

UNITE Edinburgh Voluntary Sector Branch

A Campaign Against Competitive Tendering in 2009

Introduction

In 2009 the City of Edinburgh Council decided to commission services for vulnerable adults by means of competitive tendering. The services are for about 800 adults and are currently provided by 32 voluntary organisations. In the summer bids were invited and submitted. After the Council's evaluation process was completed a recommendation was made to the Finance and Resources Committee towards the end of October that the contracts for future services be awarded to 4 voluntary organisations and 4 private sector organisations. None of these organisations were current providers. It was announced at the Committee meeting that quality would be maintained although the services in the future would cost 21% less. The recommendation to approve the tendering was opposed by the Labour and Green Councillors so that the matter had to be referred to the full Council meeting on 19 November.

BACKGROUND

City of Edinburgh Council

The Council has 58 Councillors. There are 17 Liberals, 15 Labour, 12 Scottish Nationalist, 11 Conservatives and 3 Greens. The last election was in 2007. The ruling group is a SNP/Liberal coalition with 29 Councillors. The total opposition was also 29 Councillors. However, a Liberal had been elected as Lord Provost of the City and chair of the Council. Therefore motions that were opposed by the whole opposition were passed on the casting vote of the Lord Provost. Until November 2009 the ruling group had not been defeated in a vote at the full Council.

Unite and Competitive Tendering

Unite Edinburgh Voluntary sector branch has about 950 members. It is a composite branch with members in around 40 different employers. The branch had slowly been trying to improve its organisation. An aspect of the improvement was an email network including about 160 of the members. This network included about 25 shop stewards and health and safety representatives.

For about eighteen months the Unite Edinburgh Voluntary Sector Branch had been campaigning against competitive tendering. In 2008 deputations from the branch had spoken to a Council Committee and the full Council stating that competitive tendering was not an appropriate method of commissioning vital services. Because commercial confidentiality cloaked the process at various stages the participation and views of users and employees were excluded. The Council maintained that quality was all important but devised a process which excluded the views of users and employees on quality.

The Council had, over a period of time, organised working groups involving employers and users to develop strategies for services. The usual outcome of the working groups was an

agreed service strategy. It soon became clear that the invitations to tender drawn up by the Council had ignored the service strategies worked out by the working groups. The parameters of the tender invitations were designed to achieve cost savings and not maintain quality. As an example of this process a particular service was thought to require 1200 hours per week. When the invitations to tender were published the hours had been reduced to 700. There was no documentary justification of the reduction. The cut in hours represented the view of what certain Council officials thought could be achieved in 'efficiency savings'. There had been no consultation with any stakeholder on the reduction.

The branch was unhappy with the way the Council was handling commissioning. There was a branch conference to debate the Council policy in December 2008 which was addressed by Green and Labour Councillors. It became clear that the Council was determined to press ahead with competitive tendering as a means of achieving savings. This policy contradicted the Council's commitment to achieving quality or best value. The savings they were seeking could not be achieved without cuts in quality.

THE CAMPAIGN

Homelessness and Competitive Tendering

In January 2009 the Council announced the outcome of competitive tendering as a means of commissioning homelessness services in Edinburgh. On reading the Report recommending the awarding of contracts it was clear that quality would fall and that the TUPE obligations had not been properly thought through and costed. The branch had two deputations to the Council (one deputation to the full Council in March 2009) complaining that the process was flawed and recommending that the Council do a proper 'impact assessment'. We pointed out that the public was being misled if it was being assured that quality would be maintained.

In the transition period between the award of tenders (January) and the change of providers (end of April 2009) a lot of problems emerged in dealing with TUPE issues. One contract collapsed because TUPE costs had not been considered and the staff had to be taken in house by the Council in order to maintain an essential service.

Learning from the chaos generated by the Homelessness services tendering, by May, the branch was even more concerned about the way the Council was using competitive tendering. We were aware that a further round of tendering was about to start in respect of Care Services for vulnerable adults.

The branch launched a campaign at a conference in June 2009 and set up a working group to put pressure on the Council to do away with competitive tendering or modify the process sufficiently to guarantee quality and the full realisation of TUPE rights. A branch delegation had a meeting with senior Council officials in July to relay our concerns.

Our members who were taken in house in April by the Council are now subject to another process of competitive tendering which may see them transferred to new providers at the end of May 2010. As a result the branch is involved in direct negotiations with relevant Council officials on the issues that will effect this particular transfer in respect of quality and employees rights. The direct negotiations have revealed that it is true that the drawing up of invitations to tenders, including the hours specified, is done on an arbitrary basis by

Council officials without any reference to users and employees. There really is no documentary material to support their decisions.

Therefore, when the Care and Support Services tendering came up the branch was quite familiar with Council practice and the issues this raised for us as a union branch. A lot of information had been relayed to our members through our email list and our working group. Competitive tendering had been on the agenda for every branch meeting for over a year.

Care and Support Services and Competitive Tendering

Branch members were affronted by the proposed 21% cut in services. We were convinced that this cut would be largely at the expense of employees rights/ terms and conditions. We were concerned that a transfer to the private sector organisations would lead to erosion in wages/ sick pay and pensions despite the TUPE regulations. We were concerned that none of the organisations that put in bids, including the private sector organisations, had ever made enquiries to the employers that currently employs the staff that deliver the service (including about 200 Unite members) regarding their terms and conditions. That means that they had ignored the TUPE costs associated with the proposed transfers.

Community Opposition

Users and carers were opposed to the award of tenders for a number of reasons. They were encouraged in this opposition by the staff of the voluntary organisations who were largely union members. The reasons for opposition were the 21% cut, the lack of consultation with users and carers and the Council's decision to freeze applications for direct payments. This was to prevent users from circumventing the competitive tendering process by choosing to remain with current providers.

It was easier than usual to organise users and carers because they were, in this area of service, long term clients who had been involved, over many years, in stable arrangements with the current providers. There were often close links between staff, carers and users. There was a lot of support for carers and users by the rest of the community. A poll by the local evening paper suggested that 70% of the public were opposed to competitive tendering when it came to services for vulnerable (disabled) people. The same percentage of the public said that they would support a union campaign against this example of competitive tendering.

Between the end of October and the Council meeting on 19/11/09 the community campaign got organised. This included intensive lobbying of councillors by surgery visits, letters and emails. The branch directly lobbied green and labour councillors (particularly those who were UNITE members (several) and those who were trade unionists. Before the Council meeting we were assured that a Labour/Green motion would oppose the tendering awards.

A week before the Council meeting there was a candlelit vigil outside the Council HQ organised by staff, carers and users.

The Council Meeting - 19th November 2009

On the day of the Council meeting 500 people demonstrated outside the Council and there were 12 deputations including one from UNITE Edinburgh Voluntary Sector Branch. Two other UNITE branches (Ark Housing and Penumbra) were now involved in the campaign, having members who were affected.

During the course of the meeting it became known that one Liberal councillor would abstain. The ruling group had lost its majority. For the Labour/ Green motion to succeed, however, the Tories would have to support their motion. It seems that the powerful and moving deputations from users and carers persuaded the Tories to vote with the Greens and Labour. The ruling group were overturned for the first time since the election in 2007.

The motion that was passed was long but contained three important elements. The Council had to be sure that quality would be maintained; there had to be a proper evaluation of the competitive tendering process and further applications for direct payments had to be processed.

Special Meeting of the Finance Committee - 3rd December 2009

The ruling group and Council officials planned to get the Council decision reversed at a special meeting of the Finance and Resources Committee meeting on 3/12/09. They hoped to prove that new material circumstances had arisen (the possibility of being sued by the organisations which had won the tenders) which would allow the Committee, under Council standing orders, to allow the tenders to be awarded. The campaign planned more deputations and a demonstration outside the City Chambers. The branch had applied for a deputation which would state that nothing could be decided at the Committee meeting because the Council's decision on 19/11/09 had not been implemented. Quality decisions had not been reassessed. The branch felt that it could demonstrate that the Council had not followed the guidelines laid down by the Scottish Government. Public opinion was still on the side of the campaigners.

The branch took the unusual step of using its email list to ask that all members contact their Councillor asking them to vote for the scrapping of competitive tendering for the Care and Support Services or any service involving vulnerable people. Many branch members responded to this request.

The evening before the special meeting an announcement by the Council leader informed the public that the meet was cancelled for reasons that were not mentioned and are still unclear. It seems that the ruling group received advice from the Chief Executive of the Council and the Chief Legal Officer of the Council that for the Committee to reverse the Council decision of the 19/11/09 was open to legal challenge. In the event the campaign had won the second round.

Where do we go from here in 2010 ?

The Council has issued a statement. It has admitted that there are now (out of 800 users) 500 applications for Direct Payments. This may render the whole competitive tendering exercise commercially unviable. The Council has commissioned an independent review of competitive tendering by Deloitte. The Council would like a report by 21/1/10 but this may not be possible. The report may not be available until February. The Review will also include a study of the Homelessness services competitive tendering process referred to earlier.

The City of Edinburgh Council finally admitted defeat regarding the Care Services competitive tendering. The following Labour motion was adopted at a full Council on 11 February 2010. The ruling group SNP/Liberals split and refused to support their own motion. The Liberals decided to support the Labour motion which as you will see is quite radical.

You will see that the Council has a lot of work to do and there are many possibilities for UNITE to make representations and influence future policy. Together with user groups we had a deputation to the Finance Committee of the Council on 4/2/10 when we asked them to reject the recommendations of the Council's chief executive. The motion below goes much further than the chief executive's recommendations.

"Council agrees with the need to achieve best value in all of the services provided by the Council. The way in which Care and Support Services have evolved has resulted in a large number of providers with a wide variation in prices. Council recognises that this may not represent best value.

Council notes that the competitive tendering approach was aimed at providing best value in the commissioning of care and support services for Vulnerable people. However, Council agrees that it is no longer appropriate to award the contracts as originally planned, given the shortcomings identified in the Chief Executive's report to the Finance and Resources Committee of 4 February 2010 and the changes notified in the original business case. Specifically, the level of direct payment applications has risen dramatically, bringing into doubt the viability of awarding contracts.

Council notes that, according to the Deloitte high level analysis the execution of the tender evaluation process is, "not as sufficiently meticulous or as thorough as might have been expected". Council regrets the distress and uncertainty caused to users, families and carers and wishes to take full cognisance of the representations made on this matter.

Council therefore:

- (i) instructs the Chief Executive to review comprehensively the Council's arrangements for tendering, including the communications and consultation strategy, to ensure that this situation is not repeated;*
- (ii) instructs the Chief Executive to carry out a rigorous assessment of the development and management of the care and support tender process, including the roles and responsibilities of those involved in the process, and to report on this as part of his report on lessons learned to the Finance and Resources Committee on 1 June 2010;*
- (iii) instructs the Chief Executive to take account of the findings of these inquiries when preparing the overarching commissioning strategy as a template for future procurement activity.*

Council further agrees to:

- (a) note the changed position in relation to the number of people who have now applied for Direct Payments;*
- (b) not proceed to award the care and support contracts as originally proposed;*
- (c) note that a Commissioning Strategy will be brought forward for consideration by Committee/Council in the summer;*

(d) in the meantime, not to adopt the recommended Direct Payment rate of up to £15.04; and

(e) instruct the Chief Executive to set up an arrangement, to include service providers, service users and advocacy organisations, to facilitate a dialogue and process that will help lead to the identification of an appropriate and fair Direct Payment rate, to be reported in no more than 2 Council cycles."

Some sources state that the SNP Scottish Government has taken an interest in the campaign and advised the SNP group on the Council (part of the ruling group) that it is acted foolishly. It seems that popular/ labour movement protest can be effective!

Even if the tenders were awarded the branch would still continue to campaign to make sure that the 2006 TUPE Regulations are applied properly. We will campaign for our members interests to be protected. We are well aware that if the TUPE Regulations were followed the competitive tendering process could be sunk. If trade unions used the Regulations to obtain the information they required unions could clearly demonstrate that quality was being sacrificed in order to maximise savings. This demonstration would, we feel, completely remove public support for this method of finding savings.

For more information or advice on running your campaign contact or your local Regional Officer or

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