



# FINANCE & RESOURCES

## Overview and Scrutiny Committee

<b>Report for:</b>	Finance & Resources Overview and Scrutiny Committee
<b>Title of report:</b>	Transforming Public Procurement Update & Impact – Procurement Act 2023
<b>Date:</b>	14 January 2025
<b>Report on behalf of:</b>	Councillor William Allen, Portfolio Holder for Corporate & Commercial
<b>Part:</b>	I
<b>If Part II, reason:</b>	N/A
<b>Appendices:</b>	Draft Commissioning & Procurement Standing Orders
<b>Background papers:</b>	
<b>Glossary of acronyms and any other abbreviations used in this report:</b>	<p>CPSOs - Commissioning &amp; Procurement Standing Orders</p> <p>NPPS - National Procurement Policy Statement</p> <p>PA23 - Procurement Act 2023</p> <p>WTO – World Trade Organisation</p>

### Report Author / Responsible Officer

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<b>Corporate Priorities</b>	<p><b>Community engagement:</b> Engage with residents and partners to have a real say on our services and the borough.</p> <p><b>Service improvement and delivery:</b> Running the Council efficiently and putting residents at the heart of everything we do</p> <p><b>Sustainable future:</b> Take action on the Climate and Ecological Emergency</p> <p><b>Proud and thriving borough:</b> Realise our potential as a great place to live and work with a thriving business community</p>
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Wards affected	All Wards
<p><b>Purpose of the report:</b></p>	<ol style="list-style-type: none"> <li>1. For the committee to note the updates to the Commissioning &amp; Procurement Standing Orders (CPSOs) as set out below, that will be presented to Cabinet for onward approval by Council: <ul style="list-style-type: none"> <li>• That the content of the proposed CPSOs are separated out so that the principles, objectives, and ambitions remain, but the technical guidance is removed. The CPSOs are redrafted to simplify and improve the strategic governance and operational effectiveness as set out in section 2.3.2 of the main report.</li> <li>• That the ‘Supplementary Instructions’ attributed to the CPSOs, that set out the technical aspects of the commissioning and procurement activities for officer compliance, are drafted as separate documents as set out in section 2.3.3 of the main report.</li> <li>• That any future amendments to the CPSOs will be subject to the amendment protocol as set out in section 2.3.4 of the main report.</li> <li>• That the content of the CPSOs shall be based upon the procurement principles, objectives, and ambitions as set out in section 2.3.5 of the main report.</li> </ul> </li> <li>2. For committee to note that the Constitution will be updated to ensure that the Financial Regulations align with the financial thresholds stated on the CPSOs as set out below, that will be presented to Cabinet for onward approval by Council: <ul style="list-style-type: none"> <li>• Part 8 – Annex 1 Financial Regulations (Annex D Schemes of Delegation) increase value for Head of Service for contract letting from £75k to £99,999 and for Team Leaders from £25k to £29,999, and to increase approvals on Unit 4 for Team Leaders from £25k to £29,999</li> <li>• Section 5: The acquisition of assets (Regulation E.5) increase value for Head of Service for total asset purchase price from £75k to £99,999 and for Team Leaders from £25k to £29,999</li> </ul> </li> <li>3. For committee to note that the Constitution will be updated as set out below, that will be presented to Cabinet for onward approval by Council</li> </ol>

	<ul style="list-style-type: none"> <li>Part 8 – Annex 2 Procurement Standing Orders replace the existing CPSOs with the new updated version that incorporates the changes brought about by the implementation of the PA23.</li> </ul>
<b>Recommendation (s) to the decision maker (s):</b>	1. That this Committee reviews and scrutinises the updates to the Commissioning & Procurement Standing Orders and the Constitution and provides support/feedback, to be considered by Cabinet.
<b>Period for post policy/project review:</b>	At least on an annual basis, or when updated national policy of legislation is released

## 1 Introduction/Background:

- 1.1 Following the United Kingdom's decision to leave the European Union, the Government announced plans to transform the public procurement regime, aiming to improve the way public procurement is regulated.
- 1.2 Cabinet Office presented a green paper on Transforming Public Procurement to Parliament in December 2020 which began the consultation process.
- 1.3 The consultation culminated with the Government's new procurement regime which was introduced through the Procurement Act 2023 (PA23). This was laid in parliament in March 2024 to bring elements of the legislation and the wider regime into effect.
- 1.4 The new PA23 regime was established to go live on the 28 Oct 2024 through the introduction of the Procurement Directives 2024, providing a period of 6 months to allow for public sector organisations to implement and prepare for necessary changes.
- 1.5 On 12 September 2024, the Government announced that the proposed 'go live' date for the implementation of the PA23 was being delayed until 24 February 2025. It was stated that the main reason for this delay was due to the need to draft a new National Procurement Policy Statement (NPPS), to align with the new Government's priorities, the current NPPS had been drafted by the previous Government.
- 1.6 This report highlights the key changes that the PA23 will impose, the support that the Cabinet Office have provided the public sector to implement these changes, impact these changes will have on the Council's procurement governance arrangements.

## 2 Key Issues:

### 2.1 Public Procurement Update

2.1.1 The PA23 is designed to overhaul the current public procurement process. It reforms the UK's public procurement regime to:

- create a simpler and more flexible commercial system.
- open up public procurement to new entrants.
- embed transparency throughout the commercial lifecycle.

2.1.2 These improvements require the Council to:

- Review and update existing procurement strategies & governance arrangements.
- Upskill and re-train staff.
- Improve planning of procurement resources and activities

The Act focuses on simplifying public procurement for public benefit, transparency, scrutiny, and value for money.

- 2.1.3 Cabinet Office have produced 47 written guidance notes to accompany the PA23, most of these have been released throughout the year, with plans for the remaining guidance to be published by January 2025.
- 2.1.4 The written guidance primarily focus on the technical instructions that ensure delivery with updated legislative procedures when undertaking commissioning & procurement activities.
- 2.1.5 The written guidance establishes the different stages of the commercial cycle as being:
- Plan
  - Define
  - Procure
  - Manage

The PA23 applies to each of these stages of the commercial cycle.

- 2.1.6 Specific written guidance focuses on the key principles, application, and ambitions of the PA23, which are more akin to policy and strategy development, it is this guidance that has been used to review the existing procurement governance arrangements – the Commissioning & Procurement Standing Orders (CPSOs).
- 2.1.7 The review of the CPSOs also sought feedback from contracting officers, which identified that several found the current CPSOs are considered long and difficult to read, which has consequences for ongoing compliance.
- 2.1.8 The CPSOs have been updated to align with the new legislation and as part of a wider review of procurement & contract management processes. The proposed CPSOs will now focus on key principles, application, and ambitions rather than the technical instructions for officers. This report sets out below recommendations on how the proposed CPSOs have been updated.
- 2.1.9 The delay with the publication of the last remaining documents of written guidance means that although the technical ‘Supplementary Instructions’ are being developed, they are unable to be completed until all written guidance and templates have been released.

## **2.2 Commissioning & Procurement Standing Orders**

- 2.2.1 The CPSOs have been redrafted to include the relevant aspects of the new legislation with the objective being to simplify them from an officer perspective and to improve the overall governance arrangements.
- 2.2.2 The content of the proposed CPSOs have been significantly reduced by focussing on the key principles, application, and ambitions within the main document, with separate technical ‘Supplementary Instructions’ concentrating on the specific commissioning and procurement procedures that officers will need to comply with.
- 2.2.3 The proposed CPSOs have been simplified as officers will only follow the technical ‘Supplementary Instructions’ that are relevant for the value of their procurement, rather than seeking the relevant instructions amongst all of the technical instructions as is the case in the current CPSOs.
- 2.2.4 The Procurement Team have established an implementation action plan that has focused on updating procurement guidance and preparing the Council for the new legislation. This is built around the following themes:

- Process & Controls
- Roles and responsibilities
- Systems & Technology
- Governance
- Guidance & Templates
- Training
- Communication

2.2.5 Officers within Procurement have worked with colleagues in Legal and Finance to produce the proposed CPSOs and the recommendations in this report. Changes have been reviewed to ensure that they will align with the Constitution, Financial Regs and associated officer guidance. This updated version of the CPSOs will also be presented to Cabinet for approval in January 2025 before being adopted by Council in February 2025.

## 2.3 Impact on the CPSOs

2.3.1 The new procurement legislation requires the CPSOs to be updated and also provides an opportunity for some changes to be recommended that will make the Council's commissioning and procurement arrangements more efficient and effective. These are set out below.

2.3.2 It has been identified that having the principles, obligations and objectives of public procurement and the technical guidance for all of the commissioning and procurement processes combined in one set of CPSOs has led to officers finding them difficult to follow from a compliance perspective.

### Recommendation

*That the content of the CPSOs are separated out so that the principles, objectives, and ambitions remain, but the technical guidance is removed.*

*The CPSOs are redrafted to simplify and improve the strategic governance and operational effectiveness, by focussing on the following areas:*

- *Legal Status*
- *Amendments*
- *General Principles in Public Procurement*
- *Application*
- *Setting Aside Standing Orders*
- *General Advice & Guidance*
- *Contract Type & Value*
- *Procurement Forward Plan*
- *Procurement Process & Exceptions*
- *Authorisation Levels*

2.3.3 The current CPSOs include guidance on many different types of commissioning & procurement activities, this has been identified as having caused confusion with officers who undertake these activities infrequently.

### Recommendation

*To agree that the 'Supplementary Instructions' attributed to the CPSOs, that set out the technical aspects of the commissioning and procurement activities for officer compliance, are drafted as separate documents:*

- *Quotations - Contract values up to £29,999*
- *Quotations - Contract values up to £99,999*
- *Tenders - Contract values from £100k up to WTO Thresholds*
- *Tenders - Contract values over WTO Thresholds*

- 2.3.4 To ensure the strategic effectiveness of the CPSOs, it is proposed that the following amendment protocol shall be adopted.

Recommendation

*To agree that any future amendments to these CPSOs will be subject to the following amendment protocol:*

- *Any major changes to the CPSOs in the future will be presented to Council, after first being presented to Finance & Resources OSC & Cabinet.*
- *Delegated authority is given to the Strategic Director Corporate & Commercial to make minor amendments or corrections to the CPSOs in consultation with the Portfolio Holder Corporate & Commercial Services. Any changes are to be formalised through an Officer Decision Record Sheet.*
- *Delegated Authority is also provided for the Strategic Director Corporate & Commercial to approve the technical 'Supplementary Instructions' and to make any future amendments where they deem this appropriate. Any changes are to be formalised through an Officer Decision Record Sheet*

- 2.3.5 To ensure that the strategic direction of the Council's commissioning and procurement activities align with best practice.

Recommendation

*To agree that the content of the CPSOs shall be based upon the procurement principles, objectives, and ambitions of:*

- *Procurement Legislation*
- *National Procurement Policy Statement*
- *The Council's Procurement Strategy and relevant sections of the Commercial Strategy*

## **2.4 Next Steps**

- 2.4.1 The project team need to thoroughly review the remaining written guidance (when it has been released) to understand the implications on the Council, including the wider Constitution. A presentation of the technical 'Supplementary Instructions' will be presented to Commercial Board in January (subject to the written guidance being released) and will also include an overview of the officer awareness/training programme that will have been finalised by this stage.
- 2.4.2 A presentation of the proposed CPSOs are planned for Cabinet in January 2025 and for adoption by Council in February 2025. The PA23 will go live on 24 February 2025.

## **3 Options and alternatives considered**

- 3.1 The Council does not have the option of not complying with any new legislation or national policies that arise from the PA23, as this will be the primary public procurement legislation.
- 3.2 The Council could continue with the approach of having the CPSOs updated as a single document, rather than separating out the technical guidance as 'Supplementary Instructions', but this is not recommended as it has been identified that they are more effective and clearer when they are separated out.

## **4 Consultation**

- 4.1 Any changes to procurement process or procedure that arise out of the new legislation has included stakeholder engagement (Cabinet Office Green Paper on Transforming Public Procurement).

- 4.2 Any changes will also include officer awareness training and guidance to be produced, which will help with officer compliance and buy-in.

## **5 Financial and value for money implications:**

- 5.1 It is not yet known whether any of the new duties and responsibilities that arise from the PA23 will have any financial implications for the Council, however it should be noted that officer duties across the Council will need to accommodate an increased emphasis on transparency and contract management; with requirements for public sector bodies to publish more information about procurement decisions and contract performance.
- 5.2 The new legislation emphasises the importance of achieving value for money in all procurement activities. This means considering not only the cost but also the quality and sustainability of the goods, services and works procured.
- 5.3 There is a stronger focus on managing supplier performance, ensuring that suppliers meet their contractual obligations and deliver high-quality outcomes. This includes regular performance reviews and a more structured approach to contract management.
- 5.4 In turn, this could lead to the Council achieving greater value for money and the Council will need to ensure that it has strong contract management practices across its key contracts.

## **6 Legal Implications**

- 6.1 The PA23 will have significant legal implications for the Council and these have been included in the proposed CPSOs and will be included in the technical 'Supplementary Instructions' when they are finalised.
- 6.2 It is very important to ensure that these CPSOs, the Financial Regulations, the Constitution, and any associated documentation i.e. An Officer Guide to Decision Making align to provide a consistent message.

## **7 Risk implications:**

- 7.1 If the remaining written guidance is not released before early January, there is a high risk that the impact of this outstanding guidance may not be included in the report to Cabinet on the update to the Council's CPSOs.

## **8 Equalities, Community Impact and Human Rights:**

- 8.1 Community Impact Assessment reviewed/carried out and annexed - The CIA has not identified any negative impacts.
- 8.2 Human Rights – there are no Human Rights implications arising from this report.

## **9 Sustainability implications (including climate change, health and wellbeing, community safety)**

- 9.1 There are no sustainability implications arising from this report.

## **10 Council infrastructure (including Health and Safety, HR/OD, assets, and other resources)**

- 10.1 There is no known impact to the Council's infrastructure arising from this report.

## **11 Conclusions:**

- 11.1 In conclusion, the above report provides assurance on the work that has taken place in relation to preparing the Council for the new procurement legislation:
- 11.1.2 There are a number of recommendations put forward in this report that Finance & Resources OSC are being asked to note and support for when they are presented to Cabinet later in January 2025 and for adoption by Council in February 2025.