

# Performance Management Regime

## 1. Introduction

1.1 The Council recognises that the relationship with the Provider is intended to be a long-term partnership and does not seek to introduce punitive mechanisms. This Schedule outlines a range of abatements of the Contract Sum based on the expectations of the Council laid out in the Specification.

1.2 The quality of the Services is of primary importance to the Council as these services are delivered directly to all residents of the districts to whom the Council are accountable.

1.3 Service Failures are minor deficiencies or are those elements of Service which do not fully meet the requirements of the Specification, or where any method or resource has been stated in the Method Statements, Conditions of Contract or any other Contract instruction such as a Variation Order has not been delivered. For the avoidance of doubt Service Failure is used to describe minor defects only, examples are described in Appendix 1 to this Schedule.

1.4 The Council therefore requires a Performance Management Regime (PMR). Targets will be set and reviewed annually by the Council with the aim of providing continuous improvement in Service delivery.

1.5 In addition the PMR seeks to support the development of the Services and consequently any agreed actions will be included from the Service Delivery Plan.

1.5 The performance of the Contract will be measured:-

- i. on the basis of self-monitoring
- ii. by inspections identifying Service Failures
- iii. by contacts from Customers identifying Service Failures
- iv. by monitoring of contractual requirements and resources
- v. any other additional work reasonably required by the Council in managing poor performance

1.6 The Council set annual targets and Key Performance Indicators (KPI's) for Waste Collection Services and street Cleansing. The Provider is expected to achieve the targets set for our KPI's which are identified in Appendix 2 to this Schedule.

1.7 Poor performance generates high levels of public dissatisfaction which impacts upon the reputation of the Council, and its assessed performance by Government bodies. In turn this can limit the freedoms of the Council to act, increase the burden of reporting statutory information and reduce its ability to attract grant funding, either directly or in partnership. These Services rank among the highest in

importance to the public and poor performance causes significant media and social media activity generating press enquiries and performance reports to the Council, further increasing the Council's costs and potentially affecting the reputation of the Provider.

## **2. Monitoring**

2.1 The following is the framework for monitoring and managing the delivery of the services outlined in the Specification and Method Statements to the Council under the Contract by the Provider.

2.2 The Performance Management Regime will be reported on and actions will be taken based on performance in each month of the Contract.

2.3 Contract progress will be measured by the Supervising Officer through:

- i. Joint inspections
- ii. Client team inspections
- iii. Customer contacts
- iv. Self-monitoring performance reports
- v. A formal monthly Contract meeting
- vi. Annual review of the Service Development Plan
- vii. Minutes and meeting records

2.4 A review meeting three months following the Contract Commencement will use data and information provided by the Provider and the Council and contained within contract management IT systems to review the thresholds and improvement targets set out in the Specification and this Schedule. At the Supervising Officers discretion the thresholds and targets may be modified or changed to ensure they reasonably reflect the expected Service standards. The initial review will be held on 1st August 2018 or as soon after this date as is practicable.

2.5 Every meeting and joint inspection will be recorded, minutes will be produced and agreed, along with any necessary action plan and programme of works.

2.6 In the event of any difference or dispute whether or not particular work has been carried out by the Provider, the decision of the Supervising Officer shall be final and binding on all Parties.

2.7 The Provider will undertake self-monitoring of its performance and make regular reports to the Council as required in the Specification.

2.8 The Council will carry out random inspections to verify the self-monitoring information and gather a range of performance data which may be used at the monthly Contract meeting.

2.9 The Council commits to undertaking 1000 random inspections on a monthly basis.

2.10 Overall compliance with the standards set out in the Contract documents will be assessed on the basis of inspection (without prior notice to the Provider) of all sites and work carried out by the Provider. Throughout each month the Council will

2.11 check that the tasks to be carried out in the provision of the Services have been completed to the satisfaction of the Supervising Officer and that the standards provided for in the Specification have been complied with.

2.12 The Provider shall provide at no extra cost to the Council, all necessary assistance to the Supervising Officer to enable the Council to carry out inspections. The Provider shall remedy all Service Failures at its own expense.

2.13 The Supervising Officer shall also be entitled to request any information relating to the performance of the Services and such information shall be supplied by the Provider within two (2) working days when request.

2.14 For the avoidance of doubt, the Council may undertake its review of performance by way of any method it considers appropriate. Such review may form part of a random process, a planned inspection or in response to Complaints.

2.15 The opinion of the Supervising Officer in assessing the satisfactory performance or otherwise of the Provider in the provision of the Services and in its application to valuing the Provider's accounts submitted shall be final and binding. All disputes will be managed in accordance with the Conditions of Contract.

### **3. Inspection**

3.1 Overall compliance with the standards set out in the Contract will be assessed in part on the basis of inspections (without prior notice to the Provider). Inspections of work will be carried out by the Supervising Officer within one (1) working days of the Scheduled work completion.

3.2 An unlimited number of additional inspections may be programmed as a result of specific Customer contacts regarding Service Failure or deficiency.

3.3 In addition to reporting requirements outlined in the Specification, the Supervising Officer shall be entitled to request other information or data relating to the day to day performance of the Services. This information shall be provided within one working day or a Service Failure will be assumed for the purpose of the Performance Management Regime.

### **4. Customer Service**

4.1 The Provider will ensure that at all times their employees observe high standards of Customer Service to residents of the districts, the general public and Council staff in order to promote and enhance the Council's image and reputation.

4.2 The Council will monitor the number of validated Complaints received about the Services or Provider on a monthly basis. Validated Complaints will be calculated by the Supervising Officer and validation of the Complaint shall be at the Supervising Officers discretion. A validated Complaint is defined as a Complaint as a direct result of performance, behaviour or Service Failure by the Provider which, has been determined by the Supervising Officer to have been verified or where no reasonable reason can justify the performance, behaviour or Service Failure.

4.3 The reasonable standard for validated Complaints will be deemed to be the same as the six months preceding the Contract Commencement. This figure will be reviewed on 1<sup>st</sup> August 2018. This shall form a Key Performance Indicator (KPI) throughout the life of the contract. Failure to achieve the agreed standard shall be dealt with under the Default procedure.

4.4 Validated Complaints will be monitored using the contract management system and any corporate Complaint management system operated by either NHDC and EHC and; will be reported at the Contract meeting for the preceding month.

4.5 Following a Complaint, the Supervising Officer will require the Provider to undertake a formal investigation to their satisfaction. The Supervising Officer may also undertake their own investigation to supplement information provided by the Provider. The Provider may, at the Supervising Officer's discretion, be required to provide a written report where the Complaint is:-

- i. Deemed by the Supervising Officer to be of a serious nature
- ii. About the Provider's failure to respond to notifications
- iii. About persistent failures
- iv. About inappropriate staff conduct or behaviour
- v. About breaches in health and safety 'safe systems of work'.

## **5. Rectifications, Default and Irremediable Default Notices**

5.1 The Provider is required to rectify or remedy all deficiencies in service provision or performance at its own expense.

5.2 The Council requires a high quality service in line with the Specification. The Supervising Officer shall monitor and supervise the quality of the works in three categories of performance:-

### **5.3 Resources**

This being the level and quality of resources used to perform the Services. Monitoring will ensure that any resources which the Provider committed to allocate to the Services (as agreed and included within the Method Statement) are actually used in its performance. Or suitable alternatives are in place and Services are performing to the required standard in the opinion of the Supervising Officer.

#### 5.4 Management Practice and Delivery

This being the management, 'safe systems of work' and other practices which the Provider has agreed to use in performing the Services as agreed and included within the Method Statements. These may be updated as required in the interests of improving performance or safety with agreement from the Supervising Officer.

#### 5.5 Output

This being the standard of the completed works as defined in the Specification, Method Statements or other Contract instruction such as a Variation order or, other Contract documentation and as referenced in this document (PMR).

5.6 Where the Provider fails to maintain the resource levels, or fails to follow the management practice and delivery, or fails to achieve the standards of output required, then it shall be in breach of Contract.

5.7 The Council shall be entitled to issue a:

- i. Rectification Notice (RN) or;
- ii. Default Notice (DN) or;
- iii. Irremediable Default Notice (IDN)

for each breach of whatever nature. Any notice issued shall specify the breach complained of and if appropriate, the time period within which the Council requires the breach to be remedied.

5.8 The Provider shall immediately act on any Notice by taking the steps required to either remedy the breach complained of within the time specified, together with such other steps as are necessary to minimise the impact of such breach on the overall quality of the Works. Or review and alter working practice to prevent a recurrence.

#### 5.9 Rectification Notices

5.9.1 Minor Service Failures (normally Output failures, examples of which are listed in Appendix 1 to this Schedule) will be dealt with through the issue of a Rectification Notice detailing the location of the breach and timescales to remedy the breach. Rectification Notices will not attract a financial deduction by way of liquidated and ascertained damages, other than in the circumstances described in Paragraph 6.3.

#### 5.10 Default Notices

5.10.1 Where the Provider fails to remedy a Rectification Notice within the specified timescale or it is not possible to rectify the Rectification Notice owing to the time elapse between the Service Failure and its identification by the Council, then the Supervising Officer will consider this a Default and will issue a Default Notice.

5.10.2 Where the Supervising Officer deems the breach to be other than minor this will be considered a Default and a Default Notice will be issued. Such breaches may be identified where:

- i. the level and quality of resources falls below that level detailed in the Method Statement and consequently the standards of Service are likely to/or have fallen.
- ii. the Provider fails to follow those processes which have been designed to control the performance of the Services and which have been included as part of the Contract by way of the Specification or Method Statement. In particular those which impact on 'Safe Systems of Work'
- iii. any Services provided by the Provider which fail to meet the standards required by the Specification and/or other Contract Documentation or Variation Order.

5.10.3 Where the Specification does not provide timescales for remedy of the Default the Supervising Officer will liaise with the Provider to agree in writing an acceptable timescale for remedy. Where there is further failure to remedy the Service Failure or deficiency or Default within the agreed timescale a second Default Notice will be issued and thereafter a further Default Notice shall be issued every twenty four (24) hours until the Supervising Officer is satisfied that the Default has been remedied.

5.11 If any deficient works are discovered as a result of the Provider's own supervision of its work, then the Provider shall rectify its breach (if necessary by performing or re-performing the deficient works) without delay and to the full satisfaction of the Council. In these circumstances, provided there is no loss or damage to the Council, then the Provider shall be entitled to be paid for the Works as if they were properly performed the first time and a Notice will not be issued. For the avoidance of doubt, the Provider agrees to notify the Council of any deficient works of this nature of which it is aware, even where re-performance is not practicable or possible, and irrespective of whether a Rectification Notice, Default Notice or Irremediable Default Notice has been issued, the Provider shall use its best endeavours to resolve the situation.

5.12 Any Service Failure or Default must be logged on the contract management system. Failure to log a Service Failure or Default will in itself be considered a Default.

5.13 Any deficiencies or Service Failures notified to; or discovered by the Provider by 12 noon will be rectified, to the satisfaction of the Supervising Officer, by the timescales set out in the Specification or, if no timescales are identified, by 10:00 the next day.

5.14 Any deficiencies or Service Failures notified to; or discovered by the Provider between 12 noon and midnight will be rectified, to the satisfaction of the Supervising Officer, by the timescales set out in the Specification or, if no timescales are

identified, by 17:00 the following day. For the avoidance of doubt, deficiencies or Service Failures notified to the Provider after 12 noon on Friday would need to be rectified by 17:00 the next day, being Saturday.

#### 5.15 Irremediable Default Notices

5.15.1 Where the Supervising Officer deems the breach to be other than minor and it is not possible to remedy the deficiency or failure to the Satisfaction of the Supervising Officer then an Irremediable Default Notice will be served. An IDN will have the same consequence to the Provider as a Category C Default Notice.

#### 5.16 Default and Irremediable Default Procedure

5.16.1 As a guide, the PMR operates a three stage Default model. Failure to rectify a Service Failure within the required timescales or where a breach is deemed to be other than minor, this results in a first stage Category "A" Notice.

5.16.2 Should the Category A Default Notice not be remedied within the timescales specified or should a similar reoccur within 6 months this results in the issue of a Category "B" Default Notice. Failure to rectify the same breach within 24hrs or if the issue reoccurs within a further 6 months, this will result in the issue of a Category "C" Default Notice. Further failures of the same will result in a Category C Default Notice being issued every 24 hours until the Supervising Officer is satisfied, that the Default has been remedied or alternatively that the Default is no longer relevant or present.

5.16.3 Each stage /category reflects the additional administrative and re-inspection costs incurred by the Council, such sums shall be deducted from the Provider's monthly statement following the review of performance at the monthly Contract meeting.

5.16.4 CATEGORY A - The Supervising Officer, or any other Council Officer responsible for monitoring, will have expended administration and inspection time or resource, investigating, reporting or organising the remedying of any Default therefore the deduction from the Contract Sum shall be:-

- i. £75.00 (Seventy Five Pounds Sterling) per Default. This is classified as a Category 'A' Default Deduction.

5.16.5 CATEGORY B - Where a Default has not been remedied or has recurred within 6 months the Council determines that a Category B Default Deduction will be made from the Contract Sum. The additional expended administration and inspection time or resource, investigating, reporting or organising the remedying of any Category B Default is deemed to be:

- i. £100.00 (One Hundred Pounds Sterling). This is classified as a Category 'B' Default Deduction.

5.16.6 CATEGORY C - Where the Supervising Officer determines that a Default continues to recur at the expense of the required performance of the Services, identified in any Contract documents, the Specification, or Variation Order. Then this will be deemed a Category C Default. The additional expended administration and inspection time or resource, investigating, reporting or organising the remedying of any Category C Default is deemed to be:

- i. £150.00 (One Hundred and Fifty Pounds Sterling) per 24 hours. This is classified as a Category 'C' Default Deduction.

5.16.7 The calculation of the reduction in the value of the Services to the Council under this PMR shall be final. The 3 stage model and associated deductions are summarised in Table 1

Table 1

Category	Reasons for Default	Default Deduction
A	<ul style="list-style-type: none"> <li>• Rectification not remedied within specified timescales</li> <li>• Service failure deemed other than minor, first default notice</li> <li>• Re-occurrence within 6 months</li> </ul>	£75
B	<ul style="list-style-type: none"> <li>• Category A Default not remedied within specified timescales of the Category A Default Notice</li> <li>• Further re-occurrence within 6 months</li> </ul>	£100
C	<ul style="list-style-type: none"> <li>• Category B Default not remedied within 24hrs of the issue of the Category B Default Notice.</li> <li>• 24 hour failure to remedy.</li> <li>• Further re-occurrence within 6 months</li> <li>• An Irremediable Default</li> </ul>	£150

## 6. Hotspot List

6.1 Where deficient Service or a Service Failure occurs more than twice at one address or location in any period of six (6) months or where a higher level Default has previously arisen the Supervising Officer shall be entitled, at their discretion to place an address(es) or locations on the 'Hotspot List'. Address(es) will remain on the 'Hotspot List' at least until the required Service standard has been achieved for a period as defined by the Supervising Officer.



6.2 The Provider's supervisory staff will be required to visit the addresses on the 'Hotspot List' following a scheduled service and sign a declaration to the effect that the Service has been provided to the standard required. Subsequent Service Failures at addresses on the 'Hotspot List' will automatically be deemed to be a Category 'C' Default.

6.3 The Council recognises that excessive numbers of Rectification and Default Notices often go hand in hand with high levels of public dissatisfaction and Complaints and these impact upon the reputation of the Council generating additional administration costs and senior officer input. Accordingly, the following additional amounts will be deducted in relation to Rectification Notices:

#### Rectification Notice Thresholds

i.	0 - 99 Rectification Notices in 1 week	No deduction
ii.	100 - 199 Rectification Notices in 1 week	£5 per Notice
iii.	200 - 249 Rectification Notices in 1 week	£10 per Notice
iv.	250 - 299 Rectification Notices in 1 week	£15 per Notice
v.	300 or more Rectification Notices in 1 week	£20 per Notice

6.4 In each case the Rectification Notice shall be deemed to arise in the week in which the act/omission resulting in the Rectification Notice occurred. A week being Monday to Sunday. The administration charge per notice will apply to all notices occurring in that week once the threshold is reached.

#### 6.5 Remediation

6.5.1 Should the accumulation of deductions accumulate to a value of 2% of the monthly Contract Sum in two consecutive months or three months in any six month period. This will be deemed a Persistent Breach. The Council will serve a Remediation Notice where the following will occur:-

- i. The Supervising Officer may require the Provider's senior manager responsible for this Contract (Director level or above) to attend a 'Performance Failure Meeting'. Such meeting will be held within ten working days of written notification by the Supervising Officer. At this meeting the Provider will be required to account for the performance failure and provide a Remediation Plan to be completed within one (1) month detailing the Providers actions that will return the Service to the required Contract Specification and standard and;
- ii. The Supervising Officer will increase monitoring at the Councils' discretion for a period of twelve (12) weeks. Additional expenses will be at the cost of the Provider and/or;
- iii. Failure to provide either a satisfactory Remediation Plan or to complete the actions in the Remediation Plan may result in the Council invoking the termination provisions under the Conditions of Contract, Clause 15.2.1.

6.5.2 The Provider will be liable for the costs of all activities undertaken by the Council in inspecting, collecting information, attending meetings and any other costs the Supervising Officer deems relevant with respect to this performance review, by way of liquidated and ascertained damages. This sum will be notified to the Provider and deducted from the Provider's next monthly invoice.

6.5.3 Failure of the Provider to provide a senior manager to attend the meeting will not be accepted as a valid reason for delay and the meeting may be held in their absence. The Supervising Officer may then schedule a further meeting at the Council's discretion and at further cost to the Provider.

## **7. Substituted Performance**

7.1 If the Provider for whatever reason regularly fails to perform the works in whole or in part strictly in accordance with the terms of the Contract, or in performing the Services there is an unacceptable level of deficient works, then without prejudice to any other remedy available to the Council, the Supervising Officer may upon prior written notice to the Provider, make arrangements for the Council to provide and perform, by its own staff or the staff of another Provider, such works which the Provider fails to perform or performs deficiently.

7.2 The Supervising Officer will initiate 'Step In Rights', where appropriate and the possibility of utilising alternative contractors at the Providers expense. The cost of providing 'Step In Rights' Services will be deducted from the payments to the Provider, including any additional Council administrative or legal costs.

7.3 In the event of a performance failure and the initiation of 'Step In Rights' the Council shall be permitted to use any of the Provider's equipment in addition to any equipment owned by the Council, to complete deficient works or works that have not been completed by the Provider.

7.4 Where the failure to provide and perform the Services is in the opinion of the Supervising Officer due to the failure of the Provider's management or supervisory staff to perform their work adequately or at all, or is due to the absence of or insufficiency of such staff, the Supervising Officer may effect that part of the Services be managed and supervised by the Council's own staff, or the staff of another professional organisation. In the event that the Council's own staff are used, the Provider shall be charged the hourly rate for those staff including any reasonable on costs or overheads.

7.5 Where another professional organisation is used to perform such part of the Services, the full costs thereof, together with any administration costs, shall be charged to the Provider. The Provider shall ensure that all of its staff utilised in the performance of the Contract co-operate fully with persons appointed to manage or supervise the Services under this Condition.

7.6 Where the failure to provide or perform the Services is in the opinion of the Supervising Officer due to the failure of the Provider to provide adequate equipment, materials and consumables to perform the work properly (including but not limited to insufficiency of equipment, or materials of an inferior quality), the Supervising Officer may provide adequate equipment, materials and consumables to be used by the Provider's staff in the performance of the works.

7.7 In the event that the Council supplies equipment, materials and consumables for the performance of the works, the Provider shall be charged the full cost of that equipment (either the purchase price or hire charge as appropriate) and/or the full cost of those materials and consumables (including, if necessary, the whole of the bulk purchase if it is common to obtain such materials and consumables in this manner), together with any administration and management costs.

## **8. Payment Mechanism**

8.1 Any performance related Deductions will be presented at the monthly Contract meeting and taken from the monthly Contract Sum due in accordance with the payment terms set out in the Conditions of Contract.

8.2 No payment will be made for variable or ad-hoc works which are not completed to the satisfaction of the Supervising Officer.

8.3 The Council agreed to not unduly withhold moneys due to the Provider in the event of a dispute regarding performance Deductions. In this instance the due Contract Sum will be paid minus the deemed Deductions, until a final figure is agreed.

8.4 The Council and the Provider agree that payment for the Services outlined in the Specification will be adjusted throughout the Contract Period to reflect the performance of the Provider in accordance with the Performance Management Regime Deductions.

8.5 All Deductions will be subject to inflation using the indexation as described in the Conditions of Contract.

## **9. Other Financial Deductions**

9.1 The Council has determined that some requirements set out in the Specification have sufficient impact on Service delivery to be managed outside of the Performance Management Regime. This is to ensure there is no material financial benefit to the Provider by not providing the relevant element of the Specification.

9.2 This may include withholding of any sum due for those Services, and the additional costs to the Council of providing or administering those elements of the Service.

## **10. Continuous Improvement**

10.1 The Council wishes to see a continuous improvement in performance where the performance of the Provider leads to Deductions. It is expected that the Provider will outline at the monthly Contract meeting steps which they intend to put in place to reduce occurrences of Service Failure or improve on unsatisfactory or deficient work.

10.2 The KPI's outlined in Appendix 2 to this Schedule will be monitored and reviewed annually and will identify areas of stable performance, continuous improvement or drops in performance. The Service Delivery Plan will be used by the Provider as a mechanism for outlining proposals and actions which will support Service improvement.

10.3 Any action agreed as part of the annual Service Delivery Plan review will be subject to this PMR,