

# Adult Social Services Contracts

## City of York Council

### Internal Audit Report 2016/17

Business Unit: Adults Services Commissioning & Corporate Procurement  
 Responsible Officer: Assistant Director Adult Services Commissioning  
 & Corporate Finance and Commercial Procurement Manager  
 Service Manager: Head of Commissioning & Category Manager  
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	P1	P2	P3
<b>Actions</b>	0	5	1
<b>Overall Audit Opinion</b>	Reasonable Assurance		

# Summary and Overall Conclusions

## Introduction

The council has a duty to make best use of its assets and finances on behalf of council tax payers and the wider community. It is important therefore, that works, goods and services are procured in a way that is carefully regulated, lawful and ensures transparency, and that contracts are agreed and managed appropriately.

The council has financial regulations and contract procedure rules (CPRs) in place to ensure this happens and all areas of the council should comply with these. The rules cover areas such as not incurring off contract spend, conducting procurement exercises appropriately, having contracts in an appropriate form and recording decisions regarding the award of contracts.

Services commissioned by the Adult Social Services directorate are a significant area of expenditure for the council and totalled £16m in 2015-16. Services commissioned include: supported living schemes, external home care, day support, housing related support and other miscellaneous care contracts. The Adult Services directorate has its own commissioning and contracts team.

This review was jointly requested by the Corporate Finance and Commercial Procurement Manager and the Assistant Director, Adult Services Commissioning. The circumstances that led them to request this review was a request for a waiver of the council's Financial Regulations for approximately £10m worth of contracts to be extended beyond their contract end date. This was refused, resulting in the council being in breach of its own Financial Regulations. The existing arrangements were allowed to continue whilst actions were taken to procure new services. In addition there was some challenging background within Adult Services; there had been a number of different Directors and periods in which senior staff positions were not filled, with the result that staff responsible for contracts had limited senior officer support.

## Objectives and Scope of the Audit

The purpose of this audit was to provide assurance to management that procedures and controls within the system will ensure that:

- All Adults Social Services contracts are recorded on the contract register (Yortender).
- Extensions to contracts are agreed appropriately.
- The tendering and contract award process for services complies with the contract procedure rules.
- Individual contracts are in an appropriate form and in compliance with the contract procedure rules.
- There are sufficient skills, knowledge and physical capacity within the team to deliver service expectations.

The audit included cross-referencing of the finance system to the contract register to ensure all contracts are captured; review of individual contracts and documentation and walkthrough of the tendering processes for adult social care contracts. The focus was on identifying possible improvements in procedures within the service.

## Key Findings

The audit identified examples of good practice, particularly: good quality contract documentation; procedures for ensuring all services are monitored and contracts managed; ensuring all variations are formally agreed and documented; drawing up detailed specifications and evaluation criteria for tendered services and ensuring contracts are legally sealed. Comprehensive procedure notes are also in place and it was clear the team are knowledgeable about what is a complicated service area and showed a desire to ensure their work does comply with the CPRs. However, a number of breaches of the contract procedure rules (CPRs) were also identified, as well as some issues with the clarity of the CPRs and what compliance with them looks like.

Services provided by adult social care that have current contracts in place are recorded on the council's contract register. The Adult Services Commissioning and Contracts team have processes in place to check that services are included on the council's contract register and are able to make entries themselves. Contract extensions have been agreed in line with the terms of the contracts. In many cases they had not been formally agreed and signed by a chief officer, as required by the CPRs. However, the CPRs themselves could be amended to make the requirements clearer in respect of authorising extensions.

Many contract extensions had been granted very close to the original expiry date of the contract. Service review and procurement planning processes should instead commence long before contract end dates to ensure extensions are only granted where a service is providing value for money. The service does have good quality assurance mechanisms so should be in a position to review contracts before granting extensions.

Most aspects of recent tender exercises conducted were compliant with the CPRs, all had been conducted in consultation with the central procurement team and evidence of the processes followed was retained. There were some areas where the tendering and contract award processes did not comply with the CPRs and there was not always evidence of an appropriate level of authorisation in awarding contracts. In most cases contract award decisions were not recorded on the council's decision log.

There was no formal evidence of chief officer approval of service specifications and evaluation criteria prior to going out to tender, as currently required by the CPR's. However, this element of the CPRs should be reviewed to provide greater clarity on what aspects of the tender process reasonably require chief officer approval.

There were some minor issues with evidencing the risk assessment and due diligence when awarding contracts or setting up suppliers with pre-placement agreements and pre-purchase agreements (PPAs; types of approved provider lists). It is recognised that in many cases this was because existing providers were transferred from contracts to PPAs. Therefore, a formal finding has not been raised regarding this issue. However, evidence of due diligence checks being completed should be retained for all new suppliers applying to the PPA framework, as per the department's guidance manual, before approval is given to set up the PPA.

Signed contract documents are held and have been signed and sealed by Legal Services as appropriate and required by the CPRs. Contracts themselves are in an appropriate form, with detailed terms, conditions and specifications. Processes are in place for contract management and

contract managers are assigned for all contracts. Detailed testing of contract monitoring and quality assurance processes was beyond the scope of this audit.

For most of 2016-17, there were a number of services being provided where the contract had expired. However, a new procurement exercise means that these services have now ceased and new services are operating under formal contracts since 1<sup>st</sup> February 2017 (Community Wellbeing Support services). A further 2 services that operated without a contract throughout 2016-17 have been transferred to pre-placement agreements, from 1<sup>st</sup> April 2017 (both services at The Retreat). There remain 2 services currently operating without contracts at the current time (both York Housing Association: Supported Living services at New Lane and Shipton Rd and Mental Health projects) but there are plans in place to move them onto different arrangements or commission new services, in line with the re-modelling of mental health support services, which will be taking place throughout 2017-18. This is out of around 50 formal contracts managed by the service and a further 50 suppliers who have PPAs.

## Overall Conclusions

The arrangements for managing risk were satisfactory with a number of weaknesses identified. An acceptable control environment is in operation but there are a number of improvements that could be made. Our overall opinion of the controls within the system at the time of the audit was that they provided **Reasonable Assurance**.

# 1 Appropriate level of authorisation for awarding contracts

## Issue/Control Weakness

Contracts awarded without the required level of authorisation.

## Risk

Contracts are awarded in breach of the council's constitution and financial regulations.

## Findings

Contracts with start dates from 1 January 2015 to present were reviewed. There were a total of six contracts with a value above £100K that had started from 1 January 2015 to 31 December 2016. Three of these were not completely compliant with the Contract Procedure Rules and Key Decision requirements, as follows:

- One (Advocacy hub) had been approved by the Director and Procurement and Legal Services had also been involved in the process. An open tender process was followed and the procurement process itself was fully compliant. This brought together 6 existing council services into one contract, within existing budgets. However, the value of this contract was up to £1.5m (over 5 years) and there was no record of an Executive decision or approval from the Chief Finance Officer to treat the procurement as routine.
- One (Short breaks for Adults with a Learning Disability) had evidence of Director approval but the value of the contract is £2m (over 5 years). There was evidence of Director approval, that the Executive member was involved in the process and reports had been presented to the Directorate Management Team. However, there was no evidence of an Executive decision or explicit delegation to the Director from the Executive.
- One (Riccall Carers, Extra Care Housing) was dealt with by a previous director. This was treated as a pilot for extra care and there was evidence of Director approval for the approach taken and that the relevant Executive member was kept informed. Furthermore, this additional agreement has now reverted to being included in the provider's Tier 1 homecare contract. However, as the additional agreement was for a service worth over £700K over the life of the contract it should have been made as a key decision, through a request for a waiver or for it to be treated as routine, as change to the way an existing service was being delivered.

In addition, one contract (Community Wellbeing Support Services) was largely compliant, in that the approach was approved by the Executive as required by the CPRs, but this report was not explicit about the final decision to award the contract being delegated to the Director. The CPRs do state that 'all Key Decisions are reserved to the Executive unless *specifically* delegated to an Executive Member or an Officer' (7.10) and that 'it is recommended that the approval sought includes a specific delegation to the Authorised Officer to award the contract at the conclusion of the procurement' (7.3).

Overall, there are issues relating to requesting waivers or approval for procurement to be treated as routine if a full tender exercise will not be conducted, and with ensuring that delegation of decisions to award contracts to directors is made explicit when the Executive approves a report detailing a commissioning approach or approving budget savings.

## Agreed Action 1.1

The procurement action plan agreed in November 2016, including review of the CPRs and Training Programme will help to address these findings.

Relevant officers will be reminded of the requirement to ensure that any papers to Executive seeking approval to go out to tender to services also explicitly includes delegation to the Director to award the contract where this is required and appropriate.

Compliance checks will be undertaken on the contract register for key thresholds within the CPRs in order to identify breaches, which will be reported to GRAG.

**Priority**

2

**Responsible Officer**

Corporate Finance  
and Commercial  
Procurement Manager

**Timescale**

Implemented

## 2 Recording contract award decisions on modgov (the council decision log)

### Issue/Control Weakness

Officer decisions to award contracts are not recorded on the council's officer decision log.

### Risk

Breach of the CPRs and lack of transparent record of officer decisions.

### Findings

The council's CPRs state that 'once approved, all proposed contract awards over £100,000 must be recorded in the Officer decision log on the mod.gov system' (17.3.5).

Adult social care contract award decisions had not been routinely recorded on the council's decision log. Decisions are logged where they have been made at Executive or in Executive member decision sessions. However, in 4 of 6 new contract awards over £100k since January 2015 there was no record of the contract award on the council's decision log on the 'modgov' system (though it should be noted that details of these contracts are published on the council's public contracts register).

This seems to have arisen from some confusion within the directorate regarding responsibility for recording officer decisions, as required by the CPRs.

It is possible that this lack of clarity extends to other areas of the council so it may be worth ensuring this requirement is communicated across the whole organisation.

### Agreed Action 2.1

Processes have been changed to ensure a decision record document is sent to the Director's PA and they are asked to add details to the decision to the decision log and attach this document.

All contracts over £100K identified in this audit have now been added to the decision log.

#### Priority

2

#### Responsible Officer

Head of Commissioning

#### Timescale

Implemented

### 3 Signing and sealing all contracts over £150K

#### Issue/Control Weakness

No formal record of officer authorisation for contracts that have been signed and sealed by Legal Services.

#### Risk

Contracts may be sealed by Legal Services without the appropriate level of authorisation required by the CPRs.

#### Findings

Overall, contract documents themselves had been signed by an appropriate officer. With one exception, contracts over £150K had been signed and sealed by Legal Services and where contracts were under £150K they had been signed by officers with appropriate delegated authority.

However, although they were signed and sealed by Legal Services the CPRs also state that contracts should be authorised by chief officers. In many cases contracts had been sealed by Legal Services but there was no explicit evidence of authorisation by a chief officer.

Legal Services have recently introduced a new template for services to complete when asking for contracts to be sealed by Legal Services. This template requires evidence of authorisation to enter into the contract to be stated, so it can be checked by Legal Services before they sign and seal a contract.

#### Agreed Action 3.1

A new template has been introduced by Legal Services which must be sent with all requests for documents to be sealed. This will require services to identify what authority is in place for a contract, including whether it has complied with the council's Contract Procedure Rules and whether the decision has been published.

#### Priority

2

#### Responsible Officer

Deputy Head of Legal Services (Commercial)

#### Timescale

Implemented



## 4 Authorisation for contract extensions

### Issue/Control Weakness

Contracts extended without the required level of authorisation.

### Risk

Contracts are extended without the authorisation required under the council's CPRs.

### Findings

Historically, extensions have not always been authorised by a chief officer. In most cases they were authorised by the Head of Commissioning or a Commissioning Manager. It is recognised that contracts granted extensions recently were reported to the Adults Management Team but there were a significant number of previous extensions that had not been approved by a chief officer.

The department's guidance manual states (p18 & p22) that commissioning managers can agree the extension of contracts (if the value is within their delegated authority limits). However, the department also has a flowchart for 'commissioning governance for extensions' and this states that extensions need to be agreed by a chief officer or above.

Section 21.1.2 of the CPRs states:

*All contract extensions must be approved by and dealt with by the relevant Chief Officer. The Chief Procurement Officer and Legal Services should be consulted in relation to any proposed extension*

But section 7.4 states:

*Where the aggregate contract value (including any extension) is £250,000 or less Directors may agree or authorise another Officer to enter a Contract under their delegated powers.*

Whilst not being directly contradictory, these two sections of the CPRs could cause confusion and would benefit from some clarification.

### Agreed Action 4.1

The review of the CPRs will ensure the requirements in respect of contracts and extensions are clear and consistent.

#### Priority

2

#### Responsible Officer

Corporate Finance  
and Commercial  
Procurement Manager

#### Timescale

September 2017

## Agreed Action 4.2

It will be ensured that all extensions granted in future will have Chief Officer / DMT authorisation

**Priority**

2

**Responsible Officer**

Head of  
Commissioning

**Timescale**

Implemented

## 5 Chief officer approval of service specifications and evaluation criteria

### Issue/Control Weakness

A lack of formal approval of service specifications and evaluation criteria by a chief officer.

### Risk

Failure to comply with the CPRs.

### Findings

The CPRs (2.1.2, ix) state:

*in consultation with Commercial Procurement establish a written specification and evaluation criteria (where competition is involved) and procurement methodology **which must be formally approved by the relevant Chief Officer**;*

For the contracts that had gone out to tender, detailed service specifications and evaluation criteria had been provided to the procurement team by the Adult Services Commissioning and Contracts team and advice was sought as required from procurement and legal services. For the tender exercises tested during the audit, there was no formal evidence of chief officer approval of service specifications and evaluation criteria prior to going out to tender. However, evidence has been provided, and assurances given, that formal chief officer approval has been given in respect of more recent tender exercises.

This CPR requirement suggests that the written specification, evaluation criteria and procurement method all need to be formally approved by the Chief Officer but it is potentially open to different interpretations.

The CPR requirements should be reviewed and clarified to help services understand exactly what is expected in terms of this chief officer approval, how this should be evidenced and how compliance with this requirement could be checked.

### Agreed Action 5.1

The review of the CPRs will make requirements clear.

It is intended that the **procurement methodology** requires formal approval of the relevant Chief Officer but not the detailed service specification and evaluation criteria.

Priority

3

Responsible Officer

Corporate Finance and Commercial Procurement Manager

Timescale

September 2017

## Audit Opinions and Priorities for Actions

### Audit Opinions

Audit work is based on sampling transactions to test the operation of systems. It cannot guarantee the elimination of fraud or error. Our opinion is based on the risks we identify at the time of the audit.

Our overall audit opinion is based on 5 grades of opinion, as set out below.

Opinion	Assessment of internal control
High Assurance	Overall, very good management of risk. An effective control environment appears to be in operation.
Substantial Assurance	Overall, good management of risk with few weaknesses identified. An effective control environment is in operation but there is scope for further improvement in the areas identified.
Reasonable Assurance	Overall, satisfactory management of risk with a number of weaknesses identified. An acceptable control environment is in operation but there are a number of improvements that could be made.
Limited Assurance	Overall, poor management of risk with significant control weaknesses in key areas and major improvements required before an effective control environment will be in operation.
No Assurance	Overall, there is a fundamental failure in control and risks are not being effectively managed. A number of key areas require substantial improvement to protect the system from error and abuse.

### Priorities for Actions

Priority 1	A fundamental system weakness, which presents unacceptable risk to the system objectives and requires urgent attention by management.
Priority 2	A significant system weakness, whose impact or frequency presents risks to the system objectives, which needs to be addressed by management.
Priority 3	The system objectives are not exposed to significant risk, but the issue merits attention by management.

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