



Report of: Executive Member for Finance, Performance and Community Safety

Meeting of:	Date:	Ward(s):
Executive	19 September 2019	List wards: All

Delete as appropriate:		Non-exempt
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SUBJECT: Consultation on Corporate Insourcing Policy

1. Synopsis

- 1.1 This report seeks approval for a consultation on adopting a Corporate Insourcing Policy (hereafter the 'policy'). The policy seeks to adopt a consistent approach, assuring delivery of services in-house is the council's default approach, with a mechanism for appropriate challenge and proper consideration of social value.
- 1.2 The policy will be supported by operational guidance for council officers, which shall be updated from time-to-time, under the guidance of the council's Commissioning and Procurement Board.

2. Recommendations

- 2.1 To approve the proposal for consultation on adopting a policy of delivery of services in-house as the council's default approach to supply. A duty to consult is required by the Best Value legislation. Set representatives of various specified groups - local taxpayers, local ratepayers, service users, and persons appearing to have an interest in the area - have a right to express their views. The consultation period will close after thirty (30) calendar days.
- 2.2 To note the council's Commissioning and Procurement Board is the mechanism for challenge to ensure the delivery of services in-house is the default approach.
- 2.3 To authorise the council's Commissioning and Procurement Board to require social value is adopted in provision of internal and/or external service delivery.

- 2.4 To endorse that the council's policy will be supported by operational guidance for council officers, which will be updated from time-to-time under the guidance of the council's Commissioning and Procurement Board.

3. Background

- 3.1 This report proposes a policy of in-house delivery of services as the council's default approach to supply. The council has the right to deliver services in-house without the need for a procurement exercise. Delivering services in-house permits the council the ability to determine where money should be spent and the correct organisational structure to deliver it, whilst keeping community funds in the community and protecting workforce rights. The Council has an extensive record since 2010 of successfully insourcing services to be provided in-house. Examples have included:
- building cleaning and window cleaning
 - education services
 - housing repairs and maintenance
 - handy-person services
 - street scene, including refuse collection and recycling
 - estate management services.
- 3.2 In-house service provision ensures the greatest level of control by the council of the services it delivers, deploying resources where they are most needed, working within budget constraints, supporting innovative approaches, without the same commercial imperatives of the private sector. Whilst the council recognises there are some services which it would be unable to provide in-house, there are a number of instances where the council can provide services itself for better value for money and quality. Furthermore, it permits the council to build and train a local workforce in keeping with its Fairness aspirations.
- 3.3 The policy seeks to adopt a consistent approach, assuring delivery of services in-house is the council's default approach, with a mechanism for appropriate challenge and proper consideration of social value. The council considers their activities holistically, taking account of the wider economic, social and environmental effects of their actions to ensure social value. The council's Commissioning and Procurement Board will provide the challenge mechanism to ensure the in-house first default position, looking at the characteristics, benefits, skills and assets to bring all or part of services in-house. A number private sector failures, such as that of Carillion, combined with unprecedented pressures on council finances have ignited heightened interest in insourcing. In-house services may be more able to respond to changes in public policy, plan finances for long term sustainability over profit, improve flexibility of formal contractual arrangement and achieve local aspirations.
- 3.4 The principles of best value are that the council "must 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" (Local Government Act 1999, section 3[1]). Reviewing services to see whether considering whole life costs in combination with an assessment of quality is in keeping with both the proposed policy and the council's legal duty. Key drivers to insource include improving service quality, efficiency, cost minimisation, response to austerity and alignment to corporate objectives.

- 3.5 Insourcing forms part of the jigsaw for ensuring fairness within the borough, enabling the council to tackle inequalities. The council can address as part of the 'make or buy' decision to do things in-house or not, supporting a more inclusive economy and securing social value. The concept is in keeping with the development under way of the Council's Procurement Strategy 2020-25. Trade unions and workforce involvement are both essential in insourcing options appraisals.
- 3.6 Risks and opportunities for delivering services via internal and external sourcing models will be considered, alongside potential to improve performance and delivery. Opportunities will likely be extended with such a review into the council's category management practice. The three primary categories are Place, Regeneration and Construction; Policy, Corporate and Core Services; and People, Wellbeing and Care Services. Greater analysis of services will have supplementary benefits, including improving sustainable and responsible procurement practice from local supply, apprentices and the use of small and medium enterprises.
- 3.7 Evidence of services which would warrant performance improvement or where satisfaction can be improved may suggest a focus for insourcing. Bringing services back in-house will allow matters to be more directly addressed than via a third party arrangement. Areas which may highlight performance concerns include reduced provision, rising costs, poor reputation or unreliable delivery. Where contracts cost a significant amount to manage, whole life costs may make it more prudent to deliver services in-house. However, services which are performing well, but may still be improved further by bringing in-house should still be considered for insourcing, particularly if the council considers value for money being the optimum combination of quality and cost.
- 3.8 The council has adopted a policy of paying at least the London Living Wage, which requires the council to consider payment of the London Living Wage on a case by case basis and adopt it wherever it adds value. Evidence would suggest the London Living Wage creates a motivated workforce and better levels of service delivery, but this can be further enhanced by good and flexible employment practice. Bringing contracts in-house will permit the council to extend those benefits enjoyed by existing council staff members to staff delivering our contracts. Given insourcing is classed as a service provision change, the employees of the contractors that are potentially insourced would be protected under TUPE legislation, which also acts as a guarantor of the council not losing expertise through insourcing.
- 3.9 Priorities when considering and planning for potential insourcing should include minimum disruption for service users; ensuring quality, reliability and compliance; the council's reputation; workforce matters and any regulatory requirements. Insourcing of services may result in the need for investment, for example in information technology, to deliver high quality and effective services. Such considerations should be taken in a timely manner in order not to delay a potential insourcing, requiring effective forward planning and timetabling.
- 3.10 The council's Constitution sets out the overarching governance rules for council operations. There is nothing which prevents the council in its governance arrangements from undertaking delivery of services in-house as the council's default approach to supply. An appreciation of the effect of a decision to insource a service should be considered in tandem with consequential effects, for example bringing services in-house could potentially

reduce spend with local, small or medium sized enterprises or with the voluntary and community sector, all of which the council is looking to support. Whilst decisions should not be made in isolation, it is likely a hybrid approach will continue of some services delivered in-house and some by external third party providers. The balance of services delivered in-house will increase as a result of adopting this policy.

- 3.11 Council departments will be required to undertake a detailed analysis of existing service provision and be prepared to be challenged by the council's Commissioning and Board on potential opportunities to bring services in-house as contracts are assessed. Services should assess value, duration and natural termination of existing agreements in combination with whole life costs, investment needs, service specification and qualitative improvements, in combination with impact on service users as well as time and resources required to bring services in-house. Services may be briefly better extended than re-procured where the council has a clear intention to bring a service back in-house, which would need to be considered on a case-by-case basis.
- 3.12 To make a comprehensive assessment about whether or not to bring a service in-house will need the council to deploy resources. A significant amount of information about service delivery, workforce required, financial implications and management planning will be required. For specialist services, external resources may additionally be required to advise, for example on achieving appropriate certifications. Consideration of the council's property estate may be required when identifying where services may operate from, including potentially review of estate assets. None of this is expected to detract from the delivery of services in-house as the council's default approach to supply; just that it will need to form part of that options appraisal. The final decision should be taken in accordance with the council's established decision making processes.
- 3.13 Under the Localism Act, voluntary and community bodies, council employees who wish to form a mutual organisation, and parish councils can express an interest in running a council service – this is commonly referred to as 'the community right to challenge'. The council must consider expressions of interest and, where they accept them, then go on to run a procurement exercise for the service. The Right has been created to give local groups with good ideas about how services could be run differently or better the opportunity to have a fair hearing, and if successful in their initial Expression Of Interest (EOI), to bid to run the service themselves as part of the procurement process. Adopting this policy may increase the number of EOIs which the council needs to assess, albeit none have been to date.
- 3.14 Members are asked to note that delivery of the policy will be supported by operational guidance for council officers, which shall be updated from time-to-time, under the guidance of the council's Commissioning and Procurement Board. The insourcing guidance will set out relevant background and an approach to insourcing including:
- the needs and outcomes to be achieved
 - establishing value for money
 - preparing the decision
 - commencing the insourcing
 - delivering the service in-house.

4. Implications

4.1 Financial implications:

It would be expected that any insourcing of services would be met from within existing budgets and would not create an additional budget pressure. However, if this were to be the case, the increase in budget would have to be highlighted and approved as part of the budget setting process.

As part of the options appraisal, all costs, both on-going and one-off, would need to be identified. Costs may include TUPE and pension costs, service delivery costs including materials, vehicles, IT and property assets, as well as increased costs to other services such as finance, human resources, legal etc.

4.2 Legal Implications:

This report, relating to the adoption of a policy on insourcing, is a matter for Members, through the Executive, rather than Full Council, in accordance with the division of responsibilities pursuant to the Local Government Act 2000, as amended, and Regulations thereunder.

The statutory powers that are being exercised are principally the best value duty under Part 1 of the Local Government Act 1999, which replaced compulsory competitive tendering, and is much more flexible, and the broad General Power of Competence under the Localism Act 2011, which, like any power, must be exercised reasonably and properly. The legal advice is that the proposed policy would be lawful. However, the implementation of the policy is subject to the community right to challenge under the Localism Act.

The policy, once adopted, will be relevant in each individual case, but each case must be determined against the background of the policy on its own merits in all the circumstances prevailing at the time, including, but not confined to, the policy. The exercise of discretion must not be fettered by the policy or otherwise.

Decisions must be made in accordance with the usual public law principles with which Members are familiar, including taking into account all relevant and proper considerations, and no others. Relevant matters will include the Public Sector Equality Duty and the Council's fiduciary duty to its taxpayers.

Best Value is at the heart of the matter. It will always be a mandatorily relevant consideration, indeed a positive duty.

Also, best value consultation is required, under Section 3(2) of the Local Government Act 1999, and in accordance with case-law including the Barnet case at first instance and in the Court of Appeal in 2013, and the Peters v Haringey case in 2018. The consultation duty was found to be breached in the Haringey case. It was only on the basis of delay that this challenge failed. The duty to consult is not just about how to make arrangements for improving performance. It extends to the substance of decisions about how to perform functions. It relates to high level decisions, such as outsourcing in the Barnet and Haringey cases, and also no doubt insourcing.

The obligation, however, is not of public consultation. It is with persons who appear to the Council to be representative of various specified groups, local taxpayers, local ratepayers, service users, and persons appearing to have an interest in the area.

4.3 Environmental Implications

A default policy of insourcing has two main potential environmental benefits. Firstly, it ensures that services are being delivered from a local base - outsourced services may be delivered from outside Islington, resulting in additional travel and higher emissions of CO2 and other pollutants. Secondly, it gives the council direct control of services (and their associated buildings and/or vehicles), which potentially enables positive changes such as switching to zero emission vehicles to be made more quickly and without having to seek changes to contracts.

4.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment was completed in May 2019 and the complete Resident Impact Assessment is appended.

5. Reason for recommendations

- 5.1 This paper proposes a policy of in-house delivery of services as the council's default approach to supply. The council has the right to deliver services in-house without the need for a procurement exercise. Delivering services in-house permits the council ability to determine where money should be spent and the correct organisational structure to deliver it, whilst keeping community funds in the community and protecting workforce rights. The Council has an extensive record of successfully insourcing services to be provided in-house

Appendices: Resident Impact Assessment

Background papers: None

Final report clearance:

Signed by:



Executive Member for Finance,
Performance and Community Safety

11 September 2019

Date

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