

Review of equalities in the commissioning and procurement process

Report of Nottingham City Council Scrutiny Review Panel

December 2014

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CONTENTS

	Page
Chair's Foreword	3
Background	4
The equality duty	5
National context	5
Local context	6
The Commissioning and Procurement Framework at Nottingham City Council	7
Findings	8
Conclusions	9
Recommendations	9
Contact Details	10

CHAIR'S FOREWORD

On behalf of the Scrutiny Review Panel, I am delighted to introduce this report. I would like to thank all those who participated in the process for their time and effort and ongoing commitment to helping Nottingham continuously improve. I would particularly like to thank our expert contributors from the Equalities and Fairness Commission for the detailed evidence they gave to the Review Panel.

As a local authority, we have an obligation to shape our services and practices with equalities at their heart and we continue to recognise the value of diversity in our communities.

Conducting this piece of work has been very worthwhile. We have been able to focus on promoting the requirements of the public sector equality duty under the Equality Act 2010 and we will continue to ensure that the goods and services meet the needs of their users in our diverse city.



Councillor Glyn Jenkins
Vice-chair of Overview and Scrutiny Committee



1. BACKGROUND

- 1.1 In 2014, in consultation with the Equalities and Fairness Commission at Nottingham City Council, the Overview and Scrutiny Committee commissioned a scrutiny review panel to establish to what extent equality principles are embedded within the authority's commissioning and procurement processes. In this context, commissioning is the process public authorities use to assess citizen's needs, design public services to meet those needs and finally, select an appropriate service to meet those needs.
- 1.2 The commissioning process covers a range of activity such as consulting potential service users and a robust risk analysis. Broadly speaking, the procurement process covers the acquisition of goods and services from external sources and many local authorities commit to using their spending powers to generate growth and employment in their local economies.
- 1.3 The demand for public services are increasing while resources are being drastically reduced; therefore, there is growing pressure to look for greater efficiencies to deliver better outcomes for local people.
- 1.4 The review panel was commissioned to consider what action the Council is taking in relation to:
 - (i) promoting equalities through the Council's procurement and commissioning policy;
 - (ii) what extent equalities principles are embedded in the Council's commissioning and procurement processes.
- 1.5 The Panel consisted of the following Nottingham City councillors:

Councillor Glyn Jenkins (Chair)
Councillor Pat Ferguson
Councillor Neghat Khan
Councillor Anne Peach
Councillor Mohammed Saghir
- 1.6 The Panel was supported by Imogeen Denton, Equalities and Community Relations Lead at Nottingham City Council and Rav Kalsi, Senior Governance Officer, Nottingham City Council. The following members of the Equality and

Fairness Commission (EFC) of Nottingham City Council participated in the review:

Professor Cecile Wright (Chair and BME Advocate for the EFC)

Sajid Mohammed (Faith Advocate)

John Murray (Deputy Faith Advocate)

Liz Silver (Deputy Disability Advocate)

- 1.7 The Equalities Act 2010 provides a range of legal protections from discrimination in both the workplace and wider society and consolidates previous anti-discrimination laws within a single act. By doing so, anti-discrimination laws are now easier to understand, inconsistencies have been removed and laws have been strengthened in important ways, all helping to tackle discrimination and inequality.
- 1.8 The Act established the public sector equality duty (PSED) which came into force on 5 April 2011, meaning that public bodies have to consider all individuals when carrying out their day-to-day work, in shaping policy, in delivering services and in relation to their own employees.

The equality duty

- 1.9 The duty dictates that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. In the context of the Duty, having due regard means thinking consciously about the above aims as part of the decision making process. This includes how public bodies commission and procure services from others. Although there is no explicit requirement to refer to the Equality Duty in the process of decision making, case law suggests that it is good practice to do so.

National context

- 1.10 In 2013, the government published the outcome of a review of PSED aimed at examining whether it was operating as intended¹. The report of the Independent Steering Group felt that it was too early to make a final judgement regarding the impact of the PSED having only been introduced in April 2011. An in depth review was recommended for 2016 enabling a robust

¹ The Independent Steering Group's report of the Public Sector Equality Duty review and government response <https://www.gov.uk/government/publications/the-independent-steering-groups-report-of-the-public-sector-equality-duty-psed-review-and-government-response>

inspection of the duty five years on. Despite broad support for the duty, the review found that the main challenges lie in its implementation which varies considerably across the public sector. In its recommendations for public bodies, the review recommended that public bodies must reduce the burdens placed on small employers.

- 1.11 The wider legislative framework supports the delivery of equality outcomes through commissioning and procurement. The Public Services (Social Value) Act 2012, places an obligation on public authorities to actively consider how a service being procured might improve the economic, social and environmental wellbeing of the relevant area².

Local context

- 1.12 In February 2014, Nottingham City Council's Executive Board formally adopted its Procurement Strategy³ which set out the central role of the procurement function in supporting the authority in achieving its strategic priorities, doing so within a constrained financial envelope. The overall vision of the strategy focussed on using Nottingham City Council's spending power to drive Nottingham's aspirations by being citizen focussed, maximising savings and delivering economic, social and environmental benefits. The Equality Impact Assessment relating to the Procurement Strategy highlighted that the following groups could particularly benefit from its adoption:

- People from different ethnic groups
- Men, women and transgender people
- Disabled people or carers
- People from different faith groups
- Lesbian, gay or bisexual people
- Older or younger people
- Married/civil partners, looked after children, vulnerable adults

- 1.13 Upon its adoption it was stated that the Strategy would positively impact on some or all of the age groups depending on the nature of social value requirements built into each procurement; and that the officers responsible for procurement are required to undertake a procurement specific Equality Impact Assessment of the service in question for most major procurements to be undertaken.

² Cabinet Office policy on Public Services (Social Value) Act 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79273/Public_Services_Social_Value_Act_2012_PPN.pdf

³ Nottingham City Council's Procurement Strategy 2014-2017
<http://www.nottinghamcity.gov.uk/CHttpHandler.ashx?id=52329&p=0>

1.14 Nottingham City Council has identified a number of areas vital to meeting its economic, social and environmental wellbeing obligations. These are as follows:

- i. Consultation activity is considered as an integral part of the commissioning framework and will therefore form part of all commissioning activity.
- ii. In supporting the local economy, Nottingham City Council seeks to influence and stimulate the development of local markets which in turn increases opportunities for choice, quality and value for money. It is thought that, by doing so, further opportunities will be delivered to local businesses. It is hoped that proactive work with both local suppliers and providers, including the third sector and black and minority ethnic (BME) organisations will better enable them to tender for public work.
- iii. Support for the local economy extends to all suppliers and providers. Nottingham City Council continues to ensure that there is a level playing field for all suppliers and that voluntary sector and small and medium sized enterprises are not disadvantaged by process and bureaucracy.

2 COMMISSIONING AND PROCUREMENT FRAMEWORK AT NOTTINGHAM CITY COUNCIL

2.1 Commissioning is the entire cycle of assessing the needs of people in a local area, designing the services and then securing and monitoring the service. Procurement relates to acquiring the goods, services and works. Combined, the process spans the whole cycle from the identification of the needs through to the end of a service contract. When purchasing or contracting, Nottingham City Council adheres to the following steps at every stage:

- Analyse market
- Assess individual needs
- Develop procurement plan
- Develop service specification
- Secure the service (tender, grant or in-house)
- Let outcome based contract / Service Level Agreement (SLA)
- Manage the contract / SLA
- Review contract / SLA / service outcomes
- Review user / citizen outcomes

- 2.2 The Procurement Strategy adopted by Executive Board in February 2014 outlined that it would work in an inclusive way, value diversity and actively promote equality, diversity and equity. This would include conducting an Equalities Impact Assessment for all commissioned services and carrying out a Pre-Qualification Questionnaire (PQQ) and service specifications.
- 2.3 Service user engagement is encouraged throughout the procurement process and particularly on evaluation panels, for example, on the commissioning and procurement for the interpretation services contract.
- 2.4 Commissioning and procurement decisions are taken through formal governance channels that ensure voluntary sector representation and that equality issues are being covered, such as via the Commissioning and Procurement Sub-Committee, the Integrated Care Board and the Health and Wellbeing Board. These formal procedures ensure that robust challenge and scrutiny is conducted at an early stage.
- 2.5 In accordance with the Public Services (Social Value) Act 2012, Nottingham City Council considers the social and environmental benefits of any procurement to local areas. In Nottingham City, a needs analysis is carried out for all commissioned services, as well as an Equalities Impact Assessment (EIA). A Pre-Qualification Questionnaire (PQQ) must always be carried out alongside this process.
- 2.6 The Council's Procurement and Commissioning framework focuses work around the citizen as required and no assumptions are made as to who are best placed to deliver a service. The existing approach brings together the required experts, led by a commissioning manager at Nottingham City Council.

3 FINDINGS

- 3.1 The panel and members from the EFC are concerned that smaller communities and voluntary sector organisations can often find it difficult to make bids for commissioning, and they do not always have the capacity to attend workshops. This presents as a barrier when bidding against larger organisations that possess more experience of making bids and have dedicated staff for such purposes.
- 3.2 Smaller groups are encouraged to engage with the commissioning process, and the Council has had positive feedback from some of these groups who have attended workshops. The Council currently offers other resources as an

alternative to workshops, such as e-learning material, to clarify the commissioning and procurement process.

- 3.3 The panel felt that the language used in the Commissioning and Procurement framework can often appear too commercial and business-focused which can prove tricky for BME groups and voluntary sector organisations to relate to. However, Nottingham City Council is operating within a tighter funding envelope and therefore must adhere to commercial aspects within its commissioning process in order to provide its services effectively to its citizens.
- 3.4 The panel highlighted that there appears to be a lack of understanding when completing Equality Impact Assessments (EIA) with little or no regard for their content. Guidance is not as well developed as it could be to highlight the benefit to completing a robust and effective EIA.
- 3.5 The panel accepted that the current procurement strategy does outline that local suppliers must be used for contracts of less than £10,000, and this is monitored by Nottingham City Council staff. However, the panel noted that there are ongoing discussions on the definition of 'local suppliers'.

4. CONCLUSION

- 4.1 There is an apparent skills and knowledge gap between smaller voluntary sector organisations and larger organisations regarding the commissioning and procurement process. There should be a focus on ensuring that small and medium sized enterprises (SME) are given the same opportunities with jargon-free guidance to alleviate the burden of commercial focused policies.
- 4.2 There is a lack of jargon-free available literature for BME groups and SMEs on the procurement process. The literature that does exist is difficult to digest for smaller organisations.
- 4.3 Members of the EFC felt that there was little feedback on how BME groups and SMEs perform within the commissioning and procurement process.

5. RECOMMENDATIONS

Desired Outcome – clear and appropriate jargon-free advice on the commissioning and procurement process within Nottingham City Council.

We recommend that Nottingham City Council's Commissioning Team

- a) arranges regular workshop sessions for black and minority ethnic groups and small and medium sized enterprises regarding the commissioning and procurement process;

- b) undertakes analysis and evaluation to establish any stumbling blocks BME groups and SMEs may find in bidding for services; this will highlight how organisations perform and enable success to be monitored;
- c) revises its guidance based on the outcomes of what it learns from workshop sessions and the analysis and evaluation.

The panel agreed to share the Pre-Qualification Questionnaire with the Equality and Fairness Commission and to recommend the rigorous support of positive action clauses where possible.

6. CONTACT DETAILS

If you would like to find out more about this review and / or Overview and Scrutiny in general please contact:

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<http://committee.nottinghamcity.gov.uk/mgListCommittees.aspx?bcr=1>