

To: Cabinet
Date: 22 January 2025
Report of: The Monitoring Officer (Head of Law and Governance)
Title of Report: Contractual and Governance re Fleet purchasing

Summary and recommendations	
Purpose of report:	To provide Cabinet with a summary of the matters concerning the procurement of fleet which have led to governance issues arising and actions taken to prevent reoccurrence. To seek approval to procure and delegations to enter into two contracts for the purchase of fleet to be used by Oxford Direct Services Limited.
Key decision:	No
Cabinet Member:	N/A
Corporate Priority:	A well run Council
Policy Framework:	None.

Recommendation(s): That Cabinet resolves to:	
1.	Note the historic matters set out in the report
2.	Note the steps taken to address the governance issues to prevent reoccurrence
3.	Delegate to the Head of Finance (Section 151 Officer), in consultation with the Monitoring Officer, authority to award two contract for the purchase of fleet vehicles as detailed at section 17 to 23 of the report following the completion of the procurement process.

Appendices	
Appendix 1	Fleet Procurements since 2018

Introduction and background

1. Fleet utilised by Oxford Direct Services Limited and Oxford Direct Services Trading Limited (“ODS”) are purchased by the Council. The Council enter into the contracts

and make payment to the suppliers, with ODS carrying out the procurement. The vehicles are then held by the Council, depreciated over 7 years but leased to ODS over that time with an appropriate leasing charge inclusive of interest payable to Council under the lease arrangements.

2. ODS scope and determine need in terms of fleet management. Fleet is used across a range of functions, including housing, waste, streets and parks. Life cycle of the fleet ranges typically from 7 to 10 years.
3. The following issue relates only to where ODS have procured something which the Council has then been the purchaser of / entered into the contract for. It does not affect any subcontracting arrangements they may have for delivery of their own contracts with the Council.
4. Toward the end of October 2024 6x waste refuse collection vehicles were required by ODS and were scoped and procured via a framework. It appears the procurement process was completed compliantly in line with the framework terms and conditions and award was made for fleet totalling approximately £1.5m.
5. The OCC procurement forms were signed off in line with procedure, however no cabinet decision was sought for the contract award. The contract award was a key decision under the constitution (at that time spend over £500k/contracts over £1m).
6. This was a result of an oversight the officers in ODS leading on letting the contract were not aware of the council's decision making governance requirements. As purchasing and leasing of fleet to ODS is a technical transaction there was no senior council officer client lead,
7. The need to secure the delivery of the fleet led to some pressure to get the contract signed and it was signed, dated and sealed at the end of October 2024. Unfortunately, as a consequence the authority was not properly checked when being prepared for execution by OCC and the contract should not have been sealed.
8. Though not intentional, this meant that the contract was technically let in breach of the Council's constitution and in breach of the requirements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 ("the Regs").
9. The Regs require notice of all key decisions to be published 28 days in advance of being taken with specified information on what decision is taken. This did not happen and the provisions that can allow for this to be dispensed with were also not engaged. As such the contract was let without the appropriate authority and not in line with the legal requirements.
10. All fleet procurements since 2018 have been reviewed (see Appendix 1) and this is the only contract in the period since ODS were formed where it is exceeded key decision threshold. The issue with the Regs is therefore limited to this one contract. However, the under the constitution at the time, contracts over £10,000 should have had a corresponding published officer decision, which did not happen with these fleet purchases. There is a need to ensure where the Council's wholly owned companies are letting contracts in the name of the Council, they are following the constitutional requirements.

Steps taken to address the contract

11. On becoming aware, the order for the fleet was paused whilst the issue was addressed. As the contract was unlawfully let the order could not be progressed as it would have compounded the issue for the Council.
12. The supplier has been approached and has agreed to enter into a deed of termination for the contract entered in to at the end of October (subject to agreement of final terms). It is anticipated that this will be entered in to prior to the Cabinet meeting this report will be presented at. A verbal update will be provided and delegation to the Head of Law and Governance is already provided for within the Legal Rules of the constitution.
13. There was no way that the contract could be retrospectively ratified given the requirements of the regulations and therefore this is the required course of action.

Next Steps – fleet management

14. ODS have taken this pause to review the requirements of the fleet order. They will finalise the requirements and, in conjunction with OCC's Procurement team, they will commence a new procurement via a framework agreement. Work is already underway to progress this.
15. Depending on the speed of award this will mean that the fleet will be delivered towards the end of 2025.
16. The fleet that is being replaced is at 10 years in its life span and therefore there are risks with the reliability of these vehicles, though they are currently operational. None of the existing domestic refuse collection vehicles (RCVs) will be sold until the delivery of replacement vehicles. ODS is also exploring the opportunity to rent additional domestic RCVs. The future contract is on the forward plan. Delegation is sought to enter into the resulting contract for the fleet once the procurement has completed and the decision properly notified for the 28-day notification period on the Forward Plan. This will avoid further delays by waiting to return to a meeting of full Cabinet.

Next Steps – fleet procurement

17. The fleet vehicles budget is approved within the capital budget provision for the vehicle replacement programme by Council in February each year. The last approval for this financial year 2024 – 2025 was made in February 2024 in the sum of £3.5million.
18. The proposal is to procure the following fleet via two separate contracts:
 - a. 6 Dennis Eagle Refuse Collection Vehicles (4 Domestic Waste Refuse Collection Vehicles (RCV's) and 2 Trade waste RCV's) via the Halton Housing/Link Group Fleet Procurement Framework at a cost of up to £1,506,626
 - b. 2 DAF Terberg Split body Toploaders via the Halton Housing/Link Group Fleet Procurement Framework at a cost up to £450,000
19. Seven (7) suppliers were appointed to the Halton Housing/Link Group Fleet Procurement Framework when it was established. All suppliers have a proven ability in the provision of medium and heavy commercial vehicles and between them are able to supply across all regions of the UK.
20. The Framework allows contracting authorities such as the Council to select and award to suppliers by carrying out a call-off with competition or direct award.

21. The ODSL Transport Manager completed a desk top review exercise assessing the suitability of the suppliers for the Oxford region on behalf of the Council. It is noted that Dennis Eagle, Faun Zoller and CP Davidson are the only suppliers that provide specialist refuse vehicles and that only Dennis Eagle was able to supply top-loading vehicles. It is further noted that Dennis Eagle is the first placed supplier in the lot and that appointing that company as the supplier will also ensure that the provided vehicles are compatible with the existing refuse vehicle fleet and auxiliary equipment used by ODSL.
22. Dennis Eagle is the only supplier on the framework that is able to supply large volume narrow body vehicles which are required for operational use within Oxford.
23. The procurement process under the framework is still in progress therefore delegated authority is sought to enter in to the contracts outlined above once this has been completed and the prices and specifications finalised.

Next Steps – Governance assurance

24. Steps were being taken to review and update the governance and governance process of the Council prior to this issue arising. The steps being taken, and which have been added to specifically arising from this issue are as follows:

Actions	Status / Target date
Address inconsistency in the definition of Key Decision in the constitution	Done November Council
Update report templates and guidance for officers	In progress Complete by end of January 2025
Training on decision making of the Council / Cabinet / Officers and key decisions – Legal Services and Committee Services	Delivered December 2025
Training on decision making of the Council / Cabinet / Officers and key decisions – Corporate Management Team and Heads of Service	Delivered December 2025
Training on decision making of the Council / Cabinet / Officers and key decisions – Wider Management	Scheduled January 2025
Training on decision making of the Council / Cabinet / Officers and key decisions – all staff	Scheduled April 2025 (and earlier date will be secured if possible)
Training of the officers of the Council's companies and a formal letter and guidance to the Boards setting out the requirements and asking they ensure their organisations follow them where contracting for the Council.	To be arranged once a Company Secretary is in post for each
Review of the format and structure of the forward plan – create a delegated decisions forward plan	In progress

Actions	Status / Target date
and a meetings forward plan (Cabinet, Council and SHJVG)	Complete by end of February 2025
Review of standing items on the forward plan	In progress Complete by end of January 2025
Clarification / reorganisation of clienting responsibilities within senior management	Done Implement from the 1 February with the Senior Management restructure
Review and clarify contract signing responsibilities in the constitutional review	To be looked at with anticipated approval in Spring 2025.
Specific to this issue	
OCC procurement to be involved in ODS procurement of Fleet	Already in progress
ODS to develop and maintain a rolling fleet management / replacement programme	In progress
Responsibility for the clienting of Fleet to sit centrally with the newly appointed Clienting Manager	New post holder started January 2025

Other implications

25. There are no other implications arising directly from the recommendations.

Financial implications

26. The delay in procurement of the vehicles increases the risk of additional costs to ODS should they need to hire replacement vehicles before the replacement of the ageing fleet. As set out above, all efforts will be made to mitigate this risk.

27. The budget for the replacement of refuse collection fleet vehicles together with the leasing repayments are included within the Council's revenue and capital programmes. ODSL will be responsible for the leasing payments to the Council as well as the running costs in relation to the vehicles

Legal issues

28. These are covered within the body of the report.

29. The Framework Terms and Conditions, which allow the Council to call off from will apply to both contracts to purchase.

Level of risk

30. To not replace life expired vehicles will impact on the ability of ODSL to deliver effective waste collection services.

31. The market for narrow body specialist refuse collection vehicles is very limited.

32. The lead time for delivery of the vehicles is circa 8 months.

Equalities impact

Not applicable.

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Background Papers: None	
1	Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (“the Regs”)
2	Council’s Constitution