

COMMERCIAL BOARD TERMS OF REFERENCE (DRAFT)

Purpose

The purpose of the Commercial Board is:

1. To lead a 'step change' in the commercial behaviour of staff and to be an integral part of the organisational development programme of the County Council, specifically with respect to:
 - understanding and defining needs;
 - deciding on priorities and designing services to meet those priorities;
 - sourcing and management of third party suppliers;
 - generation of external income.
2. To ensure that the County Council's commercial activity is focused upon the delivery of its objectives, including financial, service and social outcomes.
3. To oversee the forward plan of activity and identify specific projects or contracts for review based on value, perceived opportunity, and risk to the organisation
4. To ensure the County Council's decision-making is based upon appropriate use of data, future projections, and other evidence, with an emphasis upon outcomes rather than inputs.
5. To champion and embed commercial governance, compliance and discipline throughout the organisation.
6. To ensure that the required cultural change is supported by the development of commercial skills, competencies, talent management and succession planning.
7. To provide a system of gateway decision points for the approval and delivery of projects with a commercial emphasis.
8. To recommend any necessary changes to the Council's Contract Regulations and Procedure Rules, and to champion adherence of these across the organisation.

Status of the Commercial Board

The Commercial Board will have delegated responsibility from Strategic Management Team to commission mandates within an overall work programme to be agreed by. It will also have authority to scrutinize and approve key commercial decisions, subject to the continuing requirement to seek approval from the relevant Councilcommittee.

The Board will provide a regular quarterlyreport to SMT and GPC on its activity.

Role

The role of the Commercial Boardcovers the following areas:

1. General commercial principles including: planning; compliance; performance; skills development; toolkits and methodology;commissioning of services; determining the outcomes sought and goods or services required; the method of delivery and savings capture.
2. Contract and supplier management.
3. Internal and external demand management.
4. Income generation through commercial activity and trading.
5. Risk management.

Specific duties include:

1.General commercial principles

- a) Develop and recommend for SMT/Member approval the Council's Commercial and Procurement Strategy and monitor the delivery of such.
- b) Establish a Procurement Improvement Plan (including Key Performance Indicators, compliance, delivery of savings) and monitor progress against it.
- c) Undertake a fundamental review of the Council's commercial operations to ensure they are delivering the commercial and operational outcomes for which they have established.
- d) Review and analyse expenditure and income in order to inform areas of focus for the Board.
- e) Maintain an overview of the deployment of commercial toolkits and commercial skills development.

- f) Make recommendations to ensure that the organisational impacts and requirements of commercial activity are fully understood. This to include the operation of HR policies, organisational development strategy, training, inductions etc.
- g) Make recommendations to ensure that effective communications and practices are in place to drive the required changes in organisational and individual behaviours to embed good commercial practice across the Council.
- h) Periodically review the operation of the Council's contract terms and conditions.
- i) Maintain an overview of systems deployed (e.g. procurement cards and Procure to Pay).
- j) Agree, review and oversee adherence to a set of common commercial principles.
- k) Understand and address risks and challenges to the Procurement Strategy as identified by the nominated procurement leads.
- l) Identify and recommend to SMT resources for specific commercial projects in accordance with the Mandates (Outline Project Briefs) presented.
- m) Identify areas of risk either financially or in continuity of supply due to constraints in the current supply market and commission work to mitigate these risks.

2. Commissioning

- a) Prioritise, challenge and approve specific strategies for developing cross and inter-organisational commissioning.
- b) Commission, scrutinise and approve Outline Project Briefs (Mandates) for detailed options analysis in respect of "make, buy and sell" decisions, including specific scrutiny of the risks, financial and organisational impact
- c) Challenge and approve business cases for commercial activity.
- d) Strengthen the Council's approach to "market-making", for example ensuring that Mandates and business cases pay due regard to:
 - Supporting innovation and development;
 - Increasing the participation of local SMEs and social enterprises;
 - Stimulating competition through enabling new suppliers to enter the local market;
 - Creation of new delivery organisations;
- e) Challenge the assumptions on future demand and how these assumptions feed into the respective commissioning strategies for these activities;
- f) Establish and monitor the Council's forward programme of commissioning and procurement activity.

3. Procurement of services

- a) Subject to any other requirements within the Contract Procedure Rules and Standing Orders, scrutinise and constructively challenge all procurement activity with expected expenditure in excess of £100,000 (this to include expenditure disaggregated across multiple orders).
- b) Recommend budgets and allocation of resources for specific commercial and procurement exercises, and to monitor the relevant budgets and expenditure.
- c) Monitor contract awards and outcomes from tender processes (subject to existing approval requirements).
- d) Scrutinise requests for contracts awarded under emergency powers/ waivers and single tender action, ensuring compliance with the Council's Standing Orders, Financial Regulations and Scheme of Delegation.
- e) Monitor the benefits realisation process to ensure identified savings through a procurement exercise are captured and budgets amended.

4. Contract and supplier management

- a) Oversee Supplier Engagement Programmes, including prioritisation of projects, delivery of savings and improvements, negotiation of rebates and resolution of blockages.

5. Internal and external demand management

- a) Commission Mandate to implement systems of demand management across the Council, including changes in policy, procedures, authorisation, contract terms and arrangements with suppliers.
- b) Review and report on the operation and effectiveness of demand management controls in relation to contracts.
- c) Make recommendations to ensure that measures are in place to embed the new behaviours and practices that will be required to sustain demand management controls, including the role of communications.

6. Income generation and trading

- a) Develop the Council's Commercial and Income Generation Strategy.
- b) Monitor delivery of the above strategy.
- c) Establish and drive a programme of reviews to ensure the delivery of traded services are aligned to this strategy.

- d) Scrutinise, challenge and approve outline and strategic business cases and business plans in relation to new ways of delivery services i.e. Alternative Delivery Vehicles and make recommendations to SMT and the appropriate committee(s).
- e) Scrutinise, challenge and approve specific business cases for income generation through commercial activity (although not including review of charges for existing services or applications for external funding).
- f) Make recommendations to ensure that the organisational requirements and impacts are taken into account, including skills and competencies, systems, support service requirements etc.

7. Risk management

- a) Ensure that the financial, legal and reputational risks of all commercial activity are fully understood, managed, mitigated and reported to SMT and General Purposes Committee.

Process

The Commercial Board will operate by a system of outline project briefs or mandates which will set out the broad reasons for change including: the background; objectives; current expenditure; proposed approach; benefits; indicative timetable; any investment required; risks and inter-relating projects.

Responsibility for bringing mandates to the Board in a timely manner rests with Service Directors and Heads of Service. Future project planning must include sufficient time for briefs and mandates to be considered by the Board as part of the overall timescales for the project.

Mandates may be brought to the Board by the following:

- A Director, Head of Service or senior manager of the relevant service area responsible for commissioning the service or managing the contract;
- The Head of Procurement
- The Head of Transformation.

In certain instances, mandates will be brought forward by the relevant officer in response to a request from the Board.

The officer presenting the mandate will have ensured that there will have been discussion with, and involvement of, key officers and functions in the preparation of the mandate, including the service area(s), Human Resources, Finance, Internal Audit, Legal and Procurement (as appropriate).

Mandates will follow a set template and will be provided with a reference number by the Procurement Team. They may be brought to the Board in respect of a number of different scenarios, including:

1. Agreement to commence a specific procurement activity, following an appraisal and assessment of the most appropriate solution, and seeking resource where appropriate.
2. Agreement to undertake a detailed options appraisal and review in respect of a major category or complex area of commissioning and sourcing.
3. Approval of a strategy for cross-departmental items of related spend ('categories').
4. Agreement to undertake specific actions in relation to contract management, supplier engagement or implementation of demand management controls.
5. Approval of business cases and business plans in respect of specific commercial activity, including external trading and income generation from changing the use of specific Council assets and/or establishment of specific legal delivery vehicles.
6. Proposed changes to the Council's Contract Procedure Rules or significant changes in legislation, policy or development and roll out of any new commercial and procurement toolkits and training and development activity.
7. Delivery of recommendations agreed through the Council's political governance process.

The Procurement Team will be responsible for the servicing of the Commercial Board. All mandates and other papers should be submitted to the Head of Procurement at least five working days in advance of the meeting of the Commercial Board. Papers will be circulated to Board members and attendees at least three working days in advance of the meeting.

The Transformation Team will also be closely involved in identifying and developing mandates, including undertaking options appraisals, market-scanning and research. Where commissioning and procurement activity forms part of a wider project (for example major service redesign or externalisation) then the Transformation Team will have a key role in overseeing project delivery.

In scrutinising mandates, Board members will take into account a number of factors, including:

- Whether all available options have been considered and evaluated.
- Whether a cross-departmental or corporate approach has been adopted where appropriate as opposed to a single department or service approach and the extent to which officers from across the organisation have been involved in the development of the mandate.
- The extent to which the proposal focuses upon outcomes as opposed to inputs.

- The projected costs, savings and income from the proposed activity and any assumptions behind the figures including forward projections in demand and market changes to ensure the proposal is future proofed.
- The risks associated with the proposed way forward. This may include controls on demand where expenditure is demand-led.
- The impact upon the capacity and capabilities of the organisation in delivering the proposed solution, including any resource requirements.
- The likely impact upon or requirements for behaviours within the organisation and the role that effective communications should play in underpinning this.
- The extent to which the proposed approach can be delivered by the market (where appropriate) as evidenced by pre-market engagement.
- Any impacts on the organisation as a whole such as proposals for outsourcing that would leave specific fixed corporate overheads such as IT over a smaller base

Where circumstances require an urgent decision to be made in between meetings, then these must still follow the processes set out within the Council's Contract Procedure Rules, Standing Orders, Financial Regulations and Scheme of Delegation, however they must be reported in writing to the next meeting of the Board by the relevant Head of Service. The Board may provide further determination on what it sees as learning points or further actions required from the previous decision taken.

Membership and attendance

Membership of the Commercial Board shall be as follows:

Board Member	Name
Director of Resources	Chris Malyon (Chair)
Head of Procurement	Paul White
Head of Transformation	Amanda Askham
Children Families & Adults	TBC
Economy Transport & Environment	TBC
Corporate & Customer Services	TBC
Public Health	TBC
Legal	TBC
Internal Audit	TBC

The Head of Procurement will be responsible for the servicing and operation of the Board and shall attend all meetings.

Each Directorate will have a representative on the Board. The representative must have sufficient authority to participate actively in Board discussions and should have appropriate

skill and expertise to scrutinise and constructively challenge proposals and mandates. Support and training will be invested in the representatives to ensure they have the appropriate skills to fulfil this function.

Other officers of the Council will attend by invitation, and as appropriate, to meet the agenda of the Board. This may include managers from relevant service areas as well as Communications.

If any of the officers above cannot attend then a suitable substitute must take their place. Any substitute must have sufficient authority to participate actively in Board discussions.

The meetings will be serviced by the LGSSProcurement Team.

The Board will be reviewed from time to time and this must occur when an officer leaves the Council and on the anniversary of the first meeting of the Board.

Frequency

The meetings will initially be held monthly with a target maximum duration of two hours.

Quorum

Three members should be present for the approval and agreement of any mandates in conjunction with the Director of Resources or a nominated representative.

Supporting documentation

- Template – Outline Project Brief (Mandate)
- Guidance – Pre-market engagement
- Pre-procurement Business Case
- Template – Options Appraisal