

<p style="text-align: center;">Non-Executive Report of the:</p> <p style="text-align: center;">Overview and Scrutiny Committee</p> <p style="text-align: center;">30 September 2024</p>	 <p style="text-align: center;">TOWER HAMLETS</p>
<p>Report of Linda Walker Interim Divisional Director Legal and Monitoring Officer</p>	<p>Classification: Part restricted</p>
<p style="text-align: center;">Call-In of Domiciliary Care Service Contract award</p>	

<p>Originating Officer(s)</p>	<p>Thomas French, Democratic Services Officer (Committee)</p>
<p>Wards affected</p>	<p>All</p>
<p>Exempt information</p>	<p>This report and/or its appendices include information that has been exempted from publication as the Monitoring Officer:</p> <ul style="list-style-type: none"> • has deemed that the information meets the definition of a category of exempt information as set out in the Council’s Access to Information Rules; and • has deemed that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. <p>The exempt information is contained in</p> <ul style="list-style-type: none"> • Appendices 1-6 to the Cabinet report <p>The exempt information falls into these categories:</p> <p>3. Information relating to the financial or business affairs of any particular person (including the authority handling the information)</p> <p>6. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>

CONSIDERATION OF THE CALL IN

A call in request has been received on the decision of the Mayor in Cabinet on 11 September, Domiciliary Care Service Contract award. In accordance with the Council's call in procedure rules, the matter is referred to the OSC for its consideration and to decide whether to refer the matter back to the Mayor/Mayor in Cabinet for further consideration.

Aspects of the Cabinet decision/report are confidential and officers believe the Committee may wish to exclude the press and public for parts of its consideration. Accordingly, it is proposed a minor amendment be made to the normal call in procedure as follows.

Public session

- i. Chair to invite a call-in member to present call-in covering unrestricted aspects*
- ii. Chair to invite members of the Committee to ask questions
- iii. Chair to Invite Cabinet Member to respond to the unrestricted aspects of the call-in.
- iv. Chair to invite members of the Committee to ask questions.

*Officers and the Chair will provide advice to members on which aspects of the original Cabinet report and the call-in request can be discussed in the public session.

Closed session (if a motion to exclude press and public is passed by the Committee)

- i. Chair to invite a call-in member to present call-in on remaining restricted/exempt aspects .
- ii. Chair to invite members of the Committee to ask question.
- iii. Chair to Invite Cabinet Member to respond to the call-in.
- iv. Chair to invite members of the Committee to ask questions.
- v. Followed by a general debate / vote.

It is open to the OSC to either resolve to take no action (which would have the effect of endorsing the original Cabinet decision(s)), or to refer the matter back to the Cabinet for further consideration setting out the nature of its concerns and possibly recommending an alternative course of action.

RECOMMENDATION

That the Overview and Scrutiny Committee (OSC) considers:

1. The contents of the attached report, review the Cabinet's decision (provisional, subject to call in) arising; and
2. Decide whether to accept the decision or to refer the matter back to the Cabinet with proposals and reasons.

INTRODUCTION

On 11 September 2024 the Mayor in Cabinet considered a report on Domiciliary Care Service Contract award. As a result of discussions on the report it was RESOLVED to:

1. Authorise the award of contracts to the providers for lots 1 and 2 as detailed in the restricted appendices to the report.
2. Authorise in consultation with the Mayor the Corporate Director Health and Adult Social Care to instruct the sealing of all contracts and associated documents necessary to give effect to resolution 1.

The decision(s) above have been 'Called-In' by Councillors Asma Begum, Sirajul Islam, Mohammad Chowdhury, Marc Francis and Mufeedah Bustin.

This is in accordance with the provisions of the Overview and Scrutiny Procedure Rules of the Council's Constitution.

The original report to the Cabinet meeting is attached to this OSC report as Appendix 1. Members should note that appendices 1-6 of the Cabinet report are restricted.

In accordance with the OSC Protocols and Guidance adopted by the Committee at its meeting on 4th June 2013, any Member(s) who present(s) the "Call In" is (are) not eligible to participate in the general debate.

REASONS FOR THE CALL IN

The call-in requisition from the Councillors noted above has provided reason(s) for the call-in, replicated below:

1. *It is in contravention to Part A, Article 3, Section 1, Subsections of the Borough of Tower Hamlets Constitution: 'Principles of Decision-Making':*

d) a presumption in favour of openness.

This report was tabled for the meeting of cabinet on 34/34/34 with less than two hours to go before the meeting.

This prevented scrutiny from opposition groups on the council and as the deadline to ask questions had passed this meant it was also not subject to questioning.

The chair of O/S (a councillor from the administration group on the council) had waived the right to scrutinise the report without consulting any other members of O/S

thus meaning no opposition members had been involved in the decision to also waive the right to scrutinise the report.

Officers initially restricted the right to access the restricted papers only to members of the O/S committee who were not present in the Town Hall when the papers were published nor were they entitled to ask questions at cabinet.

The report contains contract awards of roughly £190m which has not been scrutinised nor questioned by opposition groups.

The timeframes given for contract award and mobilisation suggest that openness was not a consideration for this decision as it has not allowed time for any scrutiny, questioning or alternative courses of action to be considered.

Further to the above reasons the undersigned also believe that this decision should be called in on the following grounds:

- No mention as to whether this process was considered in relation to the council's status as a signatory to the UNISON ethical care charter. Whilst some of the requirements such as the Living Wage are mentioned there is no reference to other sections or processes within the charter*
- Specifically, the report does not rule out the use of Zero hours contracts in place of full-time ones but instead commits to minimising their use. This is a key component of the care charter.*
- If the council intends to no longer be a signatory of the charter, then it would presume to disclose that information to members and provide the justification for the decision.*

There is also concern regarding the CQC status of some of the providers being awarded contracts with the report detailing that a significant number of providers are not currently CQC registered. Footnotes detail that the council will be working with providers without accreditation to help them achieve that rating. One of the detailed risks is also that providers may fall below the CQC rating – the council has detailed that it will work with providers in this instance to help them achieve the required rating.

Both of these risks suggest that there is the possibility that at periods of the life of these contracts' providers will be delivering care without the requisite CQC rating – if it is the case that providers will not be delivering care without the required rating then there is also a risk that a smaller pool of providers will be expected to deliver larger packages of care than initially intended. In both instances this would suggest that this decision may place the council at risk of not fulfilling Best Value Requirements in terms of officer time, contract value and service delivery. It would also put this decision at odds with this council's strategic plan in relation to its commitments to providing excellent care for residents.

ALTERNATIVE COURSE OF ACTION PROPOSED

The call in requisition from the Councillors noted above has provided a proposed alternative course of action, replicated below:

- *Reconsider whether these contracts have been awarded against a best value framework in relation to the risks detailed.*
- *Refer this report to the audit committee for consideration.*
- *Allow time for all contract winners to achieve the required CQC rating to be able to fulfil the contract in respect to best value implications.*
- *Provide adequate time for the report to be scrutinised and questioned by opposition councillors before being re-tabled.*

Linked Reports, Appendices and Background Documents

Linked Report

- None.

Appendices

- Cabinet report, Domiciliary Care Service Contract award (public) including
 - Appendices for Domiciliary Care Service Contract award [exempt]

Local Government Act, 1972 Section 100D (As amended) List of “Background Papers” used in the preparation of this report

- None.