

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>Council</b>	
<b>DATE OF DECISION</b>	<b>17 April 2024</b>	
<b>REPORT TITLE:</b>	<b>Proposed Changes to the Constitution</b>	
<b>CORPORATE DIRECTOR</b>	<b>Corporate Director of Resources and Section 151 Officer Jane West</b>	
<b>LEAD OFFICER:</b>	<b>Director of Legal Services and Monitoring Officer Stephen Lawrence-Orumwense</b>	
<b>LEAD MEMBER:</b>	<b>Councillor Sean Fitzsimons Chair General Purposes Committee</b>	
<b>KEY DECISION?</b>	<b>NO</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	
<b>WARDS AFFECTED:</b>	<b>All</b>	

## 1 SUMMARY OF REPORT

1.1 This report contains proposed changes to the Council’s Constitution relating to:

1.1.1. The Health and wellbeing Board. Following the introduction of the Health and Social Care Act 2022 and a comprehensive review, technical legislative corrections have been proposed to improve decision making and the ability of the Board to function in line with the statutory expectations by updating membership and working arrangements of the Board.

1.1.2. The Terms of Reference (TOR) for the Corporate Parenting Panel. The changes include an expanded membership and responds to the Department of Education’s recommendations that the Corporate Parenting Panel has a broader inclusion of members to affect change at pace and a name change to Corporate Parenting Board.

1.1.3. The Tenders and Contracts Regulations (TCR’s) which form part of the Council’s Constitution and set clear rules for the procurement of goods, works and services for

the Council, following the requirements under Section 135 of the Local Government Act 1972.

## **2 RECOMMENDATIONS**

- 2.1** For the reasons set out in the reports and appendices, Full Council is recommended to:
- 2.1.1 consider and approve the proposed changes to the Constitution as set out in the respective reports and appendices attached to this report and as recommended by the General Purposes Committee;
  - 2.1.2 authorise the Monitoring Officer to update the Constitution and make any consequential changes;
  - 2.1.3 note that further changes will be made to the TCR's when regulations under the Procurement Act 2023 are finalised and the new procurement regime is fully in force; and
  - 2.1.4 note those changes to the TCR's which are executive functions of the Council.

## **3 REASONS FOR RECOMMENDATIONS**

- 3.1** The Changes to the Health and Wellbeing Board aim to improve decision making and the ability of the Board to function in line with statutory expectations by updating membership and working arrangements of the Board.
- 3.2** The new Term of Reference (TOR) for the Corporate Parenting Panel provides a robust framework to develop a strategic and shared approach to responding to the range of needs and support of children and young people in and leaving care and the name change to Corporate Parenting Board aims to reflect the broader reach, oversight and governance of the Corporate Parenting work and function.
- 3.3** The new thresholds for procurement processes and contract decisions in the new Tenders and Contracts Regulations (TCR's) are expected to eliminate unnecessary bureaucracy, speed up contract renewals and bring the Council in line with other local authorities.

## **4 BACKGROUND AND DETAILS**

### **Tenders and Contracts Regulations**

- 4.1** The Government appointed Improvement and Assurance Panel has provided the Council with an exit strategy with the following procurement related objective:

Objectives	Actions and outcomes by March 2024
A streamlined, robust and responsive procurement function with clear roles and responsibilities focused on supporting affordable service delivery across the Council's activities.	<ul style="list-style-type: none"> <li>• Review existing processes to ensure governance is in line with contract criticality and value.</li> <li>• Review processes in conjunction with Finance to clearly define where responsibility for tasks should sit.</li> <li>• Identify further process improvements through better integration with Oracle.</li> <li>• Develop an improvement plan and a suite of performance metrics and targets to allow the function's improvement to be tracked and compared with sector best practice.</li> </ul>

The recommendations within the report are the result of a review into the existing process, which is recommending a revision to the governance process and aligning to contract criticality and value. The Council has prepared a draft procurement strategy setting out the interdependent activities that will be taken as required by the IAP exit strategy, some of which require changes to the Council constitution to implement.

- 4.3** Currently, all tenders above £9,999 are managed by the Council's procurement service. Whilst this provides a high level of control, it uses resource from the Procurement Service that could be better utilised to provide strategic and commercial support for higher value procurements. A desktop analysis demonstrated that most other Councils in London do not use procurement staff resource at the £9,999 threshold, and instead have a higher threshold.
- 4.4** Therefore it is proposed to amend the requirements of each financial banding to ensure that governance reflects contract criticality and value and to ensure a streamlined yet robust process.

### **Health and Wellbeing Board**

- 4.5** The Health and Social Care Act 2012 introduced Health and Wellbeing Boards (HWBs), which became operational on 1 April 2013 in all 152 local authorities with social care and public health responsibilities. HWBs:
- Provide a strong focus on establishing a sense of place;
  - Instil a mechanism for joint working and improving the wellbeing of their local population; and
  - Set strategic direction to improve health and wellbeing.
- 4.6** The HWB is a formal statutory committee of the Council and provides a forum where political, clinical, professional and community leaders from across the health and care system come together to improve the health and wellbeing of their local populations and reduce health inequalities.
- 4.7** The HWB is unlike other Council committees in that it has both Council officers and other non-councillors as full members.

Statutory members of boards are:

- at least one councillor nominated by the Executive Mayor. Instead of or in addition to making a nomination, the Executive Mayor is entitled to be a member of the Board;
- at least one representative from each Integrated Care Board (ICB) in the area (the same person can represent more than one ICB);
- directors of adult social services, children's services and public health; and
- a representative from local Healthwatch.

**4.8** The intention is that members of boards should have parity with each other, but voting arrangements are made by individual councils. In addition, although not a statutory member, a representative of NHS England is required to participate in the board's preparation of a Joint Strategic Needs Assessment (JSNA) and a Joint Local Health and Wellbeing Strategy.

**4.9** Where the board is considering a matter that relates to the exercise or proposed exercise of the commissioning functions of NHS England in relation to the Council's area, if the board requests, NHS England is also required to appoint a representative for the purpose of participating in the board's consideration of the matter. The role of HWB is mainly around influencing the local health and care landscape through partnership working.

### **Corporate Parenting Panel**

**4.10** Following the Ofsted inspection of Children's Social Care in Croydon in 2017, a review was undertaken to identify good practice that could be adopted by the Corporate Parenting Panel to strengthen the overarching governance arrangements as outlined in the 2017-2018, Croydon Children's Social Care Improvement plan.

In 2020 Croydon Council received a 'Good' overall judgement whilst highlighting the need for further improvement in the care and services to Children Looked After and Care Leavers.

**4.11** The Corporate Parenting approach was described as committed across the council and evidence of good engagements from Elected members and young people.

In February 2023, Mark Riddell MBE, Department for Education, National Implementation Advisor for Care Leavers reviewed the Councils approach and delivery to Care Leavers. He highlighted the significant changes and buy-in from elected members. It was noted that the first strand of a Champion Model Approach was being developed to strengthen the Corporate Parenting Whole Council and Partnership approach. Mark Riddell made three specific recommendations to drive a robust improvement to services for Care Leavers. These included a review of the membership of the panel with internal and external partners, the implementation of themed subgroups and the employment of Care Leaver Ambassadors and Champion. These changes are in progress.

**4.12** The diversity and plurality of views gained from the expanded membership combined with the dynamic engagement and scrutiny through the themed subgroups add value

and enable traction in achieving the strategic aims of the Croydon Corporate Parenting Strategy which was approved by full council in October 2023.

- 4.13 The proposed changes were considered and supported by the Constitution Working Group (CWG) on 15 February 2024. As suggested by CWG, wherever appropriate, the new Board will liaise with Scrutiny on matters of common interest.

## 5. PROPOSALS

### Health and Wellbeing Board

- 5.1 The Constitution, including the Board's terms of reference, was reviewed as part of a wider review of the Health and Wellbeing Board being undertaken by its members with support from the LGA.
- 5.2 The proposed changes are shown in the tracked changes in the attached Appendix. These are made up of a number of technical legislative corrections and changes, reflecting the current political representation of the Council and other updates.

These are the main substantive changes to the Board's terms of reference:

- Membership review (2.1).
- Removal of the former section 2.3 – details around invitees to attend the Board. This is removed as it is already covered by 3.5 and removing the list gives the Board additional flexibility in determining the most appropriate invitees for specific meetings.
- Addition of the HWB Executive Group (4.1) to provide a group to develop the work programme to support the Joint Health and Wellbeing Strategy and shape the agenda and forward planning for the Board. Although this Group is informal and has no decision-making powers it can be used to take soundings between Board meetings.

- 5.3 The proposed changes were considered and supported by the Constitution Working Group (CWG) on 15 February 2024. As suggested by CWG, the terms of reference expressly state that any scrutiny member of the Council is not permitted to be a member of the Board.

### Tenders and Contracts Regulations

- 5.4 Therefore it is proposed to amend the requirements of each financial banding to ensure that governance reflects contract criticality and value and to ensure a streamlined yet robust process.
- 5.5 The key items to note within each financial banding are as follows:
- **The first financial banding of £0 – £24,999.**

This first banding requires budget holder approval for tenders up to £24,999 and recommends three written competitive quotes. The procurement service will continue to have no involvement in the first banding.

The reason that £24,999 is recommended as the first ceiling for this banding is that it reflects the requirements in the new Procurement Act (due to commence in October 2024) for publication of notices above this value.

- **The second financial banding of £25,000 - £Low Value Threshold.**

This second banding requires Head of Service approval for tenders from £25,000 up to the Low Value Threshold (LVT) for supplies and services under the Public Contracts Regulations 2015. This threshold is currently £179,087 (ex-VAT) and is updated every 2 years.

For this banding, it will no longer be mandatory for procurement staff to manage procurements, and instead officers across the Council will be able to manage a process and receive quotations for simple contracts, although procurement staff will still be available to advise and support if requested.

A low value training programme will be required to be undertaken for officers ahead of them managing low value procurements, and guidance will be available in the form of toolkits and handbooks. The current checks in the system will remain to ensure that contracts are not let without following a compliant process.

- **The third financial banding of £Low Value Threshold – Key Decision**

The third banding requires Director approval for tenders from the LVT up to the Key Decision Value. A Key Decision is an executive decision which is likely to:

- (i) result in the Council incurring expenditure, or making savings, of more than £1,000,000; or
- (ii) be significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough.

Procurements within this banding will be managed by the Council's procurement service and will require governance approval in the form of reports approved by the Director of the Service with inputs from relevant Council departments such as finance, legal and equalities.

All procurements above the LVT are required to be entered onto the Councils Procurement Pipeline which is presented quarterly to Cabinet.

- **The fourth financial banding of Key Decision and above**

The final banding requires Corporate Director and Lead Member approval for tenders with a value at or above the Key Decision Value.

Procurements within this banding will be managed by the Council's procurement service and will require governance approval in the form of reports approved by Lead Member and the Corporate Director of the Service with inputs from relevant Council departments such as finance, legal and equalities.

Whilst there are a similar number of pipeline entries above the LVT as there are for below, the collective value is significantly higher for above threshold entries. Therefore, there is greater strategic value to prioritising resource for this threshold band.

## **5.6 Other key proposed changes are as follows:**

### **5.6.1 Contracts and Commissioning Board (CCB)**

Currently, members of the CCB are required to review and authorise each governance report above the LVT, which adds unnecessary time into the process but little additional value. Relevant officers, such as finance, legal, equalities etc will continue to review and to input into reports, but once approved by these departments they will no longer be circulated for review by CCB and instead will proceed directly to be reviewed by the Chair of CCB to recommend to the relevant approver as indicated in the Gateway Authorisation Table.

### 5.6.2 London Living Wage to the Real Living Wage

Replacing the London Living Wage with the Real Living Wage will allow flexibility in pricing and best value for contracts that are performed outside of London, whilst retaining the requirement to pay London contracts the London Living Wage. The Real Living Wage rate is calculated based on the cost of living. There is a higher rate for workers in London to reflect the greater cost of living for people in the capital. The Real Living Wage is £12 across the UK and £13.15 in London (the LLW).

### 5.6.3 Minor amendments

The proposed changes also include some minor amendments to update changes to specific policy items, such as reflecting the Council change to an Executive Mayor model and removal of reference to EU legislation, which are no longer relevant following Brexit.

### 5.6.4 Approval delegations

It is proposed to amend the Executive Mayor's Scheme of Delegation so that approvals for contract decisions default to the relevant officer or member as set out in the Procurement Gateway Authorisation Table appendix within the revised TCRs.

Currently, the Procurement Pipeline which is approved at Cabinet each quarter recommends an approval delegation per contract decision, whereas it is more efficient to establish standard approvals based on contract criticality and value.

The Executive Mayor will always retain the option to make any individual executive decisions for contracts/ procurements or revise delegations, if considered appropriate.

The proposed change in thresholds would affect the following number of contracts and pipeline events (data correct as of February 2024):

Contract Value Bands	Number of Pipeline entries (18 months ahead)	Pipeline Value (18 months ahead)
£0k - <£24,999	28	£186,276
£25k - <£179,087	76	£7,362,908
£179,087+ (GPA threshold) and above	99	£1,529,672,529

### 5.6.5 Consequential amendments to the Constitution

The proposed changes to the TCRs will result in some consequential changes being required to the Council Constitution, including within the Financial Regulations. As such, the proposed recommendations to Full Council include the Monitoring Officer being authorised to update the Constitution and make any consequential changes.

Other key improvement proposals:

The draft Procurement Strategy at Appendix D includes other improvement proposals and ambitions of the Procurement Service.

A focus on strategic contracts, resource will be deployed on other key areas of procurement, including:

- Evaluation of the commercial options within the business case
- Supporting the development of contract management plans
- Improving performance and management information
- Delivery of key procurement policies, such as the Social Value policy, Equalities etc.

It is also proposed to develop a procurement governance specific template to improve the quality of governance reporting and assist with the streamlined and robust approach.

## 6 ALTERNATIVE OPTIONS CONSIDERED

### 6.1 Corporate Parenting Panel

The Children and Social Work Act 2017 introduced the seven principles of corporate parenting for local authorities. Whilst not requiring this to be a duty of partners, it is incumbent upon local authorities to engage with key partners to deliver the most holistic, robust care and services to children and young people in their care and who have left care up to the age of 25 years. The application of corporate parenting principles to improving the experiences and outcomes for children and young people in and leaving care provides a framework to measure challenges and improvements, identifying mitigating activity where required. It is considered by Ofsted and the DFE that robust Corporate Parenting governance is required in the form of a panel/board to create the best conditions for oversight and scrutiny of the strategic objectives and positive impact being achieved for our children in care and young people leaving care people. Therefore, an alternative is not considered a viable solution to meeting the requirements of the 2017 Children and Social Work Act Corporate parenting principles.

### 6.2 Tenders and Contracts Regulations

#### Procurement Thresholds & Delegations

To meet the procurement objectives from the Executive Mayor's Business Plan, the IAP exit strategy and the MTFS savings plan, the following procurement operating models have been considered.

Advisory Service	Full Service	Transactional Service (current)	Strategic Service (recommended)
No procurement threshold	>£10k procurement value threshold	>£10k procurement value threshold	LVT and above
Procurement activity is	Central procurement delivers all elements of the	Central procurement manages high and low	Central procurement offers strategic support for pre- and



devolved with a small central strategic team advising.	procurement process, including pre- and post-procurement activity for high and low value tenders.	value procurements, limited pre- or post-procurement support.	post-procurement (contract management) stages and manage high value/critical procurements.
<b>Pros:</b> low-cost central procurement service <b>Cons:</b> high value/critical procurements at greater risk of challenges and value for money opportunities missed.  Not recommended	<b>Pros:</b> Risk of challenges greatly reduced and value for money optimised. <b>Cons:</b> procurement resourcing costs for low value procurements disproportionate to risks mitigated and value gained.  Not recommended	<b>Pros:</b> Risk of challenges greatly reduced and value for money achieved during the competitive process. <b>Cons:</b> procurement resourcing costs for low value procurements disproportionate to risks mitigated and value gained.  Not recommended	<b>Pros:</b> Small risk of challenge. Procurement resourcing costs proportionate to value and risk. <b>Cons:</b> Some risk of challenge and some opportunities in optimising value for money (for sub-LVT procurements) missed.  <b>Recommended</b>

### 6.3 Removal of the requirement for Contracts and Commissioning Board (CCB) to review procurement reports and to recommend decisions relating to procurement strategies

<b>Retain requirement for CCB to review procurement reports</b>	<b>Remove requirement for CCB to review procurement reports</b>
<b>Pros:</b> Additional reviewers may highlight areas of improvement within reports	<b>Pros:</b> Significantly accelerate approval processes and reduce unnecessary bureaucracy.
<b>Cons:</b> Multiple reviewers add little additional value yet significantly increases approval times for reports	<b>Cons:</b> Less oversight and scrutiny on an individual report level.
Not recommended	<b>Recommended</b>

### Wage rate policy for employees assigned to Council contractors.

<b>Minimum Wage (21 years old and older) - £10.18/hr</b>	<b>National Living Wage - £10.42/hr</b>	<b>Real Living Wage - £12 across UK £13.15 in London (LLW)</b>
<b>Pros:</b> Cost savings and meets legal requirements	<b>Pros:</b> Cost savings and meets legal requirements	<b>Pros:</b> Savings for contracts performed outside of greater London
<b>Cons:</b> There is no London Weighting; does not meet the national living wage; doesn't meet the objective within the Executive Mayor's Business Plan.	<b>Cons:</b> There is no London Weighting; doesn't meet the objective within the Executive Mayor's Business Plan.	<b>Cons:</b> Contractor employees would not benefit from being paid LLW when performing service outside of greater London.
Not recommended	Not recommended	<b>Recommended</b>

## **7 CONSULTATION**

### **7.1 Health and Wellbeing Board**

- Consultation on the proposals for each has been with the relevant committees, the Constitution Working Group, the Executive Mayor, and the General Purposes Committee.

### **7.12 Corporate Parenting Panel**

- Extensive consultation has been undertaken across the council and with partner agencies, children, and young people during 2022-2023.

### **7.13 Tenders and Contracts Regulations**

- Consultation has taken place with several stakeholders including Corporate Management Team (CMT), CCB, the Improvement Panel, the Constitution Working Group and General Purposes Committee.

## **8 CONTRIBUTION TO COUNCIL PRIORITIES**

### **8.1 Health and Wellbeing Board**

- Outcome 1; Priority 4: Ensure good governance is embedded and adopt best practice.
- Outcome 5; Priority 2: Work closely with health services and the VCFS to improve resident health and reduce health inequalities.

### **8.2 Corporate Parenting Panel**

- The proposals contained within this report contribute to the following outcome in the Mayors Business Plan for 2022- 2026.
- Children and young people in Croydon have the chance to thrive, learn and fulfil their potential.

### **8.3 Tenders and Contracts Regulations**

- The revisions proposed in this report will contribute to the Executive Mayor's business plan concerning the provision of sound and sustainable services by being financially sustainable and ensuring good governance.
- The proposed revisions to the TCR's will contribute to the MTFS savings plan for 2024 – 2026. The Procurement service savings over this period is £290,000.

- The proposed revisions will meet the procurement objective in the exit strategy that the IAP requires, which is to ensure a streamlined, robust and responsive procurement function is in place.

## **9 IMPLICATIONS**

### **9.1 FINANCIAL IMPLICATIONS**

- There are no direct financial implications arising from the proposed changes to the Constitution relating to the Health and Wellbeing Board and Corporate Parenting Panel.

#### **Tenders and Contracts Regulations**

- There are no direct financial costs arising from this decision. This decision will enable £290k MTFs savings on procurement staffing costs.
- In addition to direct savings, this will create opportunities for contract savings through improved strategic procurement support for high value and critical contracts.
- Comments approved by the Interim Head of Corporate Finance on behalf of the Director of Finance. (Date 21/03/2024)

### **9.2 LEGAL IMPLICATIONS**

#### **Health and Wellbeing Board and Corporate Parenting Panel**

- The law relevant to the proposed changes has been referenced in the body of the respective report.
- Adopting changes to the Council's Constitution is a non-executive function reserved to Full Council after the General Purposes Committee has considered the proposed changes and made a recommendation.
- According to s9P of the Local Government Act 2000 the Council must keep its Constitution up to date.

#### **Tenders and Contracts Regulations**

- Under Section 135 of the Local Government Act 1972 the Council must make standing orders concerning the supply of goods or works and may make standing orders for all other procurement and contract matters. Furthermore, the Public Contracts Regulations 2015 requires all contracting authorities (such as the Council) to treat suppliers equally and without discrimination in a transparent and proportionate manner. The Council's revised TCRs are intended to achieve these

requirements and assist the Council in securing best value in its procurement activities while complying with its legal duties.

- In overall terms, agreeing changes to TCRs (i.e. rules and procedures for procuring supplies, services and the execution of works and related contract matters) is a Full Council function. However, changes to thresholds and delegations and policy decisions bearing upon the awarding of contracts, such as replacing the London Living Wage with the Real Living Wage, are an executive function of the Council. Approval for these changes will be sought in accordance with constitutional arrangements for the discharge of executive functions of the Council.

### **9.3 HUMAN RESOURCES IMPACT**

- There are no direct workforce implications arising from the proposed changes to the constitution relating to the Health and Wellbeing Board, Corporate Parenting Panel and the Tenders and Contracts Regulations.

### **9.4 EQUALITIES IMPLICATIONS**

- Under section 149 of the Equality Act 2010, the Council has a duty when exercising its functions to have “due regard” to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- “Due regard” is the regard that is appropriate in all the circumstances. The weight to be attached to each need is a matter for the Council. As long as the Council is properly aware of the effects and has taken them into account, the duty is discharged.
  - There are no equalities impacts directly arising from the proposed changes.

## **10 APPENDICES**

- Appendix 1 - Report, General Purposes Committee – Proposed Changes to the Corporate Parenting Panel
- Appendix 1A – Proposed Terms of Reference
- Appendix 2 - Report, General Purposes Committee Proposed Changes to the Health and Wellbeing Board

- Appendix 2A – Proposed Changes to the Health and Wellbeing Board
- Appendix 3 – Report, General Purposes Committee - Proposed Changes to the Constitution relating to Tenders and Contracts Regulation
- Appendix 3A - Draft Tenders and Contracts Regulations (2024)  
Appendix 3B – Draft TCR's with tracked changes  
Appendix 3C - Draft Procurement Strategy 2024-26

## **11 BACKGROUND DOCUMENTS**

None