

Executive Scrutiny Committee (Task & Finish Group)

A meeting of Executive Scrutiny Committee (Task & Finish Group) was held on Thursday, 21st November, 2008.

Present: Cllr David Harrington (Chairman), Cllr Dick Cains, and Cllr Mrs Maureen Rigg.

Officers: Jane Humphreys, Dave Adams (CESC); Jill Douglas, Nigel Hart, Judith Trainer (LD).

Also in attendance: Councillors Cunningham (Cabinet Member for Children & Young People); and Gibson.

An apology was submitted on behalf of Cllr Sherris.

Declarations of Interest

Cllr Gibson declared a personal/prejudicial interest in relation to Agenda Item No. 3 – Post Decision Scrutiny of the Commissioning of the Council's Neighbourhood Nurseries due to being a Director SMASH but made representations/gave evidence/answered questions with the task and finish group's agreement, and then left the meeting room.

Councillor Harrington declared a personal/non prejudicial interest during consideration of the item as a UNISON member (although a different Branch); the organisation having been referred to as part of an employee consultation matter.

Post Decision Scrutiny of the Commissioning of the Council's Neighbourhood Nurseries

The Task & Finish Group were provided with information sequencing events and decisions leading up to a contract being entered into with a nursery provider as part of the commissioning of the management of the Neighbourhood Nurseries.

The remit of the Task & Finish Group was to establish whether the commissioning arrangements had been carried out in accordance with Council policies and procedures.

Councillor Gibson outlined his concerns regarding the offer of National Neighbourhood Nurseries Initiative subsidy as part of the contract arrangements, requested confirmation that the appropriate contract procedure rules and officer delegated decision recording had been applied correctly, and questioned the extent to which the successful contractor could influence the final contract.

The opportunity was provided for members to ask anything further in regard to Councillor Gibson's representation; after which Councillor Gibson left the room and took no further part in the meeting.

The Corporate Director of Children, Education & Social Care summarised the timeline of events and decisions taken; referring where necessary to the appropriate Cabinet report, Decision Record and contract document. It was noted that the NNI funding was granted by the Government to assist local authorities in establishing nursery provision in areas that did not normally attract nursery provision. This funding was due to cease in March 2007.

In July 2005 an options appraisal was carried out to examine alternative arrangements to the operation of the nurseries and a report was taken to Cabinet on 13th July 2006. Agreement was sought to commission an external Provider to deliver the nursery provision particularly as the revenue deficit funding for the nurseries was as high as £500,000 per year. The report highlighted that until the reaction of the private sector was known it was necessary to establish a contingency fund to accommodate any delay to the timescale and additional costs that may arise as a result of any contract with an external provider.

The Council conducted a tender process to commission a Provider. It was noted that upon advertisement, 12 expressions of interest from local and national Providers had been received. At the time of inviting these expressions, the Council was still hoping to commission the NNI provision at no additional cost to the authority. The expressions of interest were evaluated in accordance with pre qualification questionnaire criteria which included financial position, health and safety, technical capacity and capability, and experience and performance of similar services. This evaluation reduced the interested Providers to a shortlist of 4 Providers that were able to fulfil the necessary criteria; and they were each invited to submit full tenders with a tender presentation. One of the shortlisted Providers failed to provide required outstanding financial information and therefore failed to meet the necessary criteria. Another shortlisted Provider withdrew their interest and did not submit a tender.

Following consideration of the two tenders received, a preferred provider and reserve were confirmed. The preferred provider was subsequently unable to demonstrate management capacity as well as submitting a viable and robust financial plan for the nurseries (as part of the contract requirements) and therefore negotiations were entered into with the reserve provider. Due to the delay to the process caused by this, the NNI subsidy was re-profiled in accordance with the Cabinet report of 13th July, and the Council subsequently authorised the use of elements of Managed Surplus funding, which included NNI money to fund the externalisation of the nurseries subject to the approval of the relevant Cabinet Member.

Negotiations with the reserve Provider confirmed that a subsidy from NNI would be required to enable the nurseries to 'break even' over a period of time. The reserve provider had at this point hoped to deliver all of the neighbourhood nursery provision from the 4 nurseries; but they later indicated that, due to concerns regarding the occupancy levels, it may be only viable to operate from 2 of the nurseries. This was subsequently confirmed during further discussions and a decision was therefore taken to close the High Flyer's and Bath Lane

nurseries, with the staff and children transferred to the 2 remaining viable nurseries.

Following consideration of the financial forecasts of the provider, the Council agreed to enter into formal contracts for the 2 nurseries, including the transfer of staff under TUPE regulations; and to pay deficit funding up to a maximum aggregated of £350k from the NNI subsidy. This subsidy would only be paid as deficit funding upon delivery to the Council of the relevant cash flow information, setting out the amount of losses incurred. The Corporate Director of Children, Education & Social Care advised members that after the first financial monitoring meeting with the successful provider, their financial performance for the first quarter had meant that approximately £10k less of a subsidy had been paid than was originally estimated for. Members were advised that the proposed use of the subsidy by the Council, in the manner outlined, was in accordance with the criteria of the Government's NNI scheme.

The Corporate Director of Children, Education & Social Care advised in summary that all staff who wished to move to the new provider had been able to do so; and that all families and children requiring nursery provision were accommodated either within the 2 remaining nurseries or alternative provision. There were no complaints from staff/parents or carers during this process

Members were afforded the opportunity to ask questions of each of the witnesses present, after which all parties, other than the elected members and scrutiny support officers, left the meeting whilst the Group deliberated the evidence heard.

The Council's Principal Solicitor was then invited back into to the meeting to provide clarification on legal matters, during which she confirmed that the tender process and contract negotiations had been carried out in accordance with Council Contract Procedure Rules; and that further to the Cabinet reports decision-making had been appropriately exercised under delegated powers, with all relevant and required member(s) and officers consulted. It was noted that the Council was also currently updating its procurement procedures and had adopted the recently agreed North East Centre of Excellence model documentation and that the Contract Procedure Rules were also being updated with a report expected to go to Cabinet in the new year. Members were also advised of the likely timescale of a typical tender exercise from start to finish having regard to the continuing cost of operation of the service by the Council itself; and the availability of any NNI subsidy.

All other parties were then invited back into the meeting.

On behalf of the Task & Finish Group, the Chairman thanked all present for their participation and contribution to the meeting, and declared that the Group was satisfied that all actions had been carried out in good faith and in accordance with the permitted criteria of the Neighbourhood Nurseries Initiative and the relevant Council Contract Procedure Rules. The Task & Finish Group also noted and welcomed the updating of the Council's Contract Procedure Rules and adoption of the NECE procurement documentation. The Task and Finish

Group indicated that it would appreciate continuing efforts being made by officers in similar situations in the future to seek to engage all relevant elected members in order to keep them up to date at all times. In this regard, reference was also made to the need for all future reports and Officer Decision records to include sufficient detail to appraise members of all relevant issues including a risk assessment; and for the relevant documentation to refer to the name / title, and not solely the signature, of the person involved. Subject to officers addressing the issues regarding communications with Members, the Group were satisfied that no further action was required.

CONCLUDED that the conclusions of the Task & Finish Group be noted; and that no further action be required.