

Commissioning and Procurement at Southwark Council

Report of the Overview & Scrutiny Committee

January 2015



Contents

Part 1: Introduction and Context

1. Introduction
2. Methods of scrutiny
3. The wider context of outsourcing public services
4. The Public Services (Social Value) Act 2012
5. New EU Procurement Directives

Part 2: Scrutiny Findings

6. Commissioning and procurement at Southwark Council
7. How procurement process works at Southwark Council
8. How Southwark's procurement thresholds compare
9. Codifying engagement with Cabinet Members
10. Contract variations "Gateway 3"
11. Cabinet Member Interview, Councillor Fiona Colley, Cabinet Member for Finance, Strategy and Performance
12. Interview with John Tizard
13. Interview with the Strategic Director of Finance & Corporate Services and Deputy Finance Director
14. Consultation with the Community and Voluntary Sector in Southwark
15. Consultation with UNISON
16. Consultation with Southwark Chamber of Commerce
17. Introducing social clauses as part of the procurement process, an example
18. Social value: apprenticeships and jobs
19. Lead-in times for decision making on procurement
20. Procurement officer views on "Gateway Zero"
21. Openness and transparency

Part 3: Conclusion and Recommendations

22. Conclusions and recommendations

Appendix: Example of a model section for a pre-qualification questionnaire on trade union black-listing

Appendix: Responses to Contracts Questionnaire

Part 1

Introduction

1. Southwark Council's contract register records 220 current contracts for goods and services accounting for a total contract value of £2.6 billion. A huge range of services, from the building of new schools to employment support services to homecare for vulnerable residents, are procured by the council. Decisions about when to outsource and who gets the contracts have a huge impact on the lives of people in the borough.
2. Yet, over the past twenty years, scrutiny of the council's procurement activity has only taken place on a piecemeal basis, usually when something has gone wrong or if a service has been brought back in-house. It has been useful to focus on individual services where appropriate but the time has now come to take a step back and reflect on the council's wider strategy.
3. This report will make recommendations which can help the council to do three things:
 1. **Save money.** The council has experienced very deep cuts to the money it receives from central government. Since 2010 this has equated to an £80 million reduction in government funding. This has caused severe pressure on budgets and the situation is becoming even more serious. In the coming financial year Southwark will need to find a further £31.2 million in savings. This report will make recommendations which can help the council do more with less and avoid procurement crises which can be extremely costly.
 2. **Improve services.** For some services which have been outsourced Southwark residents already receive a good service, but there have also been a number of significant contract failures. These have had a damaging impact on the quality of services and caused huge frustrations for residents. This report will make recommendations which will improve the outcomes of procurement decisions.
 3. **Improve social outcomes from procurement.** The council has made progress on social outcomes from procurement in recent years. Becoming a Living Wage employer and implementing the Ethical Care Charter are significant achievements. But more can be done to ensure that the way we provide services has a greater positive impact for people in the borough.
4. Overview & Scrutiny Committee has sought to answer several key questions about how the council approaches commissioning and procurement.

The key questions which this scrutiny report seeks to answer are:

How are procurement decisions made and scrutinised?

How much political/democratic input is there?

How open and transparent is the process?

How do we monitor the contracts?

Are we getting value for money?

Are the outcomes good enough?

Given the risks, are we doing too much outsourcing?

What is the impact on the workforce?

Do we need a new corporate procurement strategy?

5. This report will look at both commissioning and procurement. That is, both the decision making process on how a service will be delivered and the technical process of “going to the market”.
6. Given the range of services at Southwark for which commissioning and procurement is relevant it is not possible for us to look in detail at all contracts or even all service areas. Instead, we will concentrate on generic processes and refer to specific examples as and when they are relevant. We are particularly interested in decisions made about 'outsourcing'. We distinguish this as an issue because these are services which the council has a choice to procure. Or put another way, the council *could* provide these services directly.
7. This report does make reference to contract monitoring arrangements, but this is also not the primary focus of the report. This may well be an issue that we will return to for future scrutiny.

Methods of scrutiny

8. Overview & Scrutiny Committee (OSC) has used a variety of methods in our investigation. These included:
 - Committee interviews with officers
On 8th September 2014 OSC interviewed the Director of Finance & Corporate Services (Duncan Whitfield) and Head of Procurement (Jennifer Seeley) at a public OSC meeting.
 - Review of written report on procurement at Southwark provided by officers
Officers provided a written report on procurement to OSC which explained existing processes and safeguards.
 - Informal meetings
In addition, the Chair of OSC and the Head of Overview & Scrutiny (Shelley Burke) held several informal meetings with Director of Finance & Corporate Services and Deputy Finance Director
 - Interviews with procurement officers
On 15th December 2014 the Chair held a series of interviews with lead contract officers from across all council departments.
 - Contracts questionnaire
Lead contract officers from across the council were asked to fill out a questionnaire in relation to a random sample of the 220 contracts currently recorded on the council's public Contract Register. The full responses can be found as an appendix to this report.
 - Review of contracts register
The council's contract register was reviewed.

- Review of contract terminations
Officers provided a list of contract cancellations.
- Written submissions
OSC received written submissions from Community Action Southwark, Southwark Chambers of Commerce and UNISON. We also received additional information from officers at GMB National Office.
- Interview with John Tizard
On 10th November 2014 OSC held a discussion with John Tizard (the former Head of Policy at Capita) at OSC meeting.
- Review of a variety of external reports on procurement and outsourcing.
These include Parliamentary Select Committee reports and research carried out by think tanks and campaigning organisations.

Note on interviews with council procurement officers

Throughout this report reference is made and quotations are taken from the interviews with procurement officers carried out on 15th December 2014. The Chair of OSC interviewed officers from six different departments who were the lead contacts listed on the Contract Register, published on the council website. OSC is very grateful to officers for giving up their time to speak to us in such a constructive way.

Participants were free to offer their personal views. In particular, the interviews sought to:

- Verify current procurement and contract management processes.
- Understand the strategic approach to procurement, including a number of special themes (e.g. London Living Wage; social value; etc.).
- Gather opinions on some proposals being considered by OSC.
- Probe more deeply into the practical aspects of procuring and managing contracts.

The wider context of outsourcing public services

9. Southwark Council's approach to commissioning and procurement has not developed in a vacuum. Research, Government policy and ideological fashion have all had an impact on decisions made by councillors and senior officers and will continue to do so.
10. The roots of outsourcing go all the way back to "Public Choice Theory" championed in some American universities in the 1960's. It began to gain purchase in British political circles via the New Right think tanks (Institute of Economic Affairs, Centre for Policy Studies and Adam Smith Institute) in the late 1970's. By 1988 Conservative Minister Nicholas Ridley had written his influential pamphlet 'The Local Right', which argued that more outsourcing "...should do enormous amounts to improve standards of efficiency". Compulsory Competitive Tendering, varied forms of outsourcing and PFI were all introduced, first by the Conservatives and then continued by the 1997 Labour Government. By 2010 David Cameron was arguing that the benefits of outsourcing were so obvious, we should no longer seek to justify it, but instead "...the state will have to justify why it should ever operate a monopoly."
11. However, in the past three years there has been a significant shift in the balance of national political debate on this issue. A weight of evidence has accumulated undermining claims made for outsourcing in terms of greater efficiency and improved value for money. There have been numerous high profile contract failures and scandals which have grabbed public attention, most notably in relation to prisoner tagging, court translation services, security at the 2012 Olympics and the Government's 'Workfare' programme. In addition, a number of

the larger 'strategic partnerships' set up by councils to manage back office and transactional operations have run aground. 'Liverpool Direct', 'Service Birmingham', 'Transform Sandwell' and the 'South West One' partnerships are just a few examples.

12. Evidence presented by the cross party House of Commons Public Accounts Select Committee has also proved damaging to the reputation of private sector companies running public services. Their reports have detailed numerous examples of perverse incentives, service failure and even outright fraud.¹
13. A July 2013 report by the Institute for Government highlighted potential risks involved in outsourcing. It called for an "...urgent, cross-government review to ensure public services are truly competitive – and not dominated by a few providers". The report stated that a lack of expertise in running complex outsourcing had resulted in an inability to negotiate the best deals with suppliers. The Select Committee for Communities and Local Government report in March 2014 was largely positive about the potential benefits of outsourcing but did highlight concerns about the lack of transparency involved in contracting out and took issue with the growth of the two-tier workforce and low pay in the social care sector.²
14. Questions have also been raised about whether outsourcing really produces savings based on increased efficiency. A report by the Smith Institute published in September 2014³ shows that savings for the public sector and profits for contractors are often based on driving down of the terms and conditions of staff providing the service rather than greater efficiency. The report concludes "Huge public-sector cuts are determining the objectives, nature and outcomes of the latest outsourcing deals in public services. On some contracts, the cuts are being passed directly on to low-paid workers. On others, there is a more mixed picture, with cuts being met via reduced pay and benefits for staff alongside other changes to working patterns and processes".
15. Faced with this increasing evidence both the Liberal Democrats and Labour at national level have challenged the idea that outsourcing is a problem free solution to providing quality public services for less money.
16. The Liberal Democrats recently presented a new policy called a 'Community Trigger for Change'⁴. The policy states that "Where a sizeable proportion of users or the public for a private or other provider of a public service believe that the service is inadequate, providing for a 'community trigger for change', through which they could require the responsible authority to conduct a full review of who provides the service, and how." The Labour Party's "Community Right to Challenge" policy⁵ uses slightly different language, but would achieve essentially the same thing.
17. Both Labour and the Liberal Democrats have also come out in support of extending the Freedom of Information Act to private providers of public services. Both parties have stated that public sector contracts should be made publicly available. In addition, Andy Burnham, Labour Shadow Health Secretary, has said that under a Labour Government the NHS would be the "preferred provider"⁶ rather than the private sector.

¹ House of Commons Committee of Public Accounts 'Contracting out public services to the private sector'

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublicacc/777/777.pdf>

² House of Commons Communities and Local Government Committee Local government procurement Sixth Report of Session 2013–14, March 2014

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/712/712.pdf>

³ Smith Institute, 'Outsourcing the Cuts' <http://socialwelfare.bl.uk/subject-areas/services-activity/employment/smithinstitute/167197outsourcing-the-cuts-pay-and-employment-effects-of-contracting-out.pdf>

⁴ Liberal Democrat Conference Agenda October 2014: http://issuu.com/liberaldemocrats/docs/aut2014_agenda_book?e=5969407/9226058

⁵ John Trickett MP, Fabian Society, February 2014: <http://www.fabians.org.uk/public-service-outsourcing-putting-people-first/>

⁶ Burnham: Time to 'reset' NHS, NHS Confederation: <http://www.nhsconfed.org/news/2014/06/time-to-reset-nhs-says-burnham>

18. This stance may also be a response to consistently strong support to publicly run public services reflected in opinion polls. Table 1 below shows results from a poll recently carried out by Survation for the campaign group 'We Own It'.

Table 1. Public opinion on privatisation and contracting out⁷

| % of people agreeing with this statement | Statement |
|---|--|
| 60% | Think local and national government should try running a public service first and only consider private ownership when found to have been run poorly |
| 28% | Think local and national government should contract out to private tender first and only consider public ownership when the service is badly run and too expensive |
| 80% | Think that when a service is put out to tender, there should always be an in-house bid from the public sector to see if the service can be provided publicly at better value |
| 79% | Say the public should be consulted first before their services are privatised or outsourced |
| 88% | Think the Government should be required to end contracts of private companies early, when they are found to be doing a poor job of running public services. |

19. However, we should not pretend that outsourcing is on the wane. Quite the opposite. A recent report by the Information Services Group found that public sector spending on outsourcing has doubled since 2010 to £88 billion.⁸ Perhaps more significantly, the rate of outsourcing in the public sector is greater than it is in the private sector. According to the Financial Times, "... the public sector is contracting out services at twice the rate of the private sector. The value of public sector outsourcing deals reached £51bn over the past two years, compared with £30bn for the commercial sector". Ironically, profit-driven companies appear to be more sceptical about the benefits of outsourcing than the public sector.
20. As we approach this year's General Election, the general tenor of policy from both the Liberal Democrats and Labour, if not the Conservative Party, appears to focus on two issues: Firstly, the transparency and openness of the process and secondly, recognising the risks of service failure. Depending on the result of the 2015 General Election, Southwark Council may find itself dealing with a government which believes improving procurement includes recognising the risks of going to the market in the first place.

The Public Services (Social Value) Act 2012

21. The advent of the Public Services (Social Value) Act 2012 places a duty on local authorities, the NHS and some other public bodies to give consideration to improving the economic, social and environmental wellbeing – the "social value" – of an area when it

⁷ Survation polling commissioned by 'We Own It' <http://prezi.com/naqdf7uvoguh/campaign-for-a-public-service-users-bill/>

⁸ Financial Times, 6th July 2014 "UK outsourcing spend doubles to £88bn under coalition" <http://www.ft.com/cms/s/0/c9330150-0364-11e4-9195-00144feab7de.html#axzz3HMLjiDxy>

commissions services. This is a significant development and means that an authority must consider:

- a) How what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
- b) How, in conducting the process of procurement, it might act with a view to securing that improvement.

22. This responsibility only applies to contracts which are valued over EU Procurement thresholds. It does not cover goods and works contracts, although the Government is currently reviewing if this could be extended.

23. To ensure a council is complying with the Act it must take “reasonable steps” to consider whether additional social, economic or environmental benefits can be created through the delivery of a service. This consideration must be “proportionate and relevant to the service that is to be commissioned” and the consideration must take place before beginning the process of procurement.⁹ The case study below shows how a council might put this legislation into practice.

Case Study – Oldham Council using the Social Value Act

When Oldham Council tendered for a new banking services contract, they assessed bids with a 60% weighting in favour of service quality, and 40% allocated to price.

The winning bid delivered an annual saving of 26% on the previous contract, whilst securing additional social value outcomes. These included work with local schools and colleges to develop students’ employability and money management skills, the creation of new apprenticeships within Greater Manchester and partnership working with local stakeholders to improve employment and social inclusion outcomes.

New EU Procurement Directives

24. In February 2012 The European Union adopted a legislative package for modernisation of public procurement rules. The new directives focus on the simplification of procedures and the promotion of electronic procurement but also include

“.. new rules [which] seek to ensure greater inclusion of common societal goals in the procurement process. These goals include environmental protection, social responsibility, innovation, combating climate change, employment, public health and other social and environmental considerations.”¹⁰

25. This is significant as, for the first time, EU rules explicitly encourage the use of “social clauses” in procurement. Previously the law was ambiguous on this point. As a result some public sector commissioners have erred on the side of caution and refused to include issues such as the Living Wage in their procurement activities. This should no longer be the case and a much wider range of social considerations can be included in the contracting process.

⁹ “The Public Services (Social Value) Act 2012: One Year On”

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275719/Public_Services_Social_Value_Act_-_One_Year_On.pdf

¹⁰ Agreement on the reform of public procurement policy, Council of the European Union:
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/138101.pdf

26. The consultation on the Government's proposed transposition of these regulations into UK law is currently on-going.

Part 2: Scrutiny Findings

Commissioning and Procurement at Southwark Council

27. Before we come to our more detailed findings it is important to establish the scale of the problem with the way the council has historically approached commissioning and procurement. It has been the series of high profile contract failures in Southwark which prompted OSC to investigate this issue in the first place.
28. Of course, we will get a skewed picture of procurement at the council if we do not also recognise that there have been successes. In terms of service delivery, for example, the council's experience with SOLACE (Domestic Violence Support Services) and Veolia (waste collection and management) have been largely positive.
29. However, there is no doubt that Southwark has had its fair share of outsourcing and procurement controversies, some of which have led to serious and prolonged reductions in service quality and wasted taxpayers' money. Table 2 gives some examples of this, dating back to the 1990's.
30. These are just the highest profile examples of outsourcing which seriously underperformed according to the promises made at the point of contract award. They show us that large scale procurement can be a risky undertaking that should not be entered into lightly. Even with the best of intentions on both sides, fragmenting the control of a service can leave the council relying on the goodwill of a contractor to respond appropriately when things go wrong. Precisely this point was made by one officer in their contribution to the interviews carried out as part of this scrutiny. They said:
- “ . . . you've got the money and you think you have control. As soon as you sign the contract, you've lost it. And unless you're very good at it, you immediately pass all of the control over to that contractor. The only thing you have, in theory, is paying the bills. But then if you look at all of the legals, you don't have much control over that either. Because you are committed to paying them. So once it [the contract] started not going well, we didn't have any facility to do anything about it, other than get upset and threaten them and whatever. Of course, that was alright for a while and then they got fed up with it. They weren't going to take any notice because it wasn't in the contract.”*
31. Outsourcing can set in stone pricing and performance indicators which return exorbitant profits to private companies without any accompanying improvement in service. In the case of the Morrison housing repairs contract, financial incentives in the contract were never implemented, and performance indicators only ever returned a picture of very strong performance. In reality Morrison was providing a poor quality service which was hidden by the performance indicator regime. Operatives were able to remotely report that they had completed repairs and attended appointments without any oversight. As a result residents suffered huge inconvenience and delay whilst the company was often paid multiple times for individual repairs.¹¹
32. In the case of the Pearson/Vangent call centre contract it was revealed that the contract contained incentives for the company not to deal with issues raised. Because Vangent was

¹¹ “Review Of Key Performance Indicators In The Housing Repairs Service” Report of Housing & Community Safety Scrutiny Sub-Committee, February 2011 <http://moderngov.southwarksites.com/mgConvert2PDF.aspx?ID=16278>

paid per call it was not in their interest to sort out problems first time. Instead they had an incentive to force residents to call back multiple times.¹²

33. It is important that we do not write these examples off as “one offs”. For all these contracts, large amounts of money were invested in the procurement exercise. Expert consultants¹³ are employed to advise the council on how to structure their contracts and identify the provider best placed to deliver the service, yet the end result was still service failure.
34. There is a recognition among senior officers that things can and do go badly wrong. The Strategic Director of Finance & Corporate Services stated in his interview with OSC that after starting at the council in 2005 “The first twenty procurement reports I ever saw, none of them saved any money and none of them tangibly improved services.” The Strategic Director stated that this was, in part, because of an overly centralised procurement function in which procurement officers were divorced from the services being provided. The Strategic Director stated that the situation improved when “... responsibility was sent back out to service managers”.
35. Table 3 on page 15 lists all of the contract cancellations and mutual terminations of contracts since 2010. The rhetoric of service improvement, value for money and reliability which so often surrounds outsourcing would suggest that the need to take such a step should be rare. But these eighteen examples in just over four years present a different picture. The total amount of money spent on terminating or mutually concluding contracts with these organisations has been **£1,623,996**. The reasons for cancellations vary from contract to contract, but this is another reminder of the financial risks associated with outsourcing.
36. Based on the evidence presented in this report, OSC concludes that there is not sufficient recognition of the financial and service quality risks associated with procuring services from the private sector. Among a minority of officers with involvement in procurement there is an assumption that outsourcing is “the way we do things”. Two contributions during the interview for this scrutiny reiterate this point. In one interview an officer said:

“Sometimes it can be a fall back for the lazy. People forget why these things were introduced in the first place and then they start replicating it endlessly. They forget what it’s good for. It doesn’t help you make good judgments, it doesn’t help you set good strategy and that people almost hide behind the reality of that. They think that because they have followed the procurement process, they’ve ticked all the boxes. Therefore it’s a good decision.”

Another officer stated:

“I don’t think it’s a problem restricted to Southwark Council, but there is this idea that outsourcing is a way of sorting out our problems, and not looking at if we can sort it ourselves. In terms of procurement, you need to understand what you need to buy and you need to be able to express that very clearly and accurately through a procurement process.”

37. There is also anecdotal evidence that decisions to procure a service are sometimes presented to Cabinet Members as a fait accompli, or not even presented to Cabinet Members at all. In his interview at Overview & Scrutiny Committee the Strategic Director of Finance & Corporate Services stated that “There is the possibility that we get to Gateway 1 where we haven’t fully shared with elected members why we’re going ahead with the strategy we are going ahead with. Because of the pace of programs, particularly with regard

¹² Minutes, Overview and Scrutiny, Tuesday 8th May 2012 <http://modern.gov.southwark.gov.uk/mgAi.aspx?ID=24155>

¹³ News release: “Sharpe Pritchard advises Southwark Council on Landmark IT Managed Services Outsourcing” <http://www.sharpepritchard.co.uk/news/sharpe-pritchard-advises-southwark-council-on-landmark-it-managed-services-outsourcing>

to regeneration, we haven't had time to share with you the thinking we have gone through as officers once we have got to the Gateway 1 decision...We need to be more open about how we get to those decisions.”

38. In this report OSC seeks to make recommendations which promote a more consistent and analytical approach to commissioning and procurement at the council. Where outsourcing fails, we need to ensure that Southwark learns from these experiences and modifies its approach to reduce the risk of this happening again. OSC believes that promoting transparency, greater democratic involvement and more engagement with service users will help this to happen.

Table 2 – Examples of large scale procurement underperforming in Southwark

| Contractor | Year contract began | Service | Pre-contract statements | What happened? |
|-------------------|---|--|---|--|
| CSL (Liberata) | 1998 Initial 5 year contract then renegotiated in 2002 | Revenue and benefits | <p>Local Government Chronicle February 11th 1998: Chief executive and director of finance Bob Coomber said: '...over time we anticipate significant improvements in the service. Despite the reduced cost to the council we have set tough targets for the new provider which includes a more rapid turnaround of claims and a substantial improvement in telephone answering.'</p> | <p>There were numerous controversies over poor performance between 1998-2002. In 2002 following the best value review, the Council renegotiated the contract and there were some improvements.</p> <p>However, in 2010, following further concerns about contractor performance, the service was taken back in-house.</p> <p>From Southwark News, June 10th 2010: "Southwark Council has taken the first step in bringing tax collection in-house after its contractor missed a series of targets - leaving nearly £4 million uncollected over four years... Southwark Council had the lowest collection rate of all London boroughs in 2008/9, with every one per cent of council tax not collected representing £940,000 of lost income."</p> |
| WS Atkins | 2001 | All the non-teaching responsibilities of Southwark LEA | <p>8th April 2001, Michael Jeffries, Chief Executive of WS Atkins, said, "We are delighted to be entering into an education services partnership with the London Borough of Southwark. Together with the staff who are joining our Group, WS Atkins brings an unique combination of skills and experience to enhance the quality of the education service in Southwark."</p> | <p>The £100m education contract was terminated after two years of the five-year contract. Atkins failed to meet key targets and claimed the contract was unprofitable. The contract termination alone cost Southwark Council £1.5m.</p> |

| | | | | |
|--|-------|----------------------|--|---|
| SITA | 1990s | Street Cleaning | | <p>APSE Report “Insourcing” published in 2009: Having taken the service back in-house “...London Borough of Southwark has seen resident overall satisfaction ratings of its street and estate cleaning services increase from 30% to 70% in the last four years. It has also gone from being rated the fifth dirtiest London borough to the fourth cleanest in the same time period. These positive results have been twinned with over £1 million of efficiency savings. This vast improvement in service delivery, cleanliness and efficiency was achieved following decision made by the authority in 2002/03 to return street and estate cleaning in-house.”</p> |
| Pearson Government Solutions (Vangent) | 2005 | Customer Call Centre | | <p>There were some initial improvements in making services more accessible, but problems with performance, the structure of the contract and the takeover of the contractor by another company came to a head in 2012.</p> <p>‘Government Computing’, 10th May 2012: “Southwark council's cabinet is set to agree to proposals to bring all customer services, including the authority's web portal and contact centre, in-house. The authority has opted to end its £116m deal with outsourcing firm Vangent two years earlier than previously agreed.</p> <p>Minutes of Overview & Scrutiny 8th May 2012: “The head of customer experience said that the council's contract with Vangent was based on transactional costs, so that every time a customer called the Customer Service Centre or visited a One Stop Shop they would receive a payment. This provided no incentive for Vangent to reduce call volumes or seek to get customers to use cheaper service access channels. The new service would be investing in staff and would not be a script-based service.”</p> |

| | | | | |
|----------|------|---|--|--|
| Morrison | 2009 | Housing Repairs in South of the Borough | <p>Southwark News, 15th June 2009: Cabinet Member for Housing, Councillor Kim Humphreys said: "The new system means faster, more efficient repairs - something tenants have called for and we've addressed with serious investment. The new contracts will be closely monitored, to make sure you all receive the impeccable housing repairs service you deserve. This is a sign of things to come from a council housing service which manages all its own stock."</p> | <p>Scrutiny: In February 2011 a scrutiny report revealed that much of the performance data to monitor to the contract was consistently wrong, showing strong performance when, in fact, there were serious performance issues with the contract. It was also revealed that none of the financial incentives contained within the contract were being enforced.</p> <p>Construction Enquirer April 2012: "Southwark Council has terminated its £10m-a-year housing repairs contract with Morrison. The contractor had been given since the start of the year to improve its performance. But the council confirmed today it will be cancelling its deal with Morrison and changing the way repairs in the borough are carried-out."</p> |
| Capita | 2013 | IT Services | <p>November 2012, Craig Rodgeron, Chief executive at Capita Secure Information Solutions, said: "Capita's secure solutions business has considerable experience working with clients who require a highly secure environment - a key area of concern to council's handling large volumes of data. In addition the company's scale and expertise across local government will deliver Southwark an affordable solution, providing significant savings on current contracts... consistent value for money across the duration of the contract."</p> | <p>Capita took on responsibility for IT at Southwark from Serco in February 2013 – soon after there were serious performance issues with IT systems including extremely long log on times and staff being unable to access important data to carry out their jobs. A Capita board member wrote to all Councillors apologising for the disruption caused. At subsequent OSC meetings there was open discussion about the cancellation of the contract because problems had become so acute.¹⁴</p> <p>Since this time there has been a slow but significant improvement in performance. However, at the time of writing (November 2014) there still ongoing issues with the speed of Citrix and length of log-in times. A "refresh" of IT took place in December 2014. At the time of writing the success of this project is not clear.</p> |

¹⁴ Meeting of Overview & Scrutiny Committee, Monday 3 February 2014 7.00 pm (Item 7) <http://moderngov.southwark.gov.uk/mgAi.aspx?ID=31554>

Table 3 - All of the contract cancellations in Southwark in the past 4 years

Contract termination under CSO 8

“A contract may only be terminated early or suspended by a chief officer, and only after obtaining approval from the monitoring officer and strategic director of finance and corporate services; all such decisions will be advised in writing by the chief officer to the relevant member of the cabinet and cabinet member for finance, resources and community safety”

Contacts which have been terminated:

2014/15 to date

- Supply Southwark business support contract with Prospects Services. September 2014:

2013/14

- FM contract (at Design and build schools) with 4 Futures. Approved January 2014
- Ruskin Home to School Transport Contract

2012/13

- Reprographic service agreement with SIP Communications Plc and lease for two bulk photocopiers with CHG Meridian. September 2012
- Internal decent homes package with Kier Support Services. January 2013
- February 2013 - major works contract for Borough & Bankside and Walworth with Breyer (note: this was a mutual conclusion of the contract, so does not really apply as an early termination)
- February 2013 - intensive surveillance and supervision programme (ISS) with Nacro
- Wates housing major works contract (note: due to issues at the start of the contract we believe that the contract was never concluded so was not subject to a CSO 8 termination report).
- CSC contract with Vangent/GDIT (note: this was not approved under CSO 8 but was a cabinet decision to return service in-house and parties agreed to amend expiry date)

2011/12

- July 2011 - strategic and operational management of SBS with Just Housing
- August 2011 - bailiff services with Loxstock Ltd trading as Davies Enforcement (note: company went into liquidation)
- October 2012 - repairs and maintenance for areas 3 and 4 and internal decent homes refurbishment for areas 3 and 4 with Morrison Facilities Services Ltd (MFSL) (note: early termination via exercise of break clause w.e.f. September 2012)
- Lifts R&M contract with Apex Lift & Escalator Engineers Ltd (note: achieved by way of a settlement agreement so did not form the subject of a specific CSO 8 termination report, but was instead referred to in a subsequent report which awarded the outstanding work to another Approved List contractor).
- Liberata contract for revenues and benefits (note: this was a 'rolling contract' which continued until notice given - so wasn't terminated using CSO 8).

2010/11

- Burnhill Close travellers' site refurbishment with David Hewitt Ltd (October 2010)
- May 2010 - terminated lift maintenance contract with Apex Lift and Elevators Limited (note: through a commercial agreement)
- Gaitskell House External Refurbishment - Blain & Forrester Ltd (note: terminated due to contractor being placed in liquidation). Report signed April 2010.

How procurement process works at Southwark Council

39. With some simplification, the basic decision making process for a Gateway 1 (which sets a procurement strategy) is as follows:

- An initial opinion on whether or not to proceed with a procurement will be taken by council officers (possibly with input from the Cabinet Member, but not necessarily)
- Depending on the value, nature of decision, and decision maker the Gateway 1 reports may go through a Departmental Contract Review Board, and may also go on to the Corporate Contracts Review Board. The purpose of these reviews is to provide advice to the Lead Contract Officer.
- The decision on the procurement strategy will be taken by Cabinet if the contract:
 - has an estimated contract value of over than £4 million (for services or £15 million for works)
 - considered politically sensitive
 - is considered high risk
 - involves the transfer of a significant asset
 - involves significant change to the service

If not,

- for contracts between £2m and £4m (or for £10-£15m for works) the decision will be taken by a Cabinet Member
- for contracts under £2m the decision will be taken by a Chief Officer or as delegated in the scheme of management

40. **For Gateway 2 decisions (Contract Award)**, the criteria is broadly the same as for Gateway 1, but there are specific requirements for any proposed contracts with pension arrangements which differ from the council's admitted bodies policy.

41. **Gateway 3 decisions (Variations to an existing contract** - which may include extending the life of a contract or additional works, as allowed for in the individual contract) the decision is taken by a chief officer or by the strategic director of finance and corporate services if it is above certain thresholds or a corporate contract.

42. Once a contract is awarded some limited details should be uploaded to the council's "contract register", which is published online. This can be seen here:

http://www.southwark.gov.uk/downloads/download/96/selling_to_southwark

How Southwark's procurement thresholds compare

43. During the course of this scrutiny process OSC was informed on several occasions that Southwark's contract thresholds for Cabinet Member sign off of a decision were at the lower end of the spectrum. Officers stated in their interview with OSC that a benchmarking exercise had been carried out to confirm this and that work was in progress to *raise* Southwark's thresholds so that contracts of a higher value could be signed off by senior officers. This potential change conflicts with the views of OSC. The view of the committee is that, if anything, Southwark's contract standing orders are too high. The Committee's view is that Cabinet Member and full Cabinet sign off of procurement decisions should take place at lower values than is currently allowed in contract standing orders. OSC believes that greater oversight of these decisions from elected members would improve outcomes.

44. It is currently possible for a Gateway 1 procurement decision of up to £2m to be signed off by Senior Officers, in cases where this is not deemed politically sensitive or high risk. OSC's own benchmarking shows that in Lambeth, Islington and Lewisham that figure is £500,000. In fact, of the twelve council's OSC benchmarked Southwark against, nine had lower thresholds for Cabinet Member sign off. Only one, Havering, has higher threshold. The table below summarises these findings.

Table 4: Threshold for Cabinet Member (or member) sign off of Gateway 1 decisions

| Borough | Procurement Threshold for Cabinet Member (or member) sign off | Higher or lower than Southwark? |
|------------|---|---------------------------------|
| Southwark | Decision taken by Cabinet if over £4 million for services or £15 million for works. Unless "politically sensitive", "high risk" involves transfer of assets or "significant service change". Some contracts between £2m and £4m (or for £10-£15m for works) the decision will be taken by a Cabinet Member. For contracts under £2m the decision will be taken by a Chief Officer or as delegated in the scheme of management (with some exceptions based on risk and nature of contract) | NA |
| Barnet | Above £172,514 – if within budget, Officer in consultation with Chairman of relevant theme or Policy & Resources Committee | Lower |
| Hackney | If value of contract is above delegated authority of Chief Officer then the report is approved by Chair of Procurement Board if less than £2m, or by Cabinet Procurement Committee if more than this value | Same |
| Havering | £5,000,000-£9,999,999 – individual Cabinet Member, £10,000,000 or more – Cabinet | Higher |
| Hillingdon | £50,000 - £249,999 – Cabinet member and Leader of the Council (joint decision). £250,000 or greater – Cabinet | Lower |
| Islington | Anything above £1m capital and £500K revenue is considered to be a key decision and taken by Executive. Key decisions can be taken by Corporate Directors and two Assistant Chief Executives under urgency. No individual Executive Member decisions | Lower |
| Kingston | (Committee system so no individual Cabinet Member decision making). Anything over £300K must be authorised in consultation with Lead Member for Capital, Projects and Contracts. No set financial thresholds for the reporting of contracts to Committee but in practice financially significant and/or sensitive contracts will be submitted for Member approval by the relevant Service Committee | Lower |
| Lambeth | More than £500,000 up to £1 million - relevant Cabinet Member. More than £1 million - relevant Cabinet Member in consultation with the Leader | Lower |
| Lewisham | Building, construction and engineering works contracts with an estimated value of over £1m and all other contracts with an estimated value of over £500,000 – Mayor and Cabinet with Scrutiny | Lower |
| Merton | Contracts awarded by Cabinet where value of the contract is £2,000,000 or greater | Same |
| Sutton | Anything over £500K – relevant service committee | Lower |

| | | |
|----------------|--|-------|
| Waltham Forest | All procurements over the EU threshold for supplies and services, and over £1m for works, require Cabinet approval to start a procurement (following internal strategic procurement board approval). Those that are key decisions (over £1m or affecting more than one ward) also need Cabinet approval to award the resulting contracts | Lower |
| Westminster | Above £1.5m - Cabinet Members (£300k for consultancies) | Lower |

45. Upon further investigation, it transpired that the benchmarking referred to by officers contained information on seven unnamed councils and the table incorrectly benchmarked Southwark's threshold for Cabinet/Leader sign off at £500,000, instead of £2m.
46. OSC also notes that since these thresholds were set the council has faced almost £80 million in government funding cuts, which have caused huge budget pressures. As a result the need to scrutinise the money the council spends and ensure we are getting value for money has intensified. In the context of procurement this means that a £1.5 million contract decision accounts for a significantly larger proportion of the council's overall spending power than it did in 2010.

Codifying engagement with Cabinet Members

47. It is noticeable that Southwark's Contract Standing Orders contain no reference to the importance of consulting with Cabinet Members over major procurement decisions. By contrast Lambeth Council's Contract Standing Orders contains the following stipulation:
- "Where the aggregate value of the contract or purchase is valued at £100,000 and greater, the officer *must consult* with their departmental cabinet member before tender approval is given. "
48. OSC believes Southwark Council should adopt similar procedures in its standing orders to ensure that there is appropriate input from elected members.

Contract variations "Gateway 3"

49. As noted above, Southwark's contract standing orders say that high value contract variations or Gateway 3 decisions (contract variations) are taken by the Strategic Director of Finance & Corporate Services and advised in writing to members of the Cabinet. In practice, some of these decisions are signed off by the Cabinet Member themselves. For example, the decision to vary the Homecare Support Services taken in July 2014 was signed by the Cabinet Member.¹⁵
50. However, it is still true to say that most high value variations are signed off by the Strategic Director of Finance & Corporate Services. There is no formal limit to the value of these decisions. This is an unusual arrangement which OSC could not find an equivalent for in other local authorities. In Lewisham, for example, any contract variation over the value of £500,000 is a decision reserved for the appropriate Cabinet Member or for the Mayor.
51. OSC believes that the time has come to review and lower the current thresholds for all three gateway decisions. We would suggest that, as part of a full review of contract standing orders, Cabinet Members provide a revised schedule of thresholds which they feel better reflects the importance of the large financial commitments being made by their departments.

Cabinet Member Interview, Councillor Fiona Colley, Cabinet Member for Finance, Strategy and Performance

52. On 1st December 2014, the Committee interviewed Councillor Fiona Colley who is the Cabinet Member responsible for commissioning and procurement policy at Southwark Council. The full

¹⁵ <http://moderngov.southwark.gov.uk/documents/s47842/Record%20of%20Decision.pdf>

interview covered all areas of the Cabinet Member's portfolio, but the opportunity was also taken to ask about a possible recommendation from this scrutiny report.

Question from Chair of OSC: "What do you think of the idea of Southwark Council adopting a policy or a statement stating that our preferred way of providing a service is in-house? This would not mean that all services would be delivered in-house but that any decision to outsource would have to have a reasonable justification. What are your views on that?"

Cllr Fiona Colley: "My inclination is to agree with you. We've had some real successes in my own portfolio bringing services back in-house. Whether we go quite as far as that statement, is all about how that is understood. I think it's clear from the discussions that we have had about it, it clearly doesn't mean that everything will always be delivered in-house, but I would be worried if that was how it appeared because the points of Adele's [Cllr Morris] about the voluntary sector, I wouldn't want to give the impression that we were going to stop commissioning with the voluntary sector because, as I've already mentioned, I think the voluntary sector can sometimes deliver things right on the ground, and funding sources, better than we can.

So I think we have to be quite careful how it is described and that it's not taken to mean that it is always in-house, because I don't think that it will. But certainly I think that "Should the service be run in-house?" is always a serious question that is asked, I think it's something we could be addressing more clearly in all of the gateway reports that come to Cabinet, and I think your idea of "Gateway Zero", if you call it that or something else, is taken more seriously both in terms of whether we outsource or not, but also whether we share services with other boroughs. Too often we don't look at that until it's too late, to consider those alternative options, whether it's in-house, voluntary sector or shared service and looking at things earlier I think would be a good thing."

Interview with John Tizard

53. John Tizard attended a public Overview & Scrutiny meeting in Southwark on 10th November 2014. OSC would like to put on record our gratitude to him for taking the time to come to the committee and give his view on outsourcing and procurement.
54. John Tizard is an independent strategic advisor and commentator on public policy and public services. He works with a range of public, private, third and academic organisations. He worked for Scope from 1977 to 1997, latterly becoming their Director of Strategy and Policy and serving on its senior management team. He joined Capita in 1997 to lead its local government consultancy business but moved to a corporate role reporting directly to Capita Group's Chair and Chief Executive; and directly advising the Board. In over the ten years at Capita he held a number of different roles but for eight years until December 2007 as Director of Government and Business Engagement had responsibility for The Capita Group's public sector strategy and strategic relations with Government, the wider public sector and other national public policy and regulatory bodies. He also has over eighteen years' experience as a county councillor, and was a group leader for fourteen years and for over eight years the joint leader of Bedfordshire County Council.
55. Below are direct quotes from John Tizard from this session. Where the quotes are in response to a direct question this is highlighted:

On the important difference between Commissioning and Procurement:

"We should not confuse commissioning with procurement. Commissioning is a much more strategic process about identifying a need and how to identify the outcomes to meet that need. Too often, in a lazy way, we conflate the two. Even for in-house services you may want to go through some sort of commissioning process. In-house provision, partnership with other councils, private sector or Community and Voluntary Sector. Don't assume that the private sector is the default option."

On ensuring procurement is aligned with political objectives:

“My challenge.... Is procurement seen as a tactical or a strategic activity?... too often there is a policy objective over there and you begin to lose them all, moving back into a traditional cost based approach. Of course current financial pressures on local government mean that is a real risk. But ensuring there is a constant political drive for the wider objective to be achieved. It is really important that procurement is seen as one of the political tools of your council to actually achieve its wider objectives.”

On involving the wider community:

“Good practice means it has to have political direction. Where there is the significant spend there is also the opportunity to involve wider stakeholders. It is rare in local government in my experience for communities, residents, users of services and staff and unions to be involved in that process. There is no reason why they shouldn't be. In fact, it enriches the process. A procurement exercise which specifies a technical requirement which procurement officers have decided is the right requirement which actually doesn't meet anything like what the users want or the community wants. Then you get the ludicrous position, but the contractor is saying 'we're meeting all of our performance targets'. Very difficult, particularly if you have large corporates with large legal departments.”

On transparency:

“There is much to say for transparency. If you are going to outsource, you've not only consulted, through commissioning, but the business case for outsourcing is also subject to consultation, so that people can challenge it. Actually they can hold the council to account for what they said they would achieve. You might have your procurement team or your legal team saying 'you can't do that.' It's commercially sensitive and it's going to put us at a disadvantage'. I don't really think that's the case. We are seeing the requirement to be much more transparent... there are elements that are commercially sensitive, but that cannot be the default option. Ironically, often providers, even the big corporates, are much more prepared to be open even than the public sector client. There are certain terms that you can consider imposing on your providers. One is, you can contractually make them comply with freedom of information. But also that applies to your client side.”

Using procurement to test the ethos of providers:

“There is also something to be said for testing the ethos of your providers. Are they paying their due level of taxation? Because if not you are paying public money that may then be going out of the country and may not be being properly taxed. There is public legitimacy to test that. What are their remuneration policies so what is the ratio between their lowest paid and their most senior people. Are you comfortable with that? What are their employment practices?.. You can obviously impose things like Living Wage. Most respectable providers won't challenge you on it because they want to have a good reputation in the sector.”

On break clauses for changes in ownership:

“There is something about checking ownership....Take Southern Cross for example...it changed ownership to a very different business model. You may want to put in a break clause if there is a change of ownership during the lifetime of the contract.”

On open book accounting:

“Open book accounting. My question would be, do you have, have you agreed the accountancy standards that will underpin it and are those open book accountancy arrangements subject to your internal audit team or your external auditors? . . . One of the other big challenges is internal recharge, particularly on IT contracts. What the company does is declare a 5% profit on the contract itself. But because of internal recharging to other parts of the same company, they are in fact taking 20-25 % profits and then that then gets lost in the totality. So you do need open book accounting that exposes

the whole financial model of the company and being able to audit that. On big contracts it's absolutely essential."

On the limits of saving money through outsourcing:

"My message to you is just think and just challenge when you are thinking about outsourcing. In the past outsourcing has been seen as a means of taking out cost. You will be a much more efficient authority now than you were 10-15 years ago. So those significant savings that were there, they are not going to be there if you have contracted 1, 2 or 3 times."

On the limits of transferring risk:

"There is a lot a lot of misconception about transfer of risk and accountability. If your provider fails, you might be able to get some financial reward back from them, but what you can't do is to abdicate or transfer your political accountability ... risk always remains. I would challenge your procurement people on their understanding of risk and the transfer of risk . . . I can take you to local authority after local authority across the country, of all political persuasions where the politicians are absolutely divorced from the procurement process and it just becomes a technical exercise that they can put over there somewhere. Then they wonder why people are shouting at them in the street, when the streets aren't cleaned or the bins aren't collected."

On scrutiny and accountability:

"For scrutiny committees, for the big contracts, you should expect the client officers and the Cabinet Members and the provider to appear before you to answer questions. There will be a challenge that it wasn't in the original contract so you need to build it into the original contract so that you can do that. I think there is something about holding the Cabinet Member for the performance of contracts. There is a role for when an outsourcing is being considered to call before the committee to scrutinise most appropriate model. Has the council got the right approach? Has it got the capacity to handle those contracts? What alternatives have been looked at?"

On using the Public Services (Social Value) Act 2012 and new EU regulations:

"I would describe it as a very good enabler for people who want to use procurement for other means. You can also use the new EU procurement legislation which will allow you to take more account of social factors. Although, my advice is that you could do quite a lot under the existing ones, provided it was a level playing field."

More on the role of scrutiny:

"It is more difficult to do it retrospectively, if the contract is already let, it should be for future contracts and it's very clear that these things can be specified. It's also about who they send. You need the person with operational responsibility for the service before you. Not someone from their marketing department."

Question from the Chair of OSC:

Would you be surprised that an Authority like Southwark often finds itself in the situation where we have Gateway 1 reports circulated, for the first time, as fully formed objects in themselves? The decision to procure in the first place has already been made and the details are set. So we find the thinking about how a service should be run is done internally, or worse, isn't done at all and then is presented as a Gateway 1 report and it's very difficult to stop it. Does that surprise you?

John Tizard Answer:

I'm not at all surprised. It's very, very common and that's part of what I was saying earlier. Good practice suggests that consulting on that original review and decision is a good idea. ... it is quite likely that some people will ask questions that haven't been asked. Particularly if you ask the people who use the service or the staff. Otherwise you won't get that richness from having stakeholders involved. You need to encourage the Cabinet Members or maybe the senior officer team to be much more open about the process. This will not inhibit good procurement.

Chair of OSC suggests:

"Gateway Zero" for large contracts and asks for John Tizard's opinion, Does that sound like a sensible approach to you?

John Tizard Answer:

It does. But I think you need to go further than that. Because I think you need to talk to service users, staff, unions, CVS sector. ... in terms of accountability and transparency it is very important to have that.

Interview with the Strategic Director of Finance & Corporate Services, Duncan Whitfield and the Deputy Finance Director, Jennifer Seeley

56. On Monday 8th September 2014 OSC interviewed the Strategic Director of Finance, Duncan Whitfield and the Deputy Finance Director, Jennifer Seeley. The following notes are taken from the formal minutes of that session.¹⁶

"The chair of the Committee asked how well corporate contract review boards were functioning and whether they were providing sufficient insight and challenge. The Strategic Director of Finance confirmed that the corporate board was working extremely well but that he would like to see more challenge at the level of departmental boards.

The chair highlighted the proliferation of contracts across the council. Given the risks in big long-term contracts, he wondered whether the council should be asking officers to take a preferred position of awarding work in-house unless there was a particular case for doing otherwise. The Strategic Director of Finance responded that this could be stated in the Medium Term Resources Strategy but that it might have the effect of removing autonomy from managers who knew services well. The chair commented on the general claim that private contractors were more efficient, better value for money and improved services. Experience across the country was that profits were made at the expense of the people directly delivering the services, for instance in social care. He wondered about the possibility of holding contractors to Southwark's two tier code. The Strategic Director of Finance clarified that if Southwark's own staff were TUPE'd to a provider then their existing terms and conditions were preserved. Through the procurement process and valuation, Southwark had been quite successful in the introduction of the London Living Wage. The Ethical Care Charter was also breaking new ground. However, legal advice would be needed as to whether or not terms and conditions could be specified through procurement.

Councillor Catherine Dale emphasised the importance of the skills of the people engaged in managing contracts and questioned where management of contracts should be positioned within the authority. The Strategic Director of Finance responded that it would not be beneficial, operationally and in terms of relationships, to divorce day to day responsibility for managing contracts from the service managers. Contract management was best left with service managers but supported from the centre. Councillor Tom Flynn referred to pages 15 – 17 of the supplemental agenda which showed that a lot of decisions were made without any political involvement. He asked what percentage were made at, for example, cabinet level and whether officers considered that the

¹⁶ <http://modern.gov.southwark.gov.uk/documents/g4896/Printed%20minutes%20Monday%2008-Sep-2014%2019.00%20Overview%20Scrutiny%20Committee.pdf?T=1>

proportion was right. The Deputy Finance Director explained that the system was not dissimilar to that of other councils, with contracts over £500K in value being referred to the political arena. Procurement was considered a tool for output, to achieve service objectives, and limits were set at the level that the council decided.

Councillor Karl Eastham suggested that it might be helpful to officers to have a procurement strategy that included political considerations. The Strategic Director of Finance clarified that officers tried to embody any evolving political priorities within procurement. He added that Southwark compared with other London boroughs in this. The chair commented that the council did not have a corporate procurement strategy in the sense of a document which provided strategy and direction and did not just set out processes. The school places strategy contained a clear political input but there was no equivalent document in terms of procurement. Councillor Adele Morris wondered whether the Community Development Foundation might be able to provide a framework for assessing contractors. Councillor Johnson Situ stressed that the aim was to get the best possible service. Some sort of accreditation might help but it would be important that no providers were excluded.

Councillor Claire Maugham commented that appendix C to the report, Extract from Medium Term Resources Strategy 2014/15 – 2016/17, seemed to be very broad. She sought reassurance that the broad strategy captured specific learning for instance from the experience of the Draper House contract. The Strategic Director of Finance responded that there was scope to go deeper in the strategy, it depended how specific elected members wanted to be. Councillor Situ asked whether there was any mechanism in place to develop local businesses to be ready to take on services. The Strategic Director of Finance replied that the Economic Development Team supported local businesses.

The chair asked to see a list of terminated or cancelled contracts over the last five years. He also said that he would be taking a sample of the contracts on the contract register asking why they were procured, whether they were performing well and how they were managed. He would contact lead officers and keep strategic directors informed. The chair asked members for suggestions as to which contracts should be examined. The chair indicated that he intended to bring a draft report to committee in December.”

Consultation with the Community and Voluntary Sector in Southwark

57. The Committee is grateful to Community Action Southwark (CAS) for their very constructive engagement with this scrutiny process. CAS is the umbrella organisation for the voluntary and community sector in Southwark. CAS submitted a detailed and insightful paper to OSC setting out areas which they felt could be improved in the way the council engages with CVS bodies through commissioning and procurement. You can read the full paper here:

<http://moderngov.southwark.gov.uk/documents/s49345/Community%20Action%20Southwark%20-%20Presentation.pdf>

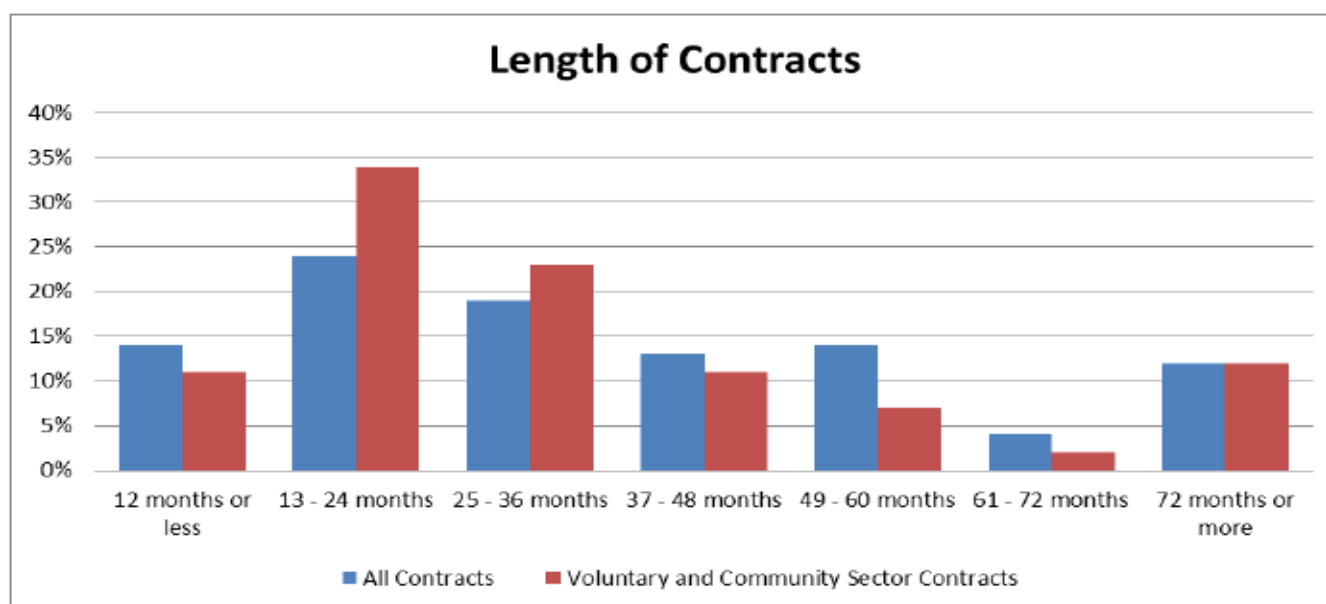
Representatives from CAS also met with the Chair of OSC to discuss their proposals. Much of the information below has been provided directly to OSC by CAS.

Southwark’s current outsourcing to the CVS sector

CVS sector currently delivers 44 contracts on behalf of Southwark council, approximately 20% of all contracts. The majority of these contracts (25) are within the Children’s and Adults Services Department. They provide a variety of services within this area – for example, mental health support, day services, and carers support.

Length of CVS contracts

Contracts with the voluntary and community sector seem, in general, to be on the shorter side. Comparing the length of all the contracts on the register to the length of just the VCS contracts, we can see that a greater proportion of them are 13-24 months long, and there are fewer contracts in the longer categories.



58. In their submission to OSC, CAS emphasised that , where outsourcing does take place, they are often best placed to deliver on greater social value from the contracts.
59. They gave the example of Thames Reach who employ service users through targeted measures such as traineeships. All jobs are open to current or former Thames Reach service users, as well as clients from other homelessness organisations. As a result, 22% of Thames Reach staff have experienced homelessness in the past. CAS went on to make a series of recommendations to the way that procurement should change in the borough. These are summarised below:

Embedding social value into procurement:

When considering contract awards, it is imperative that the council considers bids on their value for money – not just their price. Local authorities have a duty to consider ‘social value’ alongside ‘best value’. According to CAS: “The Social Value Act came into force in January 2013 – almost two years ago – yet Southwark Council still has no clear policy on social value. This is not the case in other London boroughs.”

Update CVS Compact:

Southwark Council’s CVS Compact was last revised in 2010, before the publication of the Open Public Services White Paper. It would be a good idea to refresh this Compact to include recognition of the CVS as a partner in service delivery. CAS would like to see commitments to the following:

- a) CVS engagement before procurement stage. Compact Voice recommends engagement with the CVS from the earliest stage in order to fully comply with the Social Value Act.
- b) A clear 12 weeks’ notice of contracts ending. This does not always happen, and can cause problems for the CVS, particularly with regards to giving employees notice.
- c) An appropriate length of time at Pre-qualification Questionnaire and Invitation To Tender stage. CAS would recommend a minimum of 5 weeks at the PQQ stage, and 6 weeks at the ITT stage. This would result in more targeted, higher quality submissions.

- d) A commitment to providing time for the development of consortia, and a favourable approach to consortia bids from the sector.
- e) Procurement approaches need to be varied to suit the individual circumstances. Grant funding may still be appropriate if the service is small.

Preventative procurement:

Greater value should be attached to those services with a preventative capacity. Preventative services are those which reduce future need, particularly the need for acute services provided at crisis point, which are generally very expensive. All procurement decisions should take into account whether the procurement will do anything to reduce future need. This could be done by making procurement decisions on the basis on their impact over a five or ten year period.

Appropriate size and length of contracts:

In order to ensure that services being delivered are high quality, it is important to support a mixed market of service providers, to avoid monopoly and complacency. Contracts that are particularly short (i.e. 12 months or less) make it impossible for the VCS to engage in long-term planning, or retain high quality staff. Additionally, very large contracts cause problems for the VCS. A 2013 VCSE survey by Locality found that nearly 42% of respondents believe contracts have become larger in the past five years. A further 52% expect them to become.

Standardising commissioning and procurement:

There can be different rules and procedures across Southwark Council departments about how commissioning and procurement take place. Not surprisingly, this is confusing for the sector. One example to note is the launch of the council's Approved Provider List. This is now only being used in the Community Services Department, and the sector is still required to fill in PQQs for contracts from other departments, even if they are on this list. To avoid confusion and variation in procedures across departments, we would like to see one 'commissioning unit' that standardises commissioning processes across the council and sets hard and fast rules about procurement.

Co-production:

Co-production refers to the involvement of service users in the design of services, not just consultation processes on those services once they have been decided. Because a large number of VCOs engage with service users on a day-to-day basis, they are often well-informed about local needs. Co-production could represent a good way for the sector to get involved in service design before procurement stage, to ensure that procurement is appropriate and aligns with what service users need. The council is currently in the process of developing a co-production toolkit and will be developing a community coproduction advisor network. CAS will be a key partner in the development of the toolkit. We would like to see the VCS fully involved in co-production, and VCS representatives on the advisor network.

Consultation with UNISON

- 60. The Committee is grateful to Southwark UNISON branch for their constructive submission and engagement with this scrutiny process. UNISON is the UK's largest public sector trade union. UNISON contributed a written submission to the scrutiny process.
- 61. Below is a summary of views and recommended changes to current procedures contained within the UNISON submission. A full version of this submission can be seen here:
 - 1. Involving unions in decision making:** Where a commissioning decision affects staff, unions should be involved at an early stage in the process. Southwark UNISON stated: "We have not

participated in any procurement decisions until very recently in connection with Home Care. We know that the branch secretary of Ucatt has attempted to influence procurement decisions connected to the provision of repair services to Council Tenants. Our involvement has been limited to lobbying Council Members as to what options Council reports contain and which options they should choose.” They go on to say, “UNISON would also be willing to give serious consideration to signing confidentiality agreements if this is necessary to enable us to see the bids and procurement information.”

2. On transparency: It is the view of Southwark UNISON that these questions cannot be separated. In order to have democratic input it is necessary to have an open and transparent process. Too often procurement decisions recommended by Council officers are ratified in closed session as the information is deemed commercially sensitive.

3. A procurement agreement with local trade unions: When services are reviewed UNISON would like members involved in delivering a service to:

- Receive notice that such a process is to commence
- Receive a timetable for the process
- Be permitted to submit a trade union concurrent to any subsequent reports received by the Council
- To be allowed access to tender documentation
- To be allowed access to bids
- Be involved in stake holder consultations about “co-production” etc.

Southwark UNISON “... invites the Council to enter into a procurement agreement. The provisions of such an agreement are attached as an appendix. It is recognised that in many cases Southwark UNISON would neither have the resources or the expertise to comment, for example on the purchase of energy supplies, however by early notification and access through the process Southwark UNISON members would be in a strong position to challenge assumptions made within the commissioning and procurement process, in so doing making such decisions more robust.”

4. On two-tier workforce issues: Southwark UNISON state “When the Council renews contracts or (heaven forbid) outsources services to the private or voluntary sector as a minimum the following should apply:

Access to the LGPS
Trade Union recognition agreements
London Living Wage
Company sick pay
Local delivery employing local people where possible
Work creation and training programs
Defined hour contracts without unreasonable “availability clauses”
Free access to personal protective equipment
Guarantees that TUPE terms and conditions will last for the term of the contract”

5. On social value: UNISON state “Southwark Council has an opportunity to enhance the position of local government in the local economy by ensuing “Value” isn’t just counted in “pounds shillings and pence.”

6. On the impact of Commissioning decisions on the workforce: Southwark UNISON state their belief that “...the Council should set out a set of principles in respect of the workforce. Historically Southwark Council has brought services in-house which has had a very positive impact on the workforce and would comply with any set of principles the Council could establish.”

- 7. On a procurement strategy:** UNISON state “Southwark UNISON does believe that the Council should develop a new procurement strategy. This should include a commitment to delivering services in house where possible.

Case study provided by Southwark UNISON: day centre services for adults with learning disabilities

The Council’s provider for day centre services for adults with learning disabilities has recently cut the terms and conditions of staff and is increasingly relying on “bank staff” (zero hour contracts) to deliver routine services. We are at this very moment trying to establish whether they intend to remunerate their bank staff for attending training.

Both of these employers enjoy charitable status. The branch recently sought information from the day centre provider as to when and where their board meetings took place. This information was refused. Recently a charitable provider was swallowed up by a larger organisation whilst maintaining its trading identity. The governance arrangements are now even more complex. The company is set up as a company limited by guarantee. They are able to change articles of association without agreement with service users, clients or members. The frequency of meetings and the involvement of service users in governance arrangements are below those that would be routine if the services were provided in house.

Consultation with Southwark Chambers of Commerce

62. The Committee is grateful to Southwark Chambers of Commerce for their constructive submission and engagement with this scrutiny process. Southwark Chamber of Commerce and Industry is Southwark’s largest voluntary business organisation and has recently celebrated its role of representing businesses in Southwark for over ninety years.
63. Below is a summary of the recommended changes to current procedures contained within the Chambers of Commerce submission. A full version of this submission can be seen here:
1. Local SMEs being included on council tender lists for council contracts.
 2. The council assisting SME’s in how to approach the tendering process. We attach a note regarding how Lambeth give this help.
 3. How to ensure that SME’s do not have to do a lot of expensive work to tender, only to find that they were not successful. For instance tenders could be accepted subject to appropriate accreditations being achieved.
 4. Making tenders and contracts appropriate to enable local businesses to tender.
 5. The Council should set targets for the amount, percentage and number of contracts awarded to local businesses.
 6. The council could publish data on the progress made to ensuring an adequate number and percentage of contracts going to smaller and local businesses.
 7. The council can work with Southwark Chamber of commerce in hosting events to promote the tendering process.
 8. Ensure that a minimum percentage of local businesses are employed on larger developments, thus reducing the risk of being just ‘window dressing’ i.e. being seen to help local businesses without any real commitment to do so.

9. Designating a council officer to work in partnership with the chamber in promoting procurement and other council matters that effect local business. As a result the 8,000 or so SME'S that form the backbone of economic production and employment within the borough can be promoted and become more focused on local issues and employment. This can be achieved through both the procurement process and the other items on the Chamber's Manifesto for Business in Southwark. They chamber is confident that with a real business input working in partnership with the council that results can be effectively and quickly be achieved.
10. SME's being given a chance to compete for work on major projects in the borough. This can often be achieved by being specified as part of 106 agreements. Evidence has shown that at several business fairs where large employers have been there ostensibly looking to engage and use local services in practice local businesses are not awarded contracts One instance of this is the rebuilding of London Bridge Station, this is very disruptive for the borough and local employers, giving something back in return would not be unreasonable. They are spending £6b on this over 4 years, whilst recognising they are working on promoting local apprenticeships, at a public meeting they were unaware of how many Southwark SME's were used, i.e. they have no policy to promote their work locally.

Introducing social clauses as part of the procurement process, an example

64. OSC believes that more use could be made of the Social Value provisions in our procurement processes. This is addressed further in the conclusions and recommendations below. In compiling the evidence for our recommendations OSC thought it would be useful to explore one example of how this could be done in Southwark. Below we set out how Southwark might change its procedures to ensure that companies who have been involved in trade union black-listing might be dealt with. We are grateful to the trade union GMB (national office) for the evidence they have submitted on this issue.
65. Trade union black-listing is "The systematic compilation of information on individual trade unionists and their use by employers and recruiters to discriminate against those individuals because of their trade union membership or because of their involvement in trade union activity."¹⁷ Blacklisting individuals has been unlawful since early 2010, and legislation has been put in place to prohibit its use.
66. Blacklisting can devastate the lives of people who are targeted, in some cases leading to long periods of unemployment and family breakdown. OSC believes that people who engage in trade union activity are making a contribution which can improve the working environment for all workers and benefit the organisations in which they are active. To blacklist individuals from employment simply because they are engaged in this activity is wrong and Southwark Council should actively participate in discouraging this unlawful practice.
67. Other councils, notably Islington and Liverpool, have taken action to ensure that companies who have been involved in black-listing in the past and have not taken steps to ensure they will not do so again, will not be awarded contracts. In the case of Islington, an Executive Member Report was agreed in March 2014 to put in place this policy. The recommendation of the report stated:

"The recommendations in this report will mean that the council's contracting processes take proper account of participation in blacklisting activities to ensure that no organisation which participated in blacklisting and has not "self-cleansed" is awarded a contract with the council.

¹⁷ Blacklisting the blacklisters: how to use ethical procurement to achieve justice for blacklisted workers, produced by Leigh Day and GMB
<http://www.leighday.co.uk/LeighDay/media/LeighDay/documents/Employment/Blacklisting-the-blacklisters.pdf>

*The actions to be taken by the Leader will also ensure that the concerns raised, and the best practice identified, by the Policy and Performance Scrutiny committee are brought to the attention of the Government and other London Councils.*¹⁸

68. Details of the action taken at Liverpool City Council, led by Councillor Nick Small, can be found in this article <http://www.building.co.uk/blacklisting-the-blacklisters/5053665.article> The article includes the following, please note the reference to the legality of local authority action to tackle this issue:

“Liverpool has a very high number of construction workers who have been affected by this from the seventies and eighties onwards. Some have suffered financially and we want the government to do more about this. Some sort of system of compensation needs to be set up and we’ve said where it’s legal to do so, we won’t work with the companies involved with blacklisting.”

Crucially, it appears councils are legally within their rights as clients to take this action, although that is not to say they could not be challenged.

Lawyer Rupert Choat, head of construction disputes at CMS Cameron McKenna, points to the Public Contracts Regulations 2006 which state that a contracting authority can treat a contractor as ineligible for work if they have “committed an act of grave misconduct in the course of his business or profession”.

“By definition this regulation is designed to get at things which happened in the past and it clearly gives authorities the discretion to act when a contractor has been guilty of ‘grave misconduct’,” Choat explains. “If any of the local authorities act on [these motions], it has the opportunity and threat of setting a bit of a precedent.”

69. OSC was interested to know the technicalities of how such a policy might be put in place. It appears that one way of achieving this is for a local authority to include this issue as part of the pre-qualification questionnaire (PQQ) which is often used as part of procurement exercises. A model section of a PQQ on trade union blacklisting has been produced by GMB and this is included in this report as Appendix 1.
70. OSC believes that this other social issues should be included in Southwark’s procurement processes, using the appropriate methods, to ensure Southwark Council’s resources are being used in a responsible and ethical way. Precisely which issues should be addressed and how is explored further in our recommendations.
71. OSC has been made aware of guidance and resources which Southwark offers to contract officers on the issue of blacklisting. Further steps could be taken to ensure that blacklisters who have not “Self-cleansed” are excluded as a matter of policy. This is addressed in our recommendations.

Social Value: Apprenticeships and Jobs

72. With the exception of the Living Wage and the Ethical Care Charter, it is not clear that the wider concept of social value is a core consideration in Southwark’s procurement activity. There is no reference to “social value” in Southwark’s contract standing orders or the decision charts which procurement officers are encouraged to use. The Procurement Strategy contained within the council’s Medium Term Financial Strategy¹⁹ does contain a reference to the Public Services (Social Value) Act 2012. However this is one of 32 other “key principles”.
73. Southwark has been slow to respond to the possibilities opened up by the Social Value Act. OSC is aware that some work is currently taking place to develop Southwark’s response to the Act, including a social value toolkit. This is welcome. The Committee believes that any new approach should

¹⁸ Blacklisting in the construction industry, response to the report by the policy and performance scrutiny committee, March 2014, <http://democracy.islington.gov.uk/Data/Executive/201403061930/Agenda/D1%20Response%20on%20Blacklisting%20for%20Executive.pdf>

¹⁹ http://www.southwark.gov.uk/downloads/download/278/medium_term_resources_strategy

prioritise apprenticeships and job creation for local people. The current economic climate continues to be extremely tough for many people and so the council should do everything in its power to extend quality job opportunities to Southwark residents. In one of the interviews carried out as part of this scrutiny the idea of setting targets for creating apprenticeships and jobs for local people through our procurement was put to a procurement officer. The response, which follows was very positive:

“Definitely, yes. Definitely. Without question, the construction industry ought to be investing in that and we’re not just talking about people on site, we’re talking about architects and others. There is a shortage of these types of people in the construction industry. That’s why the construction industry is so difficult at the moment. There is such a shortage of skills.... lack of brickies, lack of sparkies, lack of good plumbers. Just to take an example, we go down to a school and we can’t get the quality that we want from [contractor]. Why is that? Because they haven’t got the skills in the industry. Apprenticeships are clearly a good thing because they encourage young people to look at different forms of employment rather than necessarily just saying, ‘I can go to university’.

Also it provides an incentive for companies to invest in a local area because they can give something back to the local community. So in my dealings with Lend Lease, they are very strong on apprenticeships and strong encouraging people into the industry. They get something back from it and it builds that relationship with the local authority.”

74. A proposal was put to the same procurement officer that the Cabinet might set a target, such as: “For each £1million we spend we expect to see x amount of apprenticeships x amount of jobs for local people”. He was asked if this would be workable? His response is below:

“Yes. Obviously targets have to be reasonable. But yes, it definitely is workable and it’s a tangible way of building the relationship between the local community and people who are providing services through the private sector.... I think that is a very good proposal and if we pitch it just right we can get more interest from people working with the local authority.”

This proposal is addressed further in our conclusions and recommendations.

Social Value: Gender Pay Gap and Pay differentials

75. Consideration could also be given to promoting the values of fairness and equality through Southwark’s procurement spending power. OSC is interested in the possibility of setting a threshold for both the employee gender pay gap and pay differentials (the gap between the lowest and highest paid) for organisations to qualify to provide services on our behalf.
76. Southwark Council could ask the companies we currently have contracts with to respond to the questions on of pay differentials and gender the gender pay gap, giving us our baseline. This information would then help the council to look into setting a threshold.
77. Clearly legal advice would need to be sought to ensure that the way in which this was introduced did not breach procurement regulations.

Lead in times for decision making on procurement

78. In recent months two examples of procurement procedures apparently not being followed. The first involved traditional procurement, whilst the other related to grants made to external organisations to provide services on the council’s behalf.
79. In the first example Gateway 1& 2 reports were combined to award Engineering Contracts for the Repair and Maintenance of Potable Water, Individual Heating Systems and District Heating and Engineering Installations. The total value of the ten contracts was just over £4 million. If the contracts had not been awarded urgently, there was a possibility of tenants and leaseholders not

having heating in cold weather. As a result the Chair of Overview & Scrutiny was asked to sign off the right to call-in the decision, so that it might be implemented urgently.

80. The form submitted to the Chair of OSC by officers gave no reason at all for the delay in preparing the decision and the need for urgent implementation. Upon questioning, the officer responsible claimed that the delay was the result of a series of questions asked by the Cabinet Member about the contracts. It was stated that it had taken a period of two weeks to answer these queries. However, the Cabinet Member disputed this account. In any event, OSC considers it standard practice and welcome for a Cabinet Member to ask questions about the award of large contracts and so would not expect this to lead to any significant problems.
81. The second example involved the extension of awards and grants to external organizations to provide substance misuse treatment services. The extension was for a six-month period to cover the period October 2014 to March 2015 and the total value of the extensions was £1.9 million. In this example, the Cabinet Member was not even told that an urgent implementation notice was being sought. There appeared to be no reason whatsoever for the urgent implementation except for clerical error.
82. OSC is concerned that lead in times for the proper consideration and scrutiny of the award of contracts are not always being factored in and observed. This is addressed in the recommendations in this report.

Procurement officer views on “Gateway Zero”

83. Currently “Gateway 1” reports can sometimes be presented by officers as a fait accompli, both to Cabinet Members and scrutiny – a procurement strategy is proposed and this becomes the subject for discussion.
84. To ensure a decision to change the way a service is delivered is made with appropriate input from Cabinet, elected members, staff and residents, OSC has investigated the idea of introducing a new standard commissioning report which makes the case for the preferred mode of delivery – in-house, private sector, CVS sector, shared service etc. A Gateway zero report could also ensure that the broad methods by which a service is to be delivered (e.g. single provider/framework of providers etc.) could be discussed before a particular approach becomes hard to unpick.
85. To avoid introducing unhelpful levels of bureaucracy these reports should be reserved for high value services and exclude all capital investment works. Gateway zero reports should also set out how the commissioning decision will address social clauses, such as Living Wage, apprenticeships, job creation for local people and environmental impact. Gateway zero would also be the point at which the council could seek the views of service users and staff on the commissioning decision. As part of interviews carried out during this scrutiny procurement officers were asked for their opinion of introducing Gateway Zero reports in this form. They responded as follows:

Officer 1: “I agree that there could be more discussion at an early stage. What you’re saying is, by the time a report is delivered, all the discussion about what you are trying to achieve by the procurement has happened. So, do you want a cheap contract? If that’s the thing that matters most, this is going to be the cheapest one you’re going to get. Or do you want one with all the bells and whistles, or something in-between? ... What I tend to use is the standard options appraisal which brings into account all of those elements you are talking about. Not only in terms of cost, but political objectives, of social benefits and environment benefits. .. Any model is only as good as the people who are using it

Officer 2: “ We spent a year of work in looking at various delivery options [for a particular contract], outsourcing in-house, mixed economy etc. I can see that process for big contracts being more formalised. I can see the sense in that. Being a local economy person, all the things you are talking about [job creation, apprenticeships etc.] tick all the boxes. It’s all brilliant stuff. . . We don’t have to

think about that because it's what we do. So some kind of process that isn't an industry in itself but prompts that kind of thinking would be helpful."

Please note that this suggestion is referred to by both John Tizard and Cabinet Member Fiona Colley in responses they gave in interviews with OSC. Both gave positive responses to the proposal.

Openness and transparency

86. Procurement is often shrouded in unnecessary secrecy. After consideration, OSC believes that three issues in particular need to be addressed in this respect.
1. Contracts signed by Southwark, using public money, are not available to the public. This reduces the level of scrutiny and is not legally necessary.
 2. Contractors being paid by Southwark can and sometimes do refuse to attend scrutiny committees when requested.
 3. When contracts are cancelled, fail or are mutually concluded, Southwark Council often signs confidentiality agreements with contractors meaning that the council cannot fully explain to the public why this action has been taken.
87. As part of interviews carried out during this scrutiny two procurement officers were asked for their opinion of introducing a policy of publishing all contracts, with partial redaction if deemed legally necessary. These are the responses to this proposal:
- Officer 1: *"You mean excluding the commercials? I can't think of an in principle reason why we couldn't. Obviously we would need to make it clear when people are bidding that this is what we would be doing."*
- Officer 2: *"We may be able to. This is something to pose to legal. I can think of FOI requests where we have been asked for this information. Almost certainly you will have to go through some process of redaction because there may be elements of commercial sensitivity....I think we ought to be able to put the nature of contracts if not the pricing into a public domain."*
88. On contractors refusing to come and speak to Southwark Scrutiny Committees, one officer responded by saying "I find that staggering." When another officer was asked, "Could attendance at Scrutiny Committees be included as clauses in contracts?", they responded:
- "Well, the lawyers might possibly come up with a reason not to, but why not? Most of my contractors would welcome the opportunity to come in and talk to the client... You're better inside than outside the tent."*
89. On the same issue, another officer said:
- "My gut reaction is it may be worth exploring. We have to think through the role that scrutiny plays in holding officers to account, that important function it performs and making sure that if you were to design that into contract, you would have to ensure there wasn't a duplication or conflict. You would want it to enhance performance monitoring arrangements. My gut reaction isn't 'that is a crazy idea' but there's some careful thought that would be needed."*
90. When asked, "Why do we not tell people about our poor contractors? We sign agreements not to share this information?", one officer responded:
- "I think we're a little bit risk averse in that respect. If you look at things like CQC, it's all there for people to see. There's something for us to think about in terms of contract monitoring reports and our*

own internal reports is something we make more public, both to local residents and other boroughs who may want to look at that.”

91. Publishing contracts is also recommended by the ‘Local Government Transparency Code 2014’ which states “It is recommended that local authorities should go further than the minimum publication requirements set out in Part 2 and publish . . . all contracts in their entirety where the value of the contract exceeds £5,000.”²⁰

²⁰ Local Government Transparency Code 2014’
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360711/Local_Government_Transparency_Code_2014.pdf

Part 3

Conclusions and recommendations:

1. A new Southwark “Fairer Future” Commissioning and Procurement Strategy

Following consideration of the recommendations below Cabinet should agree a new Procurement Strategy replacing the very technical strategy currently included in the Medium Term Financial Strategy. This would provide a rich, politically informed document which could guide future commissioning decisions by officers and cabinet members. This new procurement policy should be given a high status among council officers and should act as guidance for council officers engaging in commissioning and procurement. The new strategy should be presented by the Cabinet Member for Finance, Strategy and Performance at full Council Assembly.

2. “Gateway zero” reports for all large scale commissioning processes

To ensure a decision to change the way a service is delivered is made with appropriate input from Cabinet, elected members, staff, service users and residents, we recommend a mandatory report prior to a Gateway 1 which makes the case for the preferred mode of delivery – in-house, private sector, CVS sector, shared service etc. A Gateway zero report would also ensure that the broad methods by which a service is to be delivered (e.g. single provider/framework of providers etc.) could be discussed before a particular approach becomes hard to unpick.

These reports should be reserved for high value *services* and would exclude all capital investment works. The intention of this recommendation is to improve decision making with particular regard to large scale services such as the examples given in table (street cleaning, repairs, IT, customer services etc.), rather than to introduce unnecessary bureaucracy. Therefore, OSC believes that the threshold level for a Gateway Zero decision to be required should be substantial and set following further consultation with interested parties.

Gateway zero reports should also set out how the commissioning decision will address social clauses, such as Living wage, apprenticeships, job creation for local people and environmental impact.

3. “Gateway zero” decisions reserved for Cabinet Members

Following on from recommendation 1, OSC believes that contract standing orders should make it clear that decisions about which large-scale services should be commissioned are reserved for Members of the Cabinet – not taken under delegated powers by officers.

4. Pre-Scrutiny for “Gateway Zero” reports

Southwark should require gateway zero reports to come to scrutiny (sub-committee or OSC) prior to Cabinet. This will allow changes to the proposed strategy to be suggested before key decisions are taken.

5. Lower Contract thresholds

Currently, a £480,000 contract can be awarded by officers without any oversight by a Cabinet Member or elected members. A £2 million contract can be awarded by Chief Officers and “notify” councillors. Unlimited spending on contract variations can be signed off by of Strategic Director for Finance.

In other London boroughs the thresholds are significantly lower and Cabinet Members formally sign-off far more decisions. Evidence is presented in this report showing that Southwark is out of step with the average thresholds for other London boroughs.

OSC believes we should lower our threshold levels to improve oversight of this spending. These new thresholds should be included in the new Commissioning and procurement Strategy

6. In-house as “preferred provider”

Because of the inherent risks associated with outsourcing large-scale services, Cabinet could consider having a stated policy of in-house as the “preferred provider”, similar to the NHS preferred provider policy operated when Andy Burnham was Health Secretary. This would *not* mean that Southwark would cease to outsource services. Instead it would mean that the possible benefits of outsourcing, where it was considered appropriate, would need to be investigated and evidenced. One of the problems identified in this scrutiny process has been that, across local government, there has been a tendency to assume that outsourcing services to the private sector will “solve our problems” or “take it off our hands”. In reality, many local authorities have found that the lack of direct management control and the fragmentation of staff can be hugely frustrating in delivering some services. Also, in the eyes of residents, risk is never transferred to the private sector. If a service must be outsourced then this must happen with very careful consideration and with a clearly thought through justification. Putting in place an in-house preferred provider model would help that to happen. OSC recommends that the Cabinet include this policy in the form of a statement in the new Commissioning and Procurement Strategy

7. Departmental Contract Review Boards

Clearly the Departmental and Corporate Contract Review Boards are very important in allowing officers the space to analyse these decisions at an early stage. Informally, OSC was made aware of one department where the Review Board does not actually meet in person. Instead, the practice in this department is to have a “virtual” review board. This entails relevant documents and reports being shared via email and then officers relying on this information being reviewed by colleagues. This was confirmed in one of the Procurement Officer interviews carried out for this report.

The officer stated “DCRB is virtual. So you’ll prepare the report for DCRB and it will go through the checks and any queries will come back via email... It’s emailed out for us. We prepare the documentation and we send it to the secretariat, the person who is actually co-ordinating that and they send it out to DCRB... You always get something back, even if it is ‘this is OK’”

OSC does not consider this to be adequate to facilitate the level of scrutiny needed for procurement decisions. Further evidence that the Departmental Boards are not always providing the early challenge that might be expected comes from comments made by the Strategic Director of Finance & Corporate Services in his interview with OSC. He said: “Once reports have gone through DCRBs, you often see reports where we have to ask questions which you would have thought should have been asked and answered.” OSC recommends that all virtual DCRB arrangements are replaced by formal meetings, and that consideration is given to standardising the DCRB process across all departments. The model for this could be devised and circulated by the council’s central procurement team.

8. Using the Public Services (Social Value) Act 2012 – Jobs and apprentices

More could be done to encourage social benefits within Southwark via procurement activity. Southwark should set targets for the number of apprenticeships and the number of jobs created by each £1 million of our procurement spending. These targets should be set in the Commissioning and Procurement Strategy on an annual basis along with a report on progress towards meeting those targets in the previous year should also be included in the report.

9. Using the Public Services (Social Value) Act 2012 – other social clauses

Other social value issues which should also be introduced in our tendering processes are:

- Disqualification of bidders who have engaged in trade union black-listing (and have shown no commitment to ensuring this does not happen again in the future)
- Disqualification of bidders for licensed premises (Park Café's etc) not prepared to sign up to Southwark's Women's Safety Charter
- Flexible working and family friendly policies
- Training and development of staff
- Environmental considerations

10. Standard contract clauses

To improve scrutiny and monitoring of contracts, Southwark could introduce the following contract clauses for all contracts covering the following issues:

- Prompt payment of sub-contractors
- Adherence to Southwark's whistle-blowing policy
- Open book audits of contract accounts on request
- 'Termination at will' clauses (See scrutiny of Draper House, 2013)
- Openness and transparency in the event of termination – allowing us to explain to residents why a contract has been terminated.
- Attendance at council committees such as Cabinet or scrutiny by contractors on request
- Break clause allowing Southwark to conclude a contract should the ownership of contractor change during the life of a contract.

11. Openness and transparency for contracts

Procurement is often shrouded in unnecessary secrecy. Southwark's current approach of not publishing full contracts conflicts with the recommendation made in the Local Government Transparency Code 2014. OSC recommends all contracts signed by Southwark Council with external contractors should be published in full online with a link from the contracts register. In those exceptions where commercial confidentiality is considered an issue, partial redaction could be used.

12. Lead in times for decision making on procurement

In recent months there have been two significant examples of procedures not being followed regarding Southwark contracting-out services. The first involved traditional procurement, whilst the other related to grants made to external organisations to provide services on the council's behalf.

OSC is concerned that lead in times for the proper consideration and scrutiny of the award of contracts are not always being factored in and observed. Steps should be taken to ensure that contracts are not simply "rolled on" simply because lead in times for the end of contracts have not been sufficiently accounted for.

13. Codifying engagement with Cabinet Members

It is noticeable that Southwark's Contract Standing Orders contain no reference to the importance of consulting with Cabinet Members over major procurement decisions. By contrast Lambeth Council's Contract Standing Orders contains the following stipulation:

"Where the aggregate value of the contract or purchase is valued at £100,000 and greater, the officer *must consult* with their departmental cabinet member before tender approval is given. "

OSC believes Southwark Council should adopt similar procedures in its standing orders to ensure there is appropriate input from elected members.

14. Updating Contracts register

It has emerged through conversations with officers that the contracts register is not being updated with all the information which it should be. Sometimes contracts are signed and not uploaded to the register and sometimes it is uploaded with incomplete or inaccurate information. Given the very limited amount of information required to be placed on the register, it is reasonable to expect this important document to be kept fully up to date. Measures should be put in place to ensure all contracts of the required value are uploaded to the register.

15. Update CVS Compact

Southwark Council's Community and Voluntary Sector Compact was last revised in 2010, before the publication of the Open Public Services White Paper. OSC recommends refreshing this Compact to include recognition of the CVS as a partner in service delivery. OSC is in agreement with Community Action Southwark that this should include:

- CVS engagement before procurement stage. Compact Voice recommends engagement with the CVS from the earliest stage in order to fully comply with the Social Value Act10
- A clear 12 weeks' notice of contracts ending. This does not always happen, and can cause problems for CVS organisations, particularly with regards to giving employees notice
- An appropriate length of time at Pre-Qualification Questionnaire and Invitation To Tender stage. CAS recommends a minimum of 5 weeks at the PQQ stage, and 6 weeks at the ITT stage. This would result in more targeted, higher quality submissions
- A commitment to providing time for the development of consortia, and a favourable approach to consortia bids from the sector
- Procurement approaches need to be varied to suit the individual circumstances. Grant funding may still be appropriate if the service is small

16. Standardising commissioning and procurement

In their submission to this scrutiny Community Action Southwark point out that "There can be different rules and procedures across Southwark Council departments about how commissioning and procurement take place. This is confusing for the sector." OSC recommends that the council's central procurement support team runs training sessions for all procurement officers throughout the council to make clear the standard practices they are expected to follow. Clearly this will need to wait until the full implementation of recommendation 1.

17. Consultation with recognised trade unions

Consultation where commissioning decisions affect staff, unions should be involved at an early stage in the process. Southwark UNISON has stated "UNISON would also be willing to give serious consideration to signing confidentiality agreements if this is necessary to enable us to see the bids and procurement information." This offer should be taken up by the council. OSC recommends that the council negotiate a procurement agreement with recognised trade unions to facilitate this involvement. OSC recommends that such an agreement should cover, although not be limited, to the following:

- notice that a procurement process is to commence
- a timetable for the process
- access to tender documentation
- access to bids
- involvement in in stake holder consultations

18. Protecting the workforce

When the council renews contracts or outsources services to the private or voluntary sector as a minimum the following workforce provisions should apply:

- Access to the LGPS

- Trade Union recognition agreements
- London Living Wage
- Payment of sick pay
- Appropriate training
- Defined hour contracts without unreasonable “availability clauses” (i.e. no zero hours contracts)
- Free access to personal protective equipment
- Guarantees that TUPE terms and conditions will last for the term of the contract

19. SME's included on tender lists

Local Small and Medium sized businesses should be included on council tender lists for all council contracts

20. Social Value: Gender Pay Gap and Pay differentials

Cabinet should consider setting a threshold for both the employee gender pay gap and pay differentials (the gap between the lowest and highest paid) for organisations to qualify to provide services on our behalf.

Southwark Council should ask the companies we currently have contracts with to respond to the questions on of pay differentials and gender the gender pay gap, giving us our baseline. This information would then help the council to look into setting a threshold.

Clearly legal advice would need to be sought to ensure that the way in which this was introduced did not breach procurement regulations.

Appendix 1:

Example of a model section for a pre-qualification questionnaire on trade union black-listing.

| | |
|--------------|--|
| Blacklisting | |
| 3.2a | <p>Do you certify that your organisation has not engaged in any act contrary to the Employment Relations Act 1999 (Blacklisting) Regulations 2010, s137 of the Trade Union and Labour Relations (Consolidation) Act 2002 and/or the Data Protection Act 1998 at any time in relation to:</p> <ul style="list-style-type: none"> · the recruitment of prospective employees (e.g. seeking references, vetting); · the dismissal of an employee; · the treatment of existing employees (including through the provision of names for inclusion in any blacklist, or through the imposition of other detriment for any related reason); · the use of a blacklist for any reason <p>Yes /No</p> |
| 3.2b | <p>Do you undertake, on behalf of your organisation, not do any engage in any act contrary to the Employment Relations Act 1999 (Blacklisting) Regulations 2010, s137 of the Trade Union and Labour Relations (Consolidation) Act 2002 and/or the Data Protection Act 1998 at any time in relation to:</p> <ul style="list-style-type: none"> · the recruitment of prospective employees (e.g. seeking references, vetting); · the dismissal of an employee; · the treatment of existing employees (including through the provision of names for inclusion in any blacklist, or through the imposition of other detriment for any related reason); · the use of a blacklist for any reason <p>Yes/No</p> |
| 3.2c | <p>Do you certify that the principles contained in the Employment Relations Act 1999 (Blacklisting) Regulations 2010 and the Data Protection Act 1998 have been, or will be, brought to the attention of all your employees as well as all your sub-contractors, suppliers, employment/recruitment agencies and associated companies providing services, information or materials connected with the tender and any contract entered into with such sub-contractors, suppliers, employment/recruitment agencies or associated companies will be made on the basis of compliance with the above principles by all parties.</p> <p>Yes/No</p> |
| 3.2d | <p>2d Do you certify that any organisation with which you are legally related (through any parent/subsidiary or group structure) has not done any act contrary to the Employment Relations Act 1999 (Blacklisting) Regulations 2010, s.137 of the Trade Union and Labour Relations (Consolidation) Act 2002 and/or the Data Protection Act 1998 in relation to:</p> <ul style="list-style-type: none"> · the recruitment of prospective employees (e.g. seeking references, vetting); |

- the dismissal of an employee;
- the treatment of existing employees (including through the provision of names for inclusion in any blacklist, or through the imposition of other detriment for any related reason);
- the use of a blacklist for any reason

Yes / No

Note:

In the event that you are unable to provide the certification required in this section please inform the council accordingly providing details relating to the circumstances as to why you are not able to provide the certification. The council will then review the details provided and carry out any necessary investigation to form a view as to whether the facts giving rise to the non-certification amount to an act of grave misconduct in the course of business or profession for purposes of Public Contracts Regulations 2006, Regulation 23(4)(e)) such as to disqualify you from tendering for this contract. In order to make this assessment it would be of assistance to the council if you could provide the following information:

- A description of the scope and nature of the blacklisting activities that have been carried out;
- A description of the steps taken to repair the damage done by such blacklisting activities;
- A description of any personnel changes that have been made to address the problem of blacklisting;
- A description of any organisational / structural changes that have been made to prevent blacklisting occurring in the future.

If you are not able to provide the certification in respect of any related company, please provide details as is required of any blacklisting by your organisation (see above). In addition, please provide details of any matters that demonstrate that the offending behaviour cannot be attributed also to your organisation. In this respect, you may consider it relevant to include details of the ownership, management, control and power exercised by the related company and by any common parent company (if different) over your own.