

# Finance and Resources Committee

10.00am, Thursday 12 August 2021

## Update on the implementation of the Construction Charter

Executive Wards - Council Commitments –	Executive All 2, 3 and 7
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### 1. Recommendations

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- 1.1 It is recommended that the Finance and Resources Committee note the ongoing work of the Council in promoting the Construction Charter Commitments.

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# Finance and Resources Committee

## Update on the implementation of the Construction Charter Commitments

### 2. Executive Summary

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- 2.1 On 16 August 2018, the Council adopted the Construction Charter Commitments (“the Charter”), which set out the expectations the Council has for those contractors who undertake construction work on the Council’s behalf.
- 2.2 The Charter comprises 8 separate commitments to promote the adoption of fair work practices, and high standards in respect of workmanship, employment status, health and safety and apprenticeship training, amongst other matters.
- 2.3 This report provides an update to the Committee on the Council’s promotion of the commitments set out in the Charter.

### 3. Background

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- 3.1 At the Finance and Resources Committee on 16 August 2018, the Committee agreed that the Council adopt the Charter. A link to the Committee report, and the Construction Charter Commitments themselves, can be found in Section 8 of this report.
- 3.2 As stated above, the Charter was intended to promote the adoption of fair work practices, and high standards in respect of workmanship, employment status, health and safety and apprenticeship training, amongst other matters.

### 4. Main report

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- 4.1 In delivering the Council’s new [Business Plan](#) (Our Future Council, Our Future City), the Council will be investing significantly in the building of new assets and infrastructure, and major refurbishment and improvement works, right across the city. This investment includes new schools and nurseries, an additional 10,000 affordable homes, strategic active travel schemes, the Edinburgh Trams to Newhaven project, as well as significant investment in existing roads, pavements

and Council buildings. The Council's capital budget strategy includes planned spend of £4.3bn over the next 10 years.

- 4.2 Procurement legislation imposes an obligation on the Council to comply with the sustainable procurement duty, to improve the economic, social and environmental wellbeing of the authority's area. Linked to this, the Council also complies with Scottish Government guidance on addressing fair work practices in procurement, and where appropriate secures community benefits from contractors. As such, the promotion of the central principles of the Charter are already embedded in the Council's procurement processes, including its Contract Standing Orders.
- 4.3 Making sustainable procurement business as usual, together with those linked objectives as referred to in this report, is also a key element of the Council's [Sustainable Procurement Strategy](#) (the Strategy). The Strategy was adopted by the Council at the [5 March 2020](#) meeting of the Finance and Resources Committee. The Strategy has 7 key strategic procurement objectives, one of those being to improve fair work practices being adopted by suppliers. In securing this objective, one of the actions being undertaken by the Council is to ensure the application of the Charter to Council procurement activity.
- 4.4 The Council, through Commercial and Procurement Services, is also represented on the Fair Work Convention's review into fair work in the construction industry, this review being supported by the Scottish Government. The remit of the high level, short life working group is to inform, guide and support the work of the Fair Work Convention in relation to the construction industry and to make recommendations to address the challenges of implementation of the Fair Work Framework across public sector procurement in construction. It is currently expected that this group will finalise their recommendations in the Autumn.
- 4.5 The Council's Annual Procurement Report for 2020/21 is considered elsewhere on the agenda for this meeting. However, that report details a number of related community benefits that were secured in the last financial year and which are of relevance, including the creation of apprenticeships, work placements and community engagement, as well as 79% of suppliers awarded contracts confirming that they pay a real living wage and an embedding of the Fair Work First guidance into the Council's procurement activity.
- 4.6 Since the Charter's adoption and considering that a number of the commitments were already the subject of established practice and legal obligations on the Council, the Council's Commercial and Procurement Services have been further promoting, and embedding, the Charter principles in ongoing activity.
- 4.7 This work can be demonstrated by a number of the contract award reports that have been considered by the Committee and where contractor commitments around the Charter have been specifically highlighted. These include a number of high value contracts, such as the [Housing Capital Works Framework](#), the [Domestic Repair and Maintenance Framework](#) and the [Fountainbridge Development Partner contract](#).

- 4.8 A staff member within Commercial and Procurement Services has the role of Construction Charter Champion, which is helping support the Council's ongoing commitment to the Charter and its underlying principles, including making prospective contractors aware of the Council's expectations. This staff member delivered training on the Charter to the Commercial and Procurement Services team during the year.
- 4.9 The Charter is included on the Supplier pages on the Council's [external website](#), to provide clarity and promotion of the manner in which the Council expects its contractors will operate. Council staff in those Divisions that most commonly deal with such matters, including Property and Facilities Management, Housing and Roads and Transport, have also been reminded of the Charter and its commitments, and asked to promote it to their contractors.
- 4.10 In general terms, it is to be noted that there are certain aspects of the Charter where the Council's approach is relevant to more than 1 commitment within it. However, an update on the Council's compliance with the Charter commitments is provided as follows:

#### Commitment 1: High Working Standards

- 4.11 This commitment covers a number of aspects around contractors' approach to employment status, health and safety, standards of works and apprenticeship training, amongst other matters. As the Committee will be aware, in procurement exercises, the Council continues to set selection and award criteria that recognise and encourage fair work practices. This covers matters such as whether a contractor pays a living wage and its approach to the promotion of health and wellbeing, and inclusion within the workplace. Tender submissions are assessed and scored in line with the weighting percentages set for the tender in question. Whilst there are standard terms and conditions for all Council contracts, commitments given as part of a tender submission would also form part of the formal contract awarded to the winning tenderer. Commercial and Procurement Services keep the Council's approach to such matters under review, to ensure it maximises the outcomes that can be delivered but does so in a proportionate manner that still secures value for money and is compliant with the relevant regulations.

#### Commitment 2: HMRC Compliance

- 4.12 This commitment encourages HMRC compliance by contractors. The Council's standard contract terms and conditions provide that contractors must comply with all relevant legislative requirements. In addition, the Supplier page on the Council's external website also makes it clear that contractors and subcontractors within the construction industry must be registered with HMRC's Construction Industry Scheme before they can be paid by the Council. The Council has also improved its procedures around the application of the IR35 regulations since the Charter was adopted.

### Commitment 3: Health and Safety

- 4.13 This commitment highlights that the health and safety of workers on all the Council's construction projects is paramount. Through its tender selection and award criteria process referred to above, the Council ensures the contractors are able to meet the required standards in relation to health and safety. Where appropriate, this assessment reviews the volume of any health and safety breaches, as well as the number of reportable instances and near misses. Contractors' performance in relation to health and safety and related legislative compliance would also be monitored closely by project managers through the Council's contract management framework. This continues to be of particular relevance with the COVID-19 pandemic, and Council staff work closely with contractors to ensure sites provide safe working arrangements, including social distancing measures, in line with Scottish Government guidance, and industry best practice.

### Commitment 4: Excellence in Skills and Training

- 4.14 The commitment relates to the promotion of construction industry skills and training, and the expectation that contractors will engage in this, to ensure the highest possible standards in Council projects. As covered elsewhere, this is something that would be overseen by the Council's tender assessment and selection process. In particular, mandatory criteria can be set to ensure that the Council is using contractors who promote excellence in skills and training, which would be evidenced by the holding of certain relevant specialist qualifications. The Council also works with its contractors to identify appropriate training programmes and secure the use of community benefits in all regulated procurements. Through community benefits proposals, the Council has secured apprenticeships, training opportunities and work placements for disadvantaged and long-term unemployed people.

### Commitment 5: Trade Union Recognition

- 4.15 The Council cannot mandate its contractors to engage with trade unions in a particular way. Further, some contractors may not recognise trade unions, or if they do will have their own local/national agreements in place. However, it is to be expected that the benefits that trade unions can bring to the construction workplace will be separately promoted through the Council's wider approach to tender assessment, and the sustainable procurement duty, as summarised elsewhere in this report. As an organisation, the Council has in place agreed and established mechanisms for consultation and negotiation with its recognised trade unions. This is underpinned by the agreed Working Together Protocol which has been in place since July 2014, and which sets out the way that we will work together to achieve our shared interests. There are also a number of formal meetings which are in place at an organisational and Directorate level, at which relevant matters are raised and discussed, these include the Council Health and Safety Forum, the Directorate Joint Consultative Groups and Joint Consultation Committees and Partnership at Work. If the trade unions had concerns over the manner in which the Council's contractors were complying with the Charter, then these could be raised via these

arrangements. It is understood that since the Charter's adoption no concerns have been so raised.

#### Commitment 6: Recruitment

- 4.16 This commitment promotes the adoption of fair and transparent recruitment practices by contractors. Again, this is something that would be promoted and overseen by the Council's tender assessment and selection process.

#### Commitment 7: Blacklisting

- 4.17 This commitment makes it clear that the Council considers blacklisting to be unacceptable. Blacklisting is prohibited by the Employment Relations Act 1999 (Blacklists) Regulations 2010. In line with procurement legislation, all tenderers are required to provide information on any blacklisting activity within their organisation. If a contractor was to admit to any such activity during a tender process, the Council would have the ability to reject its bid. In the period since the Charter was adopted there have been no known instances of Council contractors having been found to have breached the blacklisting regulations.

#### Commitment 8: Government Buying Standards

- 4.18 This commitment requires all relevant construction contracts to comply with Government buying standards. Council contracts require contractors to ensure they comply with all relevant legal obligations and hold a BSEN ISO 9001 (or equivalent) accreditation, or else satisfy the Council that relevant arrangements are in place. This accreditation relates to quality management and ensures that the contractor's workforce is sufficiently skilled and that it has established satisfactory training arrangements.

## **5. Next Steps**

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- 5.1 The Council will continue to promote the Charter to its contractors, and further embed its principles into the Council's procurement procedures, subject to compliance with the relevant legislative framework. To date, the Council has not had to take any specific action to deal with allegations of non-compliance in respect of the Charter

## **6. Financial impact**

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- 6.1 There is no direct financial impact associated with this report. As reported at the time of the adoption of the Charter, there will, however, be indirect costs associated with the ongoing promotion and monitoring of the Charter, especially if concerns were raised over compliance by Council contractors.

## **7. Stakeholder/Community Impact**

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- 7.1 The Charter should help secure positive impacts on the employees of those contractors who are working on the Council's construction projects, by ensuring they experience fair work practices, ongoing training and development and have the ability to access support through trade unions and trade bodies.
- 7.2 The Charter should also help secure positive impacts on those staff members and members of the public who are affected by Council construction projects, including through increased vigilance around health and safety.
- 7.3 The trade unions were consulted at the time of the adoption of the Charter, and they will be able to provide ongoing feedback on it through the normal Council engagement framework.

## **8. Background reading/external references**

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- 8.1 [Item 7.15 - Construction Charter – Reports, 419.63 KB.](#)
- 8.2 [Finance & Resources Committee, Sustainable Procurement Strategy, 5 March 2020](#)
- 8.3 [Finance & Resources Committee, Update on Implementation of Construction Charter, 24 September 2020](#)

## **9. Appendices**

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- 9.1 Not applicable.