council commissions and procures quality services and supplies, tailored to local needs, to deliver sustainable outcomes and value for money (see Appendix 3). Other key lines of enquiry include how well does the organisation manage its natural resources, physical assets, and people to meet current and future needs and deliver value for money and how well is the organisation delivering its priority services, outcomes and improvements that are important to local people.

Many of the KLOE’s will be challenging for Barnet Council if they were applied now in terms of the quality and comprehensiveness of its procurement and contract management policies and procedures. The implementation of an outsourcing/privatisation agenda will expose these inadequacies even further and the Council could lose its high performance status.

Conclusion

The Council’s Procurement policy is flawed and not fit for purpose. Since commissioning is “a broader and deeper process of meeting needs for whole groups of service users and/or whole populations” (DCLG and LGA, 2008), it is evident that Barnet Council’s commissioning and procurement strategy, excluding Adult and Childrens’ Services, does not meet the required standards.

Part 3

Improvements required to commissioning and procurement policies

This section makes a series of proposals to improve the Council's procurement policies.

The Procurement Strategy should be extended to include the following:

- Service improvement strategies
- In-house options
- Options Appraisal stages and methodology
- Employment options
- In-house bids
- Full impact assessment
- Equalities
- Evaluation criteria
- Information Disclosure
- Sustainable development
- Contract management and monitoring
- Protocols
- Risk assessment
- Failing contracts

Service improvement strategies

The Council needs to establish good practice guidance for service improvement and innovation. We made a number of proposals in Briefing No 5: Service Transformation including exploring the scope for service integration, shared services and public-public partnerships, staff and user involvement and empowerment and options appraisal criteria.

This process should also include guidance on the context and circumstances in which services would be retained in-house with or without a service improvement plan, when an options appraisal process will be triggered and the criteria by which options are assessed.

In-house options

An in-house option should be included in all options appraisals so that the Council can fully assess all the costs and benefits of making any changes to service delivery. The Council has invested in the SAP system which should aid the identification of further efficiencies from in-house delivery. The rationale for an in-house option being fully examined includes:

- To establish the grounds for achieving best value and value for money through a true comparison of the advantages and disadvantages of the full range of options and to

rigorously assess the claims made for other options against the experience and realities of current provision.

- To take account of service users preferences.
- To assess the risks involved in changing service delivery.
- To assess the economic, social, health, environmental and sustainable development impact of different options so the Council can understand the full implications of policy decisions and plan any necessary mitigating action.
- Assess whether changes in service delivery may affect the ability of the Council to maintain and improve the integration and coordination of services.
- Draw on the potential for in-house innovation based on their knowledge of delivering and managing the service.
- Transaction and delivery costs – there are a range of costs which must be taken into account in addition to the budget or estimated cost.
- Ensure that all the strategic policy issues are included in the scope of the options and their appraisal.

Options appraisal methodology

Options appraisal is the identification and assessment of different methods of delivering or supplying services and/or obtaining new or improved buildings.

- Agree project group membership and stakeholder involvement
- Identify the objectives
- Define future service needs
- The case for change such as:-
 - changes in demand and need for the service
 - demographic forecasts
 - new legislative requirements
 - current operational problems
 - government policy and modernisation agenda
 - new plans and approaches, tackling inequalities and capital investment.
- Employment options
- Identify the service, social, economic, and environmental impact of each option
- Market research evidence of the identified options
- Financial appraisal
- Identified options comparisons and analysis
- Risk analysis
- Sensitivity analysis
- Recommendations

Employment options

Barnet Council's 'Consultation Framework for Staff Transfers in Procurement Contracts' is essentially a consultation framework which establishes some key principles of consultation, opportunities for staff involvement in the procurement process, the gateway review process and refers to the Code of Practice on Workforce Matters. However, it does not address

employment options and access to information. This document should be incorporated into a new protocol which should include the Employment Charter (see Appendix 1).

The Council has claimed that it could not agree to TUPE Plus because *“it would restrict competition”* (Email to UNISON from Transforming Service Delivery Director, 17 November 2008). However, further clarification of the Council’s response is awaited.

Yet the PwC review recommends *“The Council should test the commercial viability of building in TUPE-plus to future outsourcing deals”* (PwC, 2008). The review reported that Barnet staff *“originally transferred to the contractor have seen their terms and conditions reduced and the provider is overly reliant on ex-Council staff to provided services due to high turnover of other staff”* (PwC, 2008).

The claim of ‘restricting competition’ is a myth. Newcastle City Council has had a TUPE Plus statement in its Corporate Procurement Strategy since 2003 and there is no evidence that this has reduced the level of competition. All clients, public and private, set the terms of tendering in procurement. Barnet Council appears to be in denial of the limitations of standard TUPE transfers and is willing to sacrifice its staff in the search for low priced bids.

In-house bids

The case for public delivery is based on financial advantages, protecting the public interest improved community well being, democratic accountability, equalities and social justice, sustainable development, corporate policies and the quality of jobs – for further details see www.european-services-strategy.org.uk/outsourcing-library/the-case-for-public-sector-provision/

Full impact assessment

An integrated impact assessment examines the economic, social, environmental, equality, health and sustainable development in one process and should be used at the options appraisal and bid evaluation stages.

The types of impacts to be assessed will depend on the service(s) and capital works being procured. However, all procurement processes should assess the impact on the following:

- Corporate impacts – this should assess the effect of the project on the authority as a whole and individual departments/directorates where relevant. Outsourcing can also erode the skills and knowledge required to commission and manage contracts.
- Local economy and labour market – the effect of investment, supply chains and training on the local economy and labour market - See Council’s corporate priorities- <http://www.barnet.gov.uk/corporate-plan/corporate-priorities/successful-suburb.htm>
- Employment – The impact of different employment models and bidders workforce proposals. It should include assessing the consequences of the failure to implement assurances and commitments made by bidders during the procurement process.
- Equalities – The effect of changes in access to services, planning social needs, employment opportunities, and impact on equality groups.
- Social – The effect of demographic change and social structure, the effect of changes in community organisational structures.
- The quality of community benefits such as training, local employment, planning and environmental gains.
- The environmental and sustainable development implications of options and bids.
- Offshoring – the impact of transferring work overseas on employment and service integration should be assessed. It should also assess whether this is the thin end of the wedge which could lead to further offshoring once the contract is operational.

- Transferring services out of the Borough.
- Regeneration – some partnership projects include proposals to generate additional employment via Regional Business Centres. They are based on the contractor winning contracts from other local authorities and public bodies and should be subjected to rigorous assessment since all but one project has failed to meet contractual targets.

Equalities

Three Barnet Council documents were identified which specifically concern equalities in the procurement process. However, the Equality and Fairness in Procurement is a draft document. This documentation should be reviewed and updated and a protocol drawn up on mainstreaming equalities in all stages of the commissioning and procurement process.

Evaluation criteria

The European procurement regulations impose certain restrictions on the main headings under which tenders for works, supplies and services can be evaluated. For example, price, period for completion, quality, technical assistance, delivery date and after sales service for services contracts. However, there is relatively wide scope within each heading to use comprehensive evaluation criteria and to balance a quality/price ratio depending on the service.

Table 2: **Evaluation criteria**

Evaluation criteria for bids and projects	
Vision and innovation	Partnership working
Service and community needs	Management practice
Equity, equalities and diversity	Information and communications technology innovation
Technical/design assessment	Risk management
Impact on service users	Asset management
Community well-being and the local economy	Employment, training and human resource proposals
Financial assessment	Corporate impact on the authority
Development and investment	Governance proposals
Sustainable development	Social and organisational impact
Production and supply chains	Equality and social justice impact
Environmental impact	Contribution to regional strategies
Democratic accountability and participation	Change management proposals
Transformation strategies	Added value

Trade union involvement

Protocols should be drawn up for staff/trade union and service user/community organisation involvement in the commissioning and procurement process taking account of service, capital and regeneration projects.

The Council's consultants recommended, "Trade Unions should be involved early in the procurement processes and to also support contract management arrangements to provide additional input to support solution delivery and performance management arrangements" (PwC, 2008).

Information Disclosure

The Council should establish good practice with regard to the disclosure of information in the commissioning and procurement process. This should set out the principles, the need to

safeguard the public interest and public service ethos, identify which information will be shared with the trade unions, policy and procedures for the non-disclosure of confidential information, situations when staff/trade union and user/community representatives will be required to sign confidentiality agreements, the replacement of representatives if the principles and/or agreements are not adhered to, and the provision of information with respect of the protocols on staff/trade union/ user/community representative involvement.

Sustainable development

Specifications, pre-Qualification questionnaires, selection and bid evaluation criteria should mainstream sustainable development issues such as:

- Reducing whole life costs.
- Building regional and local production and supply chains and support for the local economy.
- Minimising waste by optimising material use, recycling and use of renewable energy.
- Design for durability, adaptability and re-use.
- Use products from legal and sustainably managed sources.
- Use low maintenance building materials and install high-efficiency heating, water, air conditioning and other appliances.
- Consultation with service users and community organisations before commissioning services.

The Council must ensure that all commissioning and procurement documentation includes guidance on maximising sustainable development.

Contract management and monitoring

The Council must have the resources and ability to manage contracts, integrate and coordinate different service providers, monitor and report performance and employment policies (TUPE/TUPE Plus and Code of Practice) and to carry out periodic contract review and scrutiny.

Effective and fully resourced contract management and monitoring is an essential part of public management. Whilst there are references to the importance of contract monitoring, the planned approach to the Future Shape Contract Reviews and their subsequent termination together with Barnet Council's apparent lack of contract monitoring good practice suggests that guidance on this matter is urgently required.

Local authorities have frequently under-resourced contract management and monitoring, particularly at the options appraisal stage, which of course can distort the advantages of some options. Authorities are often forced to recruit additional staff after the contract commences. Few, if any authorities, meet the Audit Commission's recommendation of allocating 3% of the annual contract value for client costs for large or multi-functional contracts.

Furthermore, monitoring of the Best Value Code of Practice on Workforce Matters in Local Authority Service Contracts has been minimal by local authorities and trade unions. Organisational and service exemptions and the refusal of some contractors to apply the Code further undermine its effectiveness. It is essential that the Code of Practice, TUPE Plus and other agreements are written into contracts and partnership agreements.

Protocols

The Council should consider preparing Protocols to form a body of corporate good practice which directorates could use in the commissioning and procurement process. Each Protocol should describe the purpose, scope, principles, access to information, any relevant legislative constraints and communications issues. The Protocols should include:

-
- Options appraisal methodology
 - In-house bids and public sector consortia
 - Staff and trade union involvement
 - User and community involvement
 - Social and community needs assessment
 - Equalities mainstreaming
 - Sustainable procurement
 - Community impact and benefits
 - Soft market testing
 - Making markets/contestability

Risk assessment

There appears to be little guidance on risk assessment. The section on risk assessment is missing from a document titled 'The Tender Contract and Risk Register' with a reference to 'to be addressed at a later stage'. A risk evaluation chart based on five degrees of probability and five levels of impact is available on the intranet.

Failing contracts

The Council does not appear to have guidance or a procedure for dealing with contracts which are failing to meet the required level of performance over a defined period or have received an unacceptable level of user satisfaction.

Conclusion

Some elements of good practice may be available in certain directorates but they do not appear to be available corporately.

Part 4

Recommendations

We recommend that Barnet Council should implement the following recommendations as a matter of urgency:

Commissioning and procurement strategy

- Improved in-house provision should be included in the range of options for all services irrespective of who currently provides the service.
- In-house options must be fully assessed at the option appraisal stage, and if a procurement process is agreed, an in-house bid should be prepared.
- Draw up a comprehensive impact assessment methodology for options appraisal and evaluation of bids which will identify the economic, social, health and sustainable development impact of policies and projects.
- Work with the LSP and other partners to review and strengthen commissioning and procurement policies and strategies in all partner organisations.
- Prepare a series of Protocols for service reviews, options appraisal, competitive dialogue, evaluation criteria, staff and trade union participation and information disclosure.
- The Council should review its use of consultants and advisers during the procurement process and develop a strategy to increase its capability and intellectual knowledge.

Employment options

- The Council should adopt Secondment or TUPE Plus as the employment models to be used in the procurement of services or transfer of functions to arms length or joint venture companies.

Contract management and monitoring

- Fully resource contract management and monitoring so that Elected Members, service users, managers, and staff receive a regular assessment of the performance, quality of service and participation of service users in all contracts.
- The Council should immediately provide adequate resources to monitor the employment policies of all past and future private and voluntary sector contractors and arms length companies to ensure that TUPE Plus, London Living Wage and workforce development policies are fully implemented.

Scrutiny

- Overview and Scrutiny should carry out regular assessments at key stages if any major procurement is undertaken and regularly review the performance of contracts.

Appendices

Appendix 1

Employment Charter

Employment options

There are basically three employment options or models available to the Council:

- *In-house* – staff remain public employees directly managed by the Council or a shared services project jointly governed by several local authorities and public bodies.
- *Secondment* – staff remain council employees on their existing terms and conditions but are managed by a private or voluntary sector provider on a day-to-day basis' usually in a Joint Venture Company (established by the contractor and the council). New staff are generally employed by the authority but there are examples where the JVC may directly employ a proportion of new staff.
- *TUPE or TUPE Plus transfer* – staff transfer to a new employer to a private or voluntary sector contractor, or to a Joint Venture Company. A 'choices' model is promoted by a few contractors where staff have the option of secondment or TUPE transfer, although the expectation is that virtually all staff will ultimately transfer to the new employer over the course of the contract.

Risks borne by staff

Council staff are forced to bear major risks when services are privatised. There are four categories of risk - changes to terms and conditions of service; changes to pensions arrangements (not covered by TUPE regulations); changes to staff consultation and representation; and the risk of problems with a secondment agreement. Twenty-five different potential changes to jobs, terms and conditions were classified in employment risk matrix as no risk, low, medium and high (ESSU, 2006).

The in-house/secondment option minimises the risk for staff because there is 'no risk' in nine categories and only a 'low risk' in the remainder. A TUPE transfer, in stark contrast, has 40% of the risks classified as 'high' and a further 40% as 'medium risk'.

1. TUPE

The Best Value Code of Practice on Workforce Matters applies across the public sector. The Code requires that contractors (and sub-contractors) employ new staff working alongside transferred staff on "*fair and reasonable terms and conditions, which are overall no less favourable than those of transferred employees.*" Contractors must consult with trade unions to agree the terms and conditions for new starters.

Transferred staff have the right to either the Local Government Pension Scheme (LGPS) or a "*broadly comparable pension*" scheme approved by the Government's Actuary Department (GAD). The Local Government Act 2003 made the Cabinet Office Statement of Practice Staff Transfers in the Public Sector and its Annexe, *A Fair Deal for Staff Pensions*, legally binding.

Contractors are required to offer new staff the option of the Local Government Pension Scheme (LGPS), a good quality pension scheme (either a contracted out final salary based defined benefit scheme or a defined contribution scheme). The employer must match employee contributions up to 6% in a defined contribution scheme or a stakeholder pension scheme. The Code of Practice must be included in the contract between the council and the contractor.

2. In-house/secondment

Retaining in-house employment is the preferred option because it minimises the risks to staff of an erosion of terms and conditions, including pensions. Where a service or function is transferred to another organisation, the Council should consider a secondment option as practiced by a number of local authorities and the NHS.

Transformation should not be at the expense of workers terms and conditions. Wage cuts rebound on the Barnet local economy because they lead to lower spending in shops and services which in turn reduces employment and incomes.

3. TUPE Plus

The limitations of TUPE are widely recognised and this has led to the promotion of TUPE Plus. For example, Newcastle City Council's Corporate Procurement Strategy has TUPE Plus as a basic requirement in service contracts.

TUPE Plus contains the following fair employment policies:

- A guarantee that TUPE will last for the length of contract (the regulations do not specify a time period). This is essential to protect conditions of service, existing redundancy payments and early retirement provisions. Any variation to conditions of service would only be introduced following a collective agreement with the appropriate trade union.
- New starters will be on the same/very similar terms and conditions and the company will not operate a two-tier workforce.
- All TUPE transferred employees and new staff must have the option of remaining within the Local Government Pension Scheme.
- Annual local government pay awards will be implemented in full unless otherwise agreed with the recognised trade unions.
- No restrictions on staff promotion, for example, requiring transferred staff to transfer to the employer's own terms and conditions unless absolutely necessary because of nature of the work.
- The contractor will be committed to equal opportunities, work-life balance, whistle blowing and health and safety policies at least equivalent to the Council's employment and corporate policies.
- The contractor will have a workforce development, education and training plan approved by the Council.
- The current job evaluation scheme would be applied for the duration of the contract.
- The current trade union recognition and facilities agreement must be maintained, unless changed by agreement, for the duration of the contract. This should cover new staff who must have equal opportunity to join a recognised trade union.
- The contractor gives an undertaking not to offshore work and not to transfer jobs out of the Borough.
- No restrictions on the employment status of branch trade union officers in the representation of their members.
- A new employer will be required to provide a check-off facility for the deduction of trade union subscriptions.
- The Council must allocate adequate resources to fully and effectively monitor the employment policies and practices of the contractor as an integral part of the performance management and reporting process.

Appendix 2

Scope of Contract Reviews

UNISON's Briefing No 4 recommended a broader and more comprehensive review of contracts than that evident from the first two reviews of Building Cleaning and Fleet Management.

Scope

- Objectives of the contract
- Details of the contract
- Rationale for outsourcing
- Extent to which objectives met

Content

- Performance: quality of service, Key Performance Indicators and effectiveness of self-monitoring, service improvements/innovation implemented, financial, interface with council services.
- Impact on the Council, service users and staff
- Service integration: coordination with other services and knock-on effects on the Council.
- Contract management and monitoring: defaults and financial penalties, changes in contract costs through variation orders, compliance with Council corporate policies, cost of contract management and monitoring.
- Employment issues: compliance with TUPE, Code of Practice and contract conditions, training and workforce development issues.

Review process

Each review should include the views of the following:

- Service users
- Staff and trade unions
- Elected Members
- Service managers

Reports

Each review report should compile all the available evidence and should be available to relevant Committees, managers and trade unions. The overview report should draw together the lessons learnt and make recommendations regarding any required changes in procurement, documentation and contract management and monitoring.

Appendix 3

Proposed key lines of enquiry in the Comprehensive Area Assessment

Comprehensive Area Assessment: Joint Inspectorate Proposals for Consultation, 2008
London. www.audit-commission.gov.uk/caa/downloads/CAAConsultation08.pdf

Use of Resources

Governing the business: How well does the organisation govern itself and commission services that provide value for money and deliver better outcomes for local people?

Does the organisation commission and procure quality services and supplies, tailored to local needs, to deliver sustainable outcomes and value for money?

KLOE focus, The organisation:

- has a clear vision of intended outcomes for local people which shapes its commissioning and procurement, and is based on an ongoing analysis and understanding of needs;
- involves local people, partners, staff and suppliers in commissioning services;
- seeks to improve the customer experience, quality and value for money of services through service redesign, making effective use of IT;
- understands the supply market and seeks to influence and develop that market;
- evaluates different options (internal, external and jointly with partners) for procuring services and supplies; and
- reviews the competitiveness of services and achieves value for money, while meeting wider social, economic and environmental objectives.

Does the organisation produce relevant and reliable data and information to support decision making and manage performance?

KLOE focus, The organisation:

- produces relevant and reliable data and works with partners to ensure the quality of partnership data;
- understands the needs of its decision makers and provides them with information that is fit for purpose and is used to support decision making;
- ensures data security and compliance with relevant statutory requirements; and
- monitors performance against its priorities and targets, and addresses underperformance.

Does the organisation promote and demonstrate the principles and values of good governance?

KLOE focus, The organisation:

- has adopted, promotes and demonstrates, the principles of good governance;
- maintains focus on its purpose and vision;
- demonstrates a strong ethical framework and culture; and
- applies the principles and values of good governance to its partnership working.

Does the organisation manage its risks and maintain a sound system of internal control?

KLOE focus, The organisation:

- has effective risk management which covers partnership working;
- has a clear strategy and effective arrangements, including allocation of appropriate resources, to manage the risk of fraud and corruption; and
- has a sound system of internal control including internal audit.

Managing resources: How well does the organisation manage its natural resources, physical assets, and people to meet current and future needs and deliver value for money?

Is the organisation making effective use of natural resources?

KLOE focus, The organisation:

- understands and can quantify its use of natural resources and can identify the main influencing factors;
- manages performance to reduce its impact on the environment; and
- manages the environmental risks it faces, working effectively with partners.

Does the organisation manage its assets effectively to help deliver its strategic priorities and service needs?

KLOE focus, The organisation:

- has a strategic approach to asset management based on an analysis of need to deliver strategic priorities, service needs and intended outcomes;
- manages its asset base to ensure that assets are fit for purpose and provide value for money; and
- works with partners and community groups to maximise the use of its assets for the benefit of the local community.

Does the organisation plan, organise and develop its workforce effectively to support the achievement of its strategic priorities?

KLOE focus, The organisation:

- has a productive and skilled workforce;
- knows in the medium to longer term what staff it will need, with what skills, and has plans to achieve this;
- engages and supports staff in organisational change; and
- has policies that support diversity and good people management.

Managing Performance:

How well is the organisation delivering its priority services, outcomes and improvements that are important to local people?

Does the organisation have the leadership, capacity and capability it needs to deliver future improvements?

KLOE focus, The organisation is:

- effective in identifying and delivering priority services and outcomes;
- improving the services and outcomes for which it is responsible;
- contributing to wider community outcomes; and
- tackling inequality and improving outcomes for people in vulnerable circumstances.

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