

CHILDREN'S SERVICES AND LIFELONG LEARNING OVERVIEW AND SCRUTINY COMMITTEE

Monday 20 April 2009

<u>Present:</u>	Councillor	S Clarke (Chair)	
	Councillors	F Doyle	T Smith
		K Hayes	W Smith
<u>Deputies:</u>	Councillors	C Teggin	
		G Watt	
<u>Cabinet Member:</u>	Councillor	PL Davies	
<u>Co-opted Members:</u>		Mrs J Kearney	Mrs J Owens
<u>Apologies:</u>		Mrs M Cain	Mrs M Liddy

65 **CALL-IN OF CABINET MINUTE 436 (PARENTING AND PREVENTION COMMISSIONING - AGES 0 TO 19)**

The Committee was advised that Cabinet minute 436 (19 March 2009) had been called in by Councillors Clarke, Green, Anderson, Karen Hayes and Rennie, in the following terms:

“It is clear from the amount of public concern expressed via email to many elected members by service users and the Parent Partnership that questions may remain unanswered about the openness, transparency and robustness of the processes involved. Therefore we believe that it would be in the public interest to have this minute scrutinised by the relevant Overview and Scrutiny Committee.”

66 **EXEMPT INFORMATION - EXCLUSION OF MEMBERS OF THE PUBLIC**

The Committee was alerted to the fact that, although an edited version of the original Cabinet report had been circulated with the agenda, if discussion of the matter were to include the exempt information pertaining to the tendering process, it might be necessary to exclude those members of the public that were present.

67 **CHAIR'S OPENING REMARKS**

The Chair gave a brief explanation of the call-in process.

68 **DECLARATIONS OF INTEREST / PARTY WHIP**

The members of the Committee were asked to consider whether they had a personal or prejudicial interest in connection with any item on the agenda and, if so, to declare it and to state the nature of such interest. The members were reminded that they should also declare, pursuant to paragraph 18 of the Overview and Scrutiny Procedure Rules, whether they were subject to a party whip in connection with any

item to be considered and, if so, to declare it and state the nature of the whipping arrangement. The following declarations were made:

Mrs J Owens – a personal interest by virtue of her being a representative of the voluntary sector on the Committee;

Councillor Teggin – a personal interest by virtue of being a nominated governor.

69 **EXPLANATION OF CALL-IN BY THE LEAD SIGNATORY**

The Chair stated that the call-in had been lodged following representations about the tendering process for the commissioning of services. She invited Aline Macready, Co-ordinator, Wirral SEN Parent Partnership, to explain the reasons for the Partnership's request that the Cabinet's decision be re-considered.

70 **EVIDENCE FROM CALL-IN WITNESSES**

The Chair accepted Ms Macready's suggestion that she act as the main witness and that her two colleagues - John Engwall, a founder member and Trustee of the Wirral SEN Parent Partnership, and Peter Connor, Treasurer and Trustee of the Partnership – respond to any questions as necessary.

In addition to having submitted a letter to members, Ms Macready circulated a step-by-step commentary on the tendering process and highlighted the particular points of concern. She began by stating that the Partnership had been asked to tender for the provision of services under the heading "Engagement, Involvement and Advocacy" for all children with special educational needs and their families. There were five distinct services under that heading. Their tender had not been successful. Their concerns about the process were that:

(i) The tender pack was not available to them as advertised in the local newspaper on 11 December 2008. It was received by email on the 15th. They then received an amended version on the 16th by email, followed by a further email on the 23rd stating that the youth funding grant had been withdrawn as a result of a Cabinet decision on 27 November.

(ii) Instructions as to how to complete the tender documents were unclear, for example, the use of the word 'evaluation' instead of 'involvement' and the fact that she was not able to obtain clear advice as to whether one or several individual method statements were required.

(iii) There was no opportunity to state which sections of the service area that method statement applies to, so it was difficult to decide exactly which elements the organisation wished to bid for. Furthermore, to date the Wirral SEN Parent Partnership had been delivering the SEN Mediation Service (a statutory service), but upon questioning what would happen with that service, as it is not part of the tender, they were informed that the local authority expected that the successful organisation would deliver it. To date the Partnership had provided the service without any additional budget, but felt that they would not be in a position to provide the service under the current arrangement. Their proposed budget therefore reflected that expectation from the local authority. Other service providers had not been made aware of that and as such they felt disadvantaged.

(iv) A system that allowed an organisation only one opportunity within a whole service area and with a tightly restricted number of words to convince the panel about their ability to deliver all elements within that area was patently unfair. Applicants who wished to apply for only one element of a service area had a five times better opportunity within the Method Statement than those addressing five elements within the same area. That might (or might not) have disadvantaged their organisation.

(v) The fact that a section of the document had to be quickly amended to radically alter the focus of the position did not indicate that the whole process was a well planned, clear and transparent exercise.

(vi) By email, they were made aware that an amendment had been made to the service specification, so that, instead of catering for 'children and young people who are looked after (0-24) including those with disabilities', the amended version) referred to 'children and young people with disabilities (up to 24 years of age)'.

(vii) On 23 January: the Co-ordinator received an email on her home email - totally unacceptable, as they had entered the organisation's email address on the tender documents – and was asked for supplementary question about staffing levels.

(viii) With regard to the interview that formed the second stage of the evaluation, given that the partnership had submitted a tender for nearly £250,000, they felt that insufficient time was allowed to answer questions and elaborate. Again, given that they were discussing five services, that would put them at a disadvantage compared with those organisations that only tendered for one or two services. The interview lasted for a maximum of 30 minutes, but that included introductions, process etc. Six questions had been asked, but when the Treasurer wanted to elaborate on one of the questions, he was cut short and told that a question on innovative practices would be asked later. Unfortunately, the subsequent question did not provide the opportunity to impart the necessary information.

(ix) The final concern was that the information as to which were the successful organisations was available 'on the grapevine' before it had been communicated to the unsuccessful organisations. The result had been verbally communicated to the Co-ordinator, but no correspondence to that effect had been received to date.

Ms Macready added that the timeframe for submitting tenders had been tight, given that the Partnership's office had been closed for almost three weeks over the Christmas/New Year period. That did not allow time for the Partnership to explore the possibility of a consortium bid, which she understood was something that the Council was encouraging, nor to assess the TUPE implications. It was clear that other organisations had not been happy with the process – the LINK Network were in the process of writing to the Director of Children's Services about it.

In response to members' questions, Ms Macready stated that she had not been aware that there would be any opportunity to appeal for an extension. Nor had the partnership had any indication of dissatisfaction with the services that they were currently providing. That was the first time that they had been obliged to submit to a procurement process. Most of the services they provided were aimed at parents, so they had had difficulty in identifying outcomes for children. They had attended a

procurement workshop aimed at assisting tenderers, but it had lasted only 90 minutes and there had been insufficient time for all of the questions that they would have liked to ask. The workshop had been held on 18 December, the day before the Partnership's office closed for the Christmas break. Mr Connor added that there had been confusion over whether it was necessary to include VAT in their tender, which would inevitably make it higher.

71 **EVIDENCE FROM CABINET MEMBER'S WITNESSES**

Councillor Phil Davies began by stating that he welcomed the opportunity to scrutinise the procurement process, and called the following witnesses. A dossier of various documents used in the process, which also included written responses to the nine points in Ms Macready's letter, was circulated.

Julia Hassall, Head of Branch, Children's Social Care (CYPD)

She stated that the procurement exercise represented a new approach to joint commissioning. There had been prolonged discussions leading up to the invitation to tender, for services over the period 3 July 2009 to 31 March 2011. She explained the reason for the extension of services for young people up to the age of 24, and went on to explain the interview process. Sixteen organisations had been invited to the second stage, and she circulated a copy of her prompt sheet, used to ensure that all were treated in a similar, and fair, manner. A strict time limit of 30 minutes had been put on each tenderer (though the Youth Offending Service had been allowed a little longer as they were tendering under two headings). She contended that there had been ample time for questions. All members of the Panel recorded separate scores, then met together to review them in the light of the method statements submitted. No reason had been found subsequently to vary any of the scores.

In response to members' questions, she stated that it had been necessary to start the process before Christmas in order to complete it by 31 March and allow lead-in time to 3 July. She accepted that the intervening Christmas period was not ideal, but the advertisement had been placed a week earlier than originally intended and every effort was made to send out the tender documents as quickly as possible. An earlier start had not been possible because of the need to align budgets from a number of sources. There had been some hiccups with the wording of documents, but all tenderers had been advised of changes and staff of the contract team had been on hand to deal with any queries (although one member of staff had not been sure about some questions, a manager had subsequently provided responses).

Members commented that they had been aware of other organisations' concerns about a complex process, but it was noted that a significant number had attended the workshop and had received follow-up information on frequently asked questions. Julia Hassall did not consider that the withdrawal of youth grants from the funding package during the process would have had as great an impact on the Parent Partnership as on other organisations.

Janice Monty, Parenting and Prevention Commissioner (CYPD)

She explained that officers had been responding to concerns as the procurement process went along. They had learned from the experience of procurement for Children's Fund services, when only two weeks had been allowed for tenders. On

this occasion they had allowed 5½ weeks, when they understood that the average time across north-west authorities was 2-4 weeks. Additional adverts had been placed in response to comments by service providers. With regard to the wording of the tender, it had initially included the phrase “looked-after children”, but the wording was changed in line with the aim of making services more inclusive. All prospective tenderers were informed of that change. The use of the word “evaluation” had been a typing error, which had been corrected.

All of the key questions posed about the process had been dealt with at the procurement workshop. Bidders were advised that they could put in for one or more parts of any service area, with one method statement required for each area. Throughout the process, she and her staff had tried to allay fears and answer questions, and someone had always been available. Very few questions requiring explanation were actually referred to her. Also, the documentation had been made simpler than before.

With regard to the method statement, she did not consider that the SEN Parent Partnership had been disadvantaged, because they had passed that stage and progressed to the interview stage. In response to the Chair’s question, she confirmed that participants in the workshop were not asked to complete an evaluation sheet.

Peter Wong, Business Manager, Strategic Partnerships (NHS Wirral)

He explained his role – he had acted as the lead for NHS Wirral. It was his responsibility to commit NHS funding and he had to be convinced that the process was robust, where necessary challenging what was proposed. He also provided guidance as necessary to Janice Monty. He emphasised that the exercise had been a tendering process not a grant application process. He accepted that there could have been some improvements in it, but that did not mean that it was not robust; nor were the decisions made unsound. He had served on the interview panel, and those conducting the interviews had to be sure that they controlled them and did not let the bidders take over. It was important also to ensure that answers were kept to the point. Having agreed the approach beforehand, he was satisfied that the interviews were equitable. Particular care had been taken in relation to scoring financial elements, as it was recognised that some organisations within the Local Authority might not have identified all of their overheads.

In response to members’ questions, he stated that all interviewees had kept, more or less, to the allotted half-hour. As to whether 5½ weeks was a reasonable time for tenderers to respond, he accepted that the timing, running over Christmas, was not ideal, but he felt that over all there had still been sufficient time. The information requested from tenderers was straightforward enough and the documentation was intended to control any ill-thought-out tenders.

Peter Edmondson, Head of Branch, Participation and Inclusion (CYPD)

He had served on the interview panel, which represented a mixture of disciplines. They had been presented with information of a high quality, and all interviewees presented well. Each member of the panel gave their own scores, then the panel came to a joint decision.

In response to members' questions, he stated that all of the panel members had the opportunity to examine the full bids, and he did not feel that he was short of any information to reach a decision. He was satisfied that the process was fit for purpose, and that the time for submitting tenders was reasonable. With regard to the decision to remove the Youth Grant element from the tenders, he explained that separate decisions were taken in relation to other issues surrounding youth services. As to the suggestion that that the process might have been biased towards Council-based organisations, he stated that officers had worked hard with the voluntary sector to ensure that they were as competitive as they could be. The four Heads of Branch within the Children's Services Department met regularly with the voluntary sector, and the impression that he had got from them was that they were anxious to get on with the procurement process.

Peter Brandrick, Commissioning Lead (LINK Forum)

He explained the role of the LINK Forum in the process. He had been involved from the start in discussions with officers, on behalf of the management group of the Forum. He had also been involved in the procurement workshop. He stressed that, in the group workshop setting, he had asked that individual groups be given the opportunity to ask their own questions, and an extra hour had been set aside at the end. He had also been involved in the validation process and the interviews.

In response to members' questions, he stated that, in his view, adequate time had been allowed for submitting tenders, the interview stage had been well-managed and over all he was satisfied with the process. He did not consider that the documentation had been difficult. Certainly there was a lot of it, but it was easy to identify what did or did not require completing. The additional time at the procurement workshop had been to deal with queries and concerns about staffing implications. The LINK Management Group was keen to ensure that account was taken of such views, and they were in the process of preparing a report for the Commissioning Panel.

Ray Williams, Corporate Procurement Manager (Finance Department)

He referred to his role in the process, and he had submitted his response (which was circulated) to the nine points raised in Ms Macready's initial letter. As far as he was concerned, the various rules and regulations had been adhered to, there was no evidence to suggest that any tenderer had been treated unfairly, amendments to the tender documentation were minor and all concerned had been notified about them; and, whilst the interviews had been strictly controlled (bearing in mind the sixteen organisations involved), that had helped to ensure that they focused on the key issues. With regard to point (ix), he accepted that arrangements for notification of the outcome of the process and feedback sessions might be different next time.

In response to members' questions, he stated that the delay between the advertisement and the availability of documents was in effect only two or three working days. The documentation had been in a standard form, albeit that it had been slightly simplified to take account of the voluntary organisations involved and the period allowed for completion was reasonable. All organisations had received the documentation by e-mail, to avoid possible delays in the Christmas post.

Ms Macready stated that, in the view of the Parent Partnership, the time allowed for the completion of tenders was nearer 4½ weeks, rather than 5½. That did allow time for completion but did not allow time for them to consult on or investigate the possibility of providing services via a consortium, which would have been in line with Government guidance. There was also no time to consider the TUPE implications. A consortium might have been the better option, to make use of expertise available in other organisations. The Partnership was still unclear after the procurement workshop about certain issues and had received conflicting advice from one officer regarding how many method statements were required. She was concerned about what weighting had been given to responses at the interview stage. She accepted that all organisations had been given equal time, but the Partnership had not been given the opportunity to explain what they proposed in terms of “innovative” services, as a result of which, they did not score well in that respect. The Partnership was not the only voluntary organisation concerned about the time-frame and initial indications during 2008 were to the effect that the whole process was due to be finished by November, rather than be drawn out over Christmas.

Over all, she did not feel that there had been sufficient opportunity over the process to air their concerns, and there had been confusion over the documentation (for example, whether the tender would cover mediation services or not), and the Partnership had been left with the impression that the process was flawed.

73 **SUMMING UP BY CABINET MEMBER**

Councillor Davies thanked all those who had given evidence. He reminded the Committee that the exercise was aimed at achieving the provision of more integrated services. Previously there had been six funding streams, all with different criteria and target groups. The aim was to draw all that funding together for the benefit of clients and for more transparent provision of services. There had been some imperfections in the procurement process, and those involved could learn lessons from it, but he did not feel that any organisation had been disadvantaged or treated less fairly. The question of the time-line and errors in the documents were not significant in that respect.

Both of the organisations (the SEN Parent Partnership and WIRED) in contention for the services passed the initial assessment stage and both started from the same point at the interview stage. Applications to provide services were over-subscribed by a factor of four, so there were bound to be losers. He was convinced that the interview process had been robust and fair. The interviews were aimed at drawing out which organisations were best in meeting key criteria. All of the concerns expressed would be noted, and account taken of them, but in terms of the outcome, he did not believe that they had contributed to it.

74 **COMMITTEE DEBATE**

Councillor Walter Smith opened the discussion and stated that, whilst he had never doubted the integrity or good intentions of those involved in the commissioning process, he had noted that all parties to it appeared to be accepting that there had been shortcomings. He therefore moved:

“That this service area [Engagement, Involvement and Advocacy] be referred back to the Cabinet for further consideration, with a recommendation from this Committee that this service be subject to re-tendering.”

The motion was not seconded, and other members commented that, although there were some elements of the process that were unsatisfactory and would need to be addressed for the future, those elements had not caused any real disadvantage to the Parent Partnership, because they had been successful in progressing to the interview stage, at which point previous scores were not taken into account. In effect, the shortcomings in what was otherwise a robust process had not made a difference to the outcome.

75 **DECISION**

Resolved (6:1, with one abstention) -

(1) That the Cabinet’s decision in relation to the procurement of services for parenting and prevention be supported, albeit with the reservations set out in (2) below.

(2) That this Committee accepts that there are lessons to be learnt from the procurement exercise and asks the officers to look again at the issues that have been identified relating to:

**the timing of the process;
the overall timescale allowed for tendering;
the slight confusion over the wording of tender documents;
delays in providing answers to queries and feedback.**

(3) That the Committee record its thanks to all of the witnesses for their attendance and in particular to the representatives of the Parent Partnership for bringing this matter to its attention.

(4) That the Committee receive a report in due course on the outcome of the LINK Forum’s review of the procurement process.