

**Appendix 2 to this report is exempt under the Local Government Act 1972 Schedule 12A paragraph 3 - Information relating to the financial or business affairs of any particular person**

COUNCIL

17 February 2022

Report of the Director of Corporate and Customer Services (& Monitoring Officer)

## **WASTE MANAGEMENT CONTRACT INDEPENDENT REVIEW**

### **PURPOSE OF REPORT**

To consider a report detailing the findings and recommendations arising from the Independent Review of the Waste Management Contract with Serco undertaken by Allen Graham of Circling Squares.

### **RECOMMENDATIONS**

1. That the findings and recommendations of the Independent Review of the Waste Management Contract with Serco be received.
2. That the thanks of the Council be conveyed to Allen Graham of Circling Squares and Nik Hughes-Roberts of Recircle Consulting for their work.
3. That the progress made against the recommendations made in the Independent Review be noted.
4. That approval be given to a supplementary revenue budget of £15,000 in 2021/22 (financed from the general reserve) and a further £15,000 to be included in the draft revenue budget for 2022/23 to continue to engage the services of Nik Hughes-Roberts of Recircle Consulting to support the Council in navigating contractual and legal issues connected to the contract with Serco.
5. That, where urgent decisions are required to be taken in respect of service delivery or contractual matters, in the event that a Council meeting cannot be organised to make a decision within a necessary timescale, consultation take place with political group leaders through the Leaders Advisory Group.
6. That, in the event of the circumstances arising where urgent decisions are required and consultation takes place with the Leaders Advisory Group, Political Group Leaders be recommended to consult their groups and provide feedback promptly to Officers in order for timely decisions to be made.

### **WARDS AFFECTED**

District-wide

### **STRATEGIC LINK**

The purpose of the independent review was to provide a strategic review of the delivery of the provisions of the contract by Serco. The review report itself provides an opportunity to understand what lessons can be learned and improvements made both in the delivery of the service, as well as ensuring that residents in the Derbyshire Dales receive excellent service from the Council and its contractors.

## **1 BACKGROUND**

- 1.1 At its meeting held on 14 October 2021, the Council received a petition from nearly 600 residents which requested the authority “to commission an independent enquiry into Serco’s delivery of its 2020 waste contract and impose penalties for non-compliance where they are found to be applicable. We believe this is necessary so that the Council can meet its environmental and climate commitments in the future while representing value for money for tax payers and residents.”
- 1.2 At the same meeting, having debated a Motion seeking to establish an independent review of the contract with Serco for the provision of waste and recycling services, the Council resolved to:-
- Initiate an independent review of the Waste and Recycling Collection Contract to establish Serco’s performance against the requirements of the contract using qualitative and quantitative methods.
  - Require an evaluation of current contractual and operational issues including current market conditions, environmental impacts and financial impacts arising as a result of service disruptions encountered.
  - Require an assessment of the decisions taken, the likelihood of rectification within current contract parameters and identify possible alternative solutions.
  - In the interests of expediency, delegate authority to the Community and Environment Committee to agree appropriate Terms of Reference and to commission ‘Recircle Consulting’ to undertake the review given their knowledge of the Derbyshire Dales, the contractual requirements with Serco and their relevant market intelligence.
  - Require the completion of the review by 31<sup>st</sup> December 2021 and for it to be reported to an extraordinary meeting of Community and Environment Committee in January 2022.
  - Approve a supplementary revenue estimate of £20,000 for 2021/22 for the appointment of ‘Recircle Consulting’ to undertake the review.
- 1.3 On 17 November 2021, the Community and Environment Committee approved the appointment of Allen Graham of Circling Squares to conduct the review according to the following terms of reference:
- a) To evaluate the provisions of the contract with Serco for the delivery of waste and recycling services that took effect in August 2020; specifically whether the contract specification, mobilisation and implementation met the requirements approved by Elected Members in December 2019 and whether the contract was adequate in the context of the competitive waste services market at that point in time and presently.

- b) To evaluate the Council's management of that contract, including:
  - i. Whether the response to the recent service disruption and decisions taken by Officers/Members was necessary, effective and proportionate
  - ii. Areas of good practice
  - iii. Areas of improvement
  - iv. Operational / market constraints and future mitigating measures to address any identified contract failings
  
- c) To evaluate Serco's performance in the delivery of the contract
  - i. Review of contract documents and requirements
  - ii. Contract mobilisation and August 2020 implementation.
  - iii. Quantitative analysis of data in relation to KPIs and other key performance measures
  - iv. Review of financial impact associated with diversion of waste streams
  - v. Qualitative review of other contract performance/compliance
  - vi. Review feedback from the Waste & Recycling team in their dealing with residents and Elected Members, and Serco's response to those requests.
  
- d) To establish and summarise the root causes of recent service disruption and identify the actions required to be considered in order to mitigate future wide scale service disruption to residents.

1.4 The Committee also established a steering group of Members to work with Allen Graham to provide guidance, structure and feedback to ensure that the review remained independent and focused on learning opportunities for all parties. Councillors Cruise, Gamble, Salt, Slack and Swindell served on the Steering Group.

## **2 REPORT**

2.1 Having commissioned the independent review into the history, actions, approach and recovery plan adopted following severe service disruption experienced by residents of the Derbyshire Dales in relation to domestic waste and recycling services, the scope of the review was additionally defined by the Member Steering Group as reviewing whether the contract with Serco remained "fit for purpose", whilst verifying and commenting upon the actions taken within the external environment of the time and, in particular, the impact of the pandemic. The review was supported by the commissioning of Recircle Consulting, who had been separately commissioned by the Council in October 2021 to provide expert market knowledge together with an objective evaluation of the contractor's performance in the delivery of the waste collections contract (covered by part c of the terms of reference).

2.2 The full review report prepared by Allen Graham is enclosed at Appendix 1 to this report, which sets out the methods utilised in gathering and reviewing information from contract documentation, other correspondence and speaking to staff from the Council and Serco. The conclusions reached by Allen Graham in respect of the implementation of the contract are set out on pages 39 and 40 of the review report, but are listed here:

- The evidence provided both verbally and in writing during the course of this review lead to the conclusion that there has been an incomplete delivery of the contract requirements by Serco.

- As a result of key components not being fully implemented or delivered there has been an undoubted impact upon service delivery resulting in an accelerated and unmanageable volume of customer enquiries and complaints
- The volatile environment caused by the pandemic impacted significantly upon the strategic and operational capacity of both the contractor and the authority. In particular the escalation of household waste resulting from changing behaviours combined with vehicle delays and staff shortages placed additional pressures that required close management by the contractor
- The remote working environment imposed upon both parties appears to have been significant in disrupting the effective man management of the contract in its early stages as key service areas were disrupted and stretched to react to competing and variable priorities
- Evidence presented provided reassurance that senior management remained responsive to supporting the Waste and Recycling Manager, providing clear advice and direction within the first 3 months of the contract commencement
- Officers of Derbyshire Dales District Council, and in particular the waste and customer service teams have continually gone the “extra mile” to protect the authority’s reputation, resolve customer complaints and assist the contractor in recovering the situation
- My review has established that, once the seriousness of the situation became apparent, the Chief Executive and Director of Community and Environment had taken proportionate and necessary steps to
  - Communicate effectively with the senior management of Serco
  - Engage and communicate with members of the authority
  - Identify the root causes and attempt to negotiate remedial steps to establish an emerging recovery plan
- The Authority has not yet received the benefits of the whole of the contract as intended
- It will be necessary to evaluate and agree the financial and contractual consequences caused by non-delivery of the key deliverables of the contract whilst considering the future impacts of any customer behavioural changes which continue as the pandemic hopefully recedes
- Serco is responding and has acknowledged in a discussion during my visit to the depot that they “took the eye off the ball” and the contract was not supervised and managed to the level they set themselves
- A recovery plan is now in place which was an essential first step to prevent further deterioration and secure improvement for the residents
- A separate technical evaluation of Serco’s performance (covering part C of the terms of reference for the review) has been concluded and supports the conclusions of this review.

2.3 The following recommendations have been made to the Council by Allen Graham:

1. That Derbyshire Dales District Council continues to maintain and further the dialogue utilising the formalised contract management arrangements
2. That the dialogue is extended to include:
  - a) Resolving existing performance and payment discrepancies to ensure these are equitably resolved taking into account the Council’s additional support commitments

- b) An agreement regarding how any re-basing required to take account of changes in customer behaviour caused either by the pandemic or the emerging sustainability agenda will be addressed
- c) Establishing the intentions and approach for both parties to ensure the ongoing fulfilment of the contract

3. That the Council also communicates the importance and urgency of resolving the MIS and round optimisation issues through a clear and robust plan

4. That the Corporate Leadership Team re-establish a corporate approach to overseeing the critical success factors of implementing the contract, reacting to unsatisfactory performance and advising Members of on-going options for future delivery

5. That consideration is given to enabling customer service staff access to relevant data and options to escalate and remedy customer queries.

6. That a review of the corporate management capacity is undertaken to ensure that future transformational and modernisation projects are adequately resourced.

2.4 Recircle Consulting's report provides a detailed evaluation of Serco's performance against the contract. This report is enclosed as an exempt appendix under paragraph 3 of Schedule 12A of the Local Government Act 1972. The reason for the exemption is that the report contains information relating to the financial or business affairs of Serco which the Council may rely on in future negotiations and actions with Serco. It is considered that the publication of this information would not serve the public interest as it would undermine the Council's position in respect of ongoing negotiations and potential future legal action. The findings and recommendations from Recircle's report are captured by the conclusions and recommendations from Allen Graham.

2.5 To assist Members consideration of the recommendations from Allen Graham, officers have set out the progress made in respect of the areas where recommendations have been made.

<b>Recommendation</b>	<b>Progress</b>	<b>Officer Lead</b>
<p>1. That Derbyshire Dales District Council continue to maintain and further the dialogue utilising the formalised contract management arrangements.</p>	<p>Monthly Contract Meetings, which monitor and measure service performance and delivery, have continued, as outlined in the terms and conditions of the contract.</p> <p>There are also weekly Contract and Operational meetings taking place, as well as daily updates on performance, and this has been the case for several months.</p> <p>In addition to the regular meetings and ongoing dialogue, the Council is applying mechanisms available in the contract to help manage contract behaviour and address outstanding issues and under performance.</p>	<p>Director of Community &amp; Environmental Services</p>

<b>Recommendation</b>	<b>Progress</b>	<b>Officer Lead</b>
<p>2. That the dialogue is extended to include:</p> <p>a) Resolving existing performance and payment discrepancies to ensure these are equitably resolved taking into account the Council's additional support commitments</p> <p>b) An agreement regarding how any re-basing required to take account of changes in customer behaviour caused either by the pandemic or the emerging sustainability agenda will be addressed</p> <p>c) Establishing the intentions and approach for both parties to ensure the ongoing fulfilment of the contract</p>	<p>The Chief Executive, the Director of Community &amp; Environmental Service and the Waste &amp; Recycling Manager met with Serco's MD for Citizens Services and with Serco's Regional Director, who holds the portfolio for the Derbyshire Dales contract, on Wednesday 26 January to progress the outstanding matters.</p> <p>At the above meeting, the Council requested that Serco to confirm its intentions and outline a timeframe for returning to the contractually required level of service.</p> <p>There is a follow up meeting arranged for Monday 14 February, where Serco is expected to provide an update on their progress.</p> <p>Officer's focus is currently on encouraging Serco to return levels of Service to those set out in the contract. As part of this, it may be necessary to undertake 're-basing' to account for the influence on the Covid-19 pandemic on waste generation. It will be for Serco to propose a change in this regard, which as yet Serco has not done.</p>	<p>Director of Community &amp; Environmental Services</p>

<b>Recommendation</b>	<b>Progress</b>	<b>Officer Lead</b>
3. That the Council also communicates the importance and urgency of resolving the MIS and round optimisation issues through a clear and robust plan	Officers are utilising contractual mechanisms to drive / manage the process of Serco resolving the MIS issues.  Should Serco fail to resolve the MIS issues within appropriate timescales then a further escalation of the contractual mechanisms will be applied.	Director of Community & Environmental Services
4. That the Corporate Leadership Team re-establish a corporate approach to overseeing the critical success factors of implementing the contract, reacting to unsatisfactory performance and advising Members of on-going options for future delivery	Weekly updates prepared for Corporate Leadership Team.  Contract management team to be established to provide timely interventions and contract oversight.	Chief Executive / Director of Community & Environmental Services
5. That consideration is given to enabling customer service staff access to relevant data and options to escalate and remedy customer queries.	Customer Services staff were given access to and training on the Whitespace system on 9 February 2022.	Director of Corporate and Customer Services
6. That a review of the corporate management capacity is undertaken to ensure that future transformational and modernisation projects are adequately resourced	Individual discussions commenced with Corporate Leadership Team. Proposals to be formulated and presented to Council for consideration in due course.	Chief Executive

2.6 The review commissioned by the Council provide a comprehensive reflection on what has occurred in respect of the waste management contract with Serco. It should also be recognised that the review is also a snapshot of the situation at a particular moment in time. The operational delivery of the waste contract continues to be challenging and residents have experienced and continue to experience inconsistency in service delivery which remains a source of frustration for them and for officers at the Council.

2.7 In recognition of the dynamic and constantly changing situation, it is recommended that the Council approves additional budgetary provision of £15,000 in 2021/22 and £15,000 in 2022/23 to retain the services of Nik Hughes-Roberts of Recircle



Consulting to ensure that the authority continues to receive the high quality advice and support to react and respond to situation with Serco. Over the coming weeks, Recircle Consulting will be supporting the Council with the analysis of data, review of KPIs (inc. supporting information and billing) and application of contract mechanisms to improve Serco's performance levels.

- 2.8 Member involvement, oversight and ownership of decision making in respect of the provision of waste and recycling services will take on increased importance in the short term following consideration the independent review report. Residents of the Derbyshire Dales have turned to their elected representatives for answers throughout the periods of disruption to service provision and it is important that Members, as community leaders and representatives, are able to provide clear explanations as to decisions taken in respect of this key service. It is likely that decisions may need to be made quickly to respond to contractual developments or legal advice. Whilst decision making by the full Council is the preferred and appropriate route to deal with these challenges, the arrangement of meetings of the Council with a need to provide five clear days' notice may not always best serve the interests of the Council in such situations where expedient decision making is required.
- 2.9 As stated, there will always be a presumption that such matters will be referred to Council, however it is recommended that, where urgent decisions are required, the relevant officers (likely to be the Chief Executive or Director of Community and Environmental Services) be required to consult with the Leaders Advisory Group before taking any decisions to give representatives of all political groups the opportunity to comment and influence any decision making under the urgency procedure. Whilst the Leaders Advisory Group presently has no constitutional status, such a body is often in operation informally in local authorities for the purposes of consultation and political engagement outside of the formal governance framework, and it is considered a useful vehicle for consultation and communication where prompt decisions are required. In such cases, it is suggested that political group leaders take the opportunity to consult their own group Members on any proposals during any timescale set aside for broader consultation before a decision is required to be made. The Council cannot direct the requirements for consultation with political groups by their own group leaders, so this is submitted as a suggestion to ensure that, where urgent decisions are required to be taken by officers, as many Members have the opportunity to influence that decision as possible.
- 2.10 In making a recommendation to enable consultation through the Leaders Advisory Group where urgent decisions are required, this is ensure that there is a One Council approach to addressing and resolving the issues relating to the waste and recycling services contract. This is not intended to bind individual Members or groups to a particular course of action, but to maintain transparency where decisions are required. Where urgent decisions are required and enacted, such decisions will be reported back formally to the Council meeting.

### **3 RISK ASSESSMENT**

Legal

- 3.1 Having received the independent review reports, the Council is being asked to receive the findings and recommendations. The table at paragraph 2.5 sets out the

work undertaken to date responding to the recommendations that have been made in the independent review.

- 3.2 The overall legal risk to the Council should be managed by the issue of Default/Remediation Notices as necessary to reinforce the need for performance levels to be met and to be clear that any change to those levels should be negotiated with Serco and dealt with via a Variation Agreement. The recommendations in this report to provide an efficient model of decision making where the Council is required to respond quickly to service delivery or contractual issues will strengthen the Council's position whilst maintaining political ownership and oversight and providing transparency. The legal risk associated with this report is considered to be low.

#### Financial

- 3.3 One of the report recommendations seeks approval for further budgetary provision (£15,000 in 2021/22 and £15,000 in 2022/23) to continue to engage the services of Nik Hughes-Roberts of Recircle Consulting to support the Council in navigating contractual and legal issues connected to the contract with Serco. The financial risk of this is assessed as low.
- 3.4 One of the conclusions of the review is that "It will be necessary to evaluate and agree the financial and contractual consequences caused by non-delivery of the key deliverables of the contract whilst considering the future impacts of any customer behavioural changes which continue as the pandemic hopefully recedes".
- 3.5 There is also a recommendation (in the table in paragraph 2.5) that dialogue is extended to include "Resolving existing performance and payment discrepancies to ensure these are equitably resolved taking into account the Council's additional support commitments".
- 3.6 Over the coming weeks, Recircle Consulting will be supporting the Council with the analysis of data, review of KPIs (inc. supporting information and billing) and application of contract mechanisms to improve Serco's performance levels. Once this work has been concluded, the financial implications and risks will be assessed; any significant budgetary changes will be reported to a future Council meeting.

## **4 OTHER CONSIDERATIONS**

- 4.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.
- 4.2 Having received and reviewed the independent report and recommendations, there are no actions that impact on the climate change agenda. Whilst regard has been had to climate change implications, a climate change impact assessment has not been undertaken. However, it is acknowledged that some of the decisions taken during the recent period of service failure will have had an adverse climate change impact. In particular, as documented on page 38 of the review report, the suspension of separate food waste collections. Whilst the Council acknowledges and understands the impacts of sending food waste to landfill and the subsequent production of Methane this operational decision was taken to free up teams to enable all other scheduled waste collections, including recycling collections to take place. As referred to in the report a recovery plan is now in place, which will seek to

ensure that such measures are not necessary again.

## **5 CONTACT INFORMATION**

- 5.1 James McLaughlin, Director of Corporate and Customer Services, 01629 761281 or [james.mclaughlin@derbyshiredales.gov.uk](mailto:james.mclaughlin@derbyshiredales.gov.uk)

## **6 BACKGROUND PAPERS**

- 6.1 Report to Community and Environment Committee - Independent Review of the Waste and Recycling Services Contract with Serco – Proposed Terms of Reference and Appointment of Independent Review Officer – 17 November 2021
- 6.2 Petition to Derbyshire Dales District Council – Independent Inquiry into Serco's delivery of the Waste Contract
- 6.3 Minutes of the Council meeting held on 14 October 2021

## **7 ATTACHMENTS**

- 7.1 Appendix 1 – Derbyshire Dales & Serco WASTE Management Contract Independent Review – Report of Allen Graham
- 7.2 Exempt Appendix 2 – Contract Performance Review – Waste Collections – Report of Recircle Consulting