



## **UNISON response to AUDIT Committee**

**Thursday 8 December 2011**

**Agenda Item 10:**

**Procurement Controls and Monitoring Plan Progress Report**

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**5 December 2011**

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## 1. Introduction

The Council has made a political decision to become a Commissioning Council whereby it no longer provides services yet still wants to be able to ensure the provision of excellent services, alongside effective governance and strong performance.

For any organisation, public or private to make such far reaching transformation it must seek assurance that it has sufficient control over spend and procurement.

This UNISON report to the Audit Committee is our attempt to publicly identify the risks and our concerns about the report and furthermore highlight the bigger concern that the Council is not fit and ready for such a massive transformation to become a 'Commissioning Council'.

## 2. Equalities and Diversity

In the covering report at paragraph 5.1 refers:

“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.”

The Report from Internal Audit fails to provide any evidence based assessment in relation to compliance with Equalities and Diversity issues. Furthermore, if the current procurement process has a number of weaknesses as identified in the Internal Audit report, then how can the Council demonstrate compliance?

## 3. Contract Register

The report to the next Audit Committee meeting on 8<sup>th</sup> December states at **paragraph 9.5** (bullet point 3) that “further work is required to ensure the Contract Register is complete and accurate.” The report goes on to confirm the following:

- Some entries in the register not linked to Delegated Powers Report – (some entries possibly not CPR compliant)
- Contract not signed for some entries in the register (some entries possibly not CPR compliant)
- Original authority to use framework contract missing for some entries in the register (some entries possibly not CPR compliant)
- Actual spend on some existing contract entries exceed the contract value (some entries possibly not CPR compliant)

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- Contract possibly not signed for some entries in the register (some entries possibly not CPR compliant)
  - Confusion over use of orders under £25K and whether they constituted a contract with the risk of sub-dividing procurement to avoid the need to follow CPR (some entries possibly not CPR compliant)

The report implies that the Contract Register is not fit for purpose and identifies the changes necessary to improve **Procurement Controls and monitoring**.

However, the Audit Committee on **6<sup>th</sup> September** was informed at **paragraph 9.3** that

“work on Contract Register to date highlighted that over **80%** of spend is compliant with existing Contract Procedure Rules, this is significantly above the median for Councils within the London region.”

UNISON is concerned that six months after the Metpro Audit there are still a number of areas of concern for which internal audit have provided amber assessments e.g. Item 1 (ii) of the Action Plan matrix provided

**“A SAP solution should be explored by Corporate Procurement team to enter vendor limits in accordance with the contract procedure rules thresholds”**

Whilst this is an improvement for new Vendors we are concerned about the **5,694 existing** Vendors as detailed in **Quarter 2** for Corporate Performance Indicator Number **7003**.

**The second Amber item on Action Plan matrix is Item 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.”

#### **Internal Audit Assessment**

“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**.”

## **4. Inconsistencies between Action Plan Matrix and the report**

UNISON acknowledges the significant issues identified under Key Findings in the report. The report details a series of weaknesses to the Council’s current risk & procurement controls. The Findings indicate **serious** and **fundamental** problems which potentially leave the council at risk of failing to deliver value for money and having **uncommercial** contracts with suppliers. There are also potential **safeguarding** risks if procurement due diligence has not been followed.

However, we note worrying **inconsistencies** between the findings in the Internal Audit assessment and the RAG indicator in the Action Plan Matrix.

The Action Plan Matrix predominantly rates the majority of actions as Green, which in our view **misrepresents** the detailed evidence produced earlier in the report.

Please find below our comments on a select number of Actions in the Action Plan Matrix.

### RAG Status

Report Ref	Action	IA Assessment	RAG	UNISON Comments
1	Contract Procedure Rules should be followed by all services to procure works, supplies and services.	Communication sent	Green	Is the Committee satisfied that a <b>simple communication</b> has resulted in services following CPR across the whole Council without <b>evidence based assessment</b> ?
2	Formal written contracts should be established for all services commissioned by the Council as required by the Contract Procedure Rules	All Directors established local contracts registers for all compliant and non-compliant contracts.	Green	Despite the report at paragraph 9.5 listing a <b>number of outstanding issues</b> is the Committee satisfied that services are following CPR <b>across the whole Council</b> ?
3	All directors should maintain a complete register of contracts as required by Contract Procedure Rules. This should assist with the completion of a Corporate contract register, which should be placed on Council's internet to meet transparency agenda.	[the report contains commentary on the outcome of the IA review but there is no mention of the contracts register on the internet]	Green	Despite the report stating weaknesses around the contracts register, which is still <b>not published on the internet</b> is the Committee satisfied that the contract register is <b>fit for purpose</b> and assists the Council to <b>deliver VFM and the transparency agenda</b> ?
4	Corporate Procurement should undertake an oversight function to ensure that contracts are in place where expenditure in Services exceeds the stipulated CPR thresholds.	First corporate contracts register is now in place.	Green	Despite the report stating <b>weaknesses</b> around the contracts register is the Committee satisfied that the contract register is <b>fit for purpose</b> and assists

Report Ref	Action	IA Assessment	RAG	UNISON Comments
	Complete and accurate Directorate contract registers should enable this monitoring to take place.			the Council to <b>deliver VFM?</b>

## 5. Statutory Compliance

The report states on Page 3:

‘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 contracts 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 subdivided with the intention of trying to keep below thresholds and therefore not follow prescribed requirements in respect of the regulations.**’

We understand from the blogging community that **since 2005** over **£2.6m** of spend has taken place with a local company (started allegedly by an ex-employee of the Council) and that formal tendering and selection process to comply with Contract Procedure Rules may not have been followed. An examination of the payment list (which is publicly available on one of the Blogs) from the Council to this company possibly suggests that orders may have been split to circumvent the Regulations. This may have resulted in the Council **not securing value for money** and possible wasting public funds.

The report **is silent** on **assurance** around the Council’s compliance to the Public Contracts Regulations 2006/9.

## 6. Key unanswered Questions

UNISON is concerned to note that six months after MetPro Audit we read in paragraph 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.”

UNISON has submitted the following question because of our concerns about the lack of transparency about the size and scope of the problem with the Council’s Procurement and management function. We believe it is not only in the **public interest** but in the Council’s interests that by adopting a One Barnet Commissioning Council policy the Council **must comply** with the following paragraphs from their own report for all procurements of goods and services.

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.”

UNISON understands that the Audit Committee has the following 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.”

UNISON therefore asks the Audit Committee to ensure the UNISON FOI questions are responded to and answers supplied to UNISON and all members of the Audit Committee with 10 working days of this Committee meeting.

UNISON has consistently raised concerns about procurement and contract monitoring long before the Metpro Audit. It was one of the reasons UNISON submitted a Draft comprehensive Corporate Procurement Policy in October 2009 as part of our attempts to engage with the Council.

Our efforts to seek a robust and comprehensive overhaul of the current procurement policy have been repeatedly rejected by the Council.

The following is the list of UNISON questions under FOI and the current position is stated against each request for information.

	<b>Information Requested</b>	<b>Date Requested</b>	<b>Request Acknowledged</b>	<b>Information Received</b>
1	<b>Council spend to Vendors/Suppliers</b> How many Supplier/Vendors (companies & individuals we buy goods and services) does the Council have currently?	14/11/2011	Yes, received on 16/11/2011	<b>None</b> received as at 05/12/2011
2	<b>Council spend</b> How many Supplier/Vendors (companies & individuals we buy goods and services) does the Council have where the procurement of good & services over a period of the last three years exceeds the EU threshold for tendering as required the Councils Contract Procedure Rules?	14/11/2011	<b>None</b> received as at 05/12/2011	<b>None</b> received as at 05/12/2011
3	<b>Council Spend &amp; Tendering</b> Where procurement of goods & services by the Council over the last three years from Supplier/Vendors (companies & individuals we buy goods	14/11/2011	Yes, received on 15/11/2011	<b>None</b> received as at 05/12/2011

	<b>Information Requested</b>	<b>Date Requested</b>	<b>Request Acknowledged</b>	<b>Information Received</b>
	and services) have exceeded EU threshold for tendering, how many of these Supplier/Vendors have been subject to a tendering process as required the Councils Contract Procedure Rules?			
4	<b>Procurement &amp; Tendering</b> Where procurement of goods & services by the Council over the last three years from Supplier/Vendors (companies & individuals we buy goods and services) have exceeded EU threshold for tendering and the tendering process as required by the Councils Contract Procedure Rules has been completed, how many contracts do we have in place with these Supplier/Vendors?	15/11/2011	<b>None</b> received as at 05/12/2011	<b>None</b> received as at 05/12/2011
5	<b>Criteria for Contract Register</b> What are the Council's criteria for entering Supplier/Vendor onto the Contract Register?	15/11/2011	<b>None</b> received as at 05/12/2011	<b>None</b> received as at 05/12/2011
6	<b>Number on Councils Contract Register</b> How many Supplier/Vendors are there currently on the Councils Contract Register?	15/11/2011	<b>None</b> received as at 05/12/2011	<b>None</b> received as at 05/12/2011
7	<b>Contract Register &amp; Tendering</b> How many Supplier/Vendors are there currently on the Councils Contract Register where the supplier/vendor has undergone a tendering process as required by the	17/11/2011	<b>None</b> received as at 05/12/2011	<b>None</b> received as at 05/12/2011



	<b>Information Requested</b>	<b>Date Requested</b>	<b>Request Acknowledged</b>	<b>Information Received</b>
	contract procedure rules.			
8	<p><b>Contract Register &amp; Contract Procedure Rules</b></p> <p>From the Supplier/Vendors that are currently on the Councils Contract Register where the Supplier/Vendor has undergone a tendering process as required by the contract procedure rules, how many of these does the Council have a contract with?</p>	17/11/2011	<b>None</b> received as at 05/12/2011	<b>None</b> received as at 05/12/2011

**Our purpose in asking these FOI questions is simply to establish the level of non compliance to the councils own Corporate Procedures Rules (CPR), Financial Regulations (FR) and EU Procurement legislation.**