

**STROUD DISTRICT COUNCIL**  
**STRATEGY AND RESOURCES COMMITTEE**

**AGENDA  
ITEM NO**

**11 JULY 2019**

**8**

<b>Report Title</b>	<b>UNITE CONSTRUCTION CHARTER</b>
<b>Purpose of Report</b>	To enable the Committee to consider the implications of adopting the Charter and to make a recommendation to Council.
<b>Decision(s)</b>	<b>It is recommended that the Committee RECOMMENDS to Council that:</b> <b>(1) It adopts the Unite Construction Charter and</b> <b>(2) Requests the Leader to sign the Charter on behalf of the Council.</b>
<b>Consultation and Feedback</b>	Not applicable
<b>Financial Implications and Risk Assessment</b>	It is possible that compliance with the charter may create additional costs for contractors, which in turn would be passed on the Council. This would not be possible to quantify as such costs would be included within quoted prices. This may, in turn, impact on the level of services the Council is able to provide.  Andrew Cummings, Interim Director of Resources & Section 151 Officer Tel: 01453 754115 Email: <a href="mailto:andrew.cummings@stroud.gov.uk">andrew.cummings@stroud.gov.uk</a>
<b>Legal Implications</b>	In order to comply with EU public procurement directives and domestic regulations the Council should ensure that the implementation of the principles in the Charter do not breach obligations to ensure non-discrimination, equal treatment and transparency when conducting procurements. Ability to comply with the Charter should not be used as a pass / fail criteria in the procurement process.  The Charter should be considered as guidance of recommended practice only and should not be given the status of a rigid rule which could result in the Council being challenged for fettering its discretion.  Patrick Arran, Interim Head of Legal Services & Monitoring Officer Tel: 01453 754369 Email: <a href="mailto:patrick.arran@stroud.gov.uk">patrick.arran@stroud.gov.uk</a>
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<b>Options</b>	The Committee can recommend adoption of the Charter or not recommend adoption of the Charter

<b>Performance Management Follow Up</b>	If this Charter is adopted, it will form part of the Council's Procurement Strategy and would be monitored as part of that process and normal contract management.
<b>Background Papers/ Appendices</b>	Appendix 1 – Unite the Union Construction Charter

## **1. INTRODUCTION / BACKGROUND**

The council maintains a strong commitment to social value and sustainability, and as such reviews its procurement processes on an ongoing basis. In doing so, it considers opportunities trialled elsewhere including work undertaken by other authorities. The Council procures construction projects and wishes to achieve the highest standards in direct employment status, health and safety, standards of work, apprenticeship training and nationally agreed terms and conditions.

1.1 Unite the Union has been conducting a campaign with all Councils and Group Leaders across the country regarding their Construction Charter, seeking support to have the terms of the Charter nationally agreed as minimum standard in any local authority procurement policy. The Charter is included as appendix 1 to this report. The Charter has been adopted by a number of Councils, for example, Dudley, Bristol, Corby, Leicester, Birmingham, Manchester, Nottingham and Brighton and Hove.

1.2 The Charter is the result of a campaign to challenge poor practice within the industry that is said to compromise the welfare of workers. It contains eleven requirements including essential points on health and safety, standards of work, apprenticeship training and the implementation of appropriate nationally agreed terms and conditions of employment. It is intended to be a benchmark for the Council's contractors, sub contractors and the supply chain engaged on construction projects awarded by the Council to commit to those standards

1.3 Subject to what is said below, there is no legal reason against adoption of the Charter. In terms of its requirements, several of these are already explicitly required as part of the Council's standard contracting procedures, e.g. compliance with Health and Safety, Competence and Apprenticeships.

1.4 However, whilst it is in order for the Council to adopt the Charter it cannot be treated as a rigid rule and certain elements may need to be analysed and adapted on a case by case basis to suit the Council's circumstances. It should also be noted that officers have had some indications from contractors that, if this were an all or nothing approach, they may not be in a position to tender. This could result in a situation where officers would be unable to compile a tender list, for this reason, it would not be appropriate to use the ability to comply with the Charter as a pass / fail question in a procurement process.

1.5 There will also be a need to avoid unintended consequences such as potential exclusion of SME's due to the requirements of the Charter leading to additional costs / inability to comply. This could hinder the Council's ambitions in relation to ensuring social value in contracts within the District and local procurement from the local supply chain. The Charter is still relatively new and, as stated above, may discourage potential bidders from engaging with the Council.

1.6 Another potential issue is that it may not be possible for all operatives to be directly employed on a PAYE basis. Many small / sub-contractors will be self-employed. It is clear that Unite's intended purpose with this clause is to prevent the use of intermediate payroll companies (umbrella companies) which they believe could dilute employment rights. The Charter does anticipate that use of these companies is allowed, but that there should not be over reliance.

1.7 In terms of blacklisting, Article 9 of the Charter refer to the practice not being acceptable. However, the use of such a list is actually unlawful in any event under the Employment Relations Act 1999 (Blacklists) Regulations 2010.

1.8 In summary, it is recognised there are benefits to applying the Charter; furthermore some of its provisions are covered by existing practices, or can be easily implemented. There are however certain complexities that need to be analysed and worked through in order to avoid unintended consequences. Officers will do this on a case by case basis.

1.9 If approved, the charter will be included within the Council's Procurement Strategy. The charter will not be retrospectively applied to pre-existing contracts.

1.10 By approving and including the Charter in the Council's Procurement Strategy, contracts between the Council and contractors in the construction industry will be strengthened. This Charter also aligns itself to modern slavery and human trafficking which is already part of Council policy.

## Unite the Union Construction Charter

As a Local Authority we are responsible for the procurement of a multitude of construction projects. It is therefore appropriate that we as a responsible client enter into this agreement and commit to working with the appropriate trade unions, in order to achieve the highest standards in respect of; direct employment status, health & Safety, standard of work, apprenticeship training and the implementation of appropriate nationally agreed terms and conditions of employment. The following shall be a requirement for all contractors and their supply chain engaged by this Authority: -

1. All parties recognise that the highest level of compliance with current HMRC regulations must be achieved where public funds are utilised. It is therefore a contractual requirement that all operatives are directly employed on a PAYE basis under a contract of employment. Furthermore the use of intermediary pay roll company will be prohibited on all contracts.
2. Health and Safety of workers on all of our construction projects is paramount. It is therefore a requirement that all contractors rigorously implement and adhere to our minimum standards for health and safety, as set out in our procurement documents. In addition we require all contractors to provide quality welfare facilities fit for purpose in accordance with the Construction Design and Management Regulation of 2015.
3. It is a recognised fact that the presence of trade union safety representatives significantly improves safety in the workplace. Contractors and their supply chain are required to work collaboratively with the appropriate trade unions to identify and implement reasonable real-world initiatives.
4. The Authority requires all projects to be completed to the highest standard, so as to meet the aspirations of the residents of this Authority. In order to achieve this it is recognised that it is necessary that all workers are competent and have the appropriate level of skill to carry out the work they are employed to do. To assist in the achievement of this goal the Authority's contractors and their supply chain will ensure they retain documented evidence that all workers are competent to carry out the work they have been employed to do. They will ensure that such evidence is retained in a way as to allow the Authority or its nominee's to audit the documentation. Possession of the recognised industry skills / grade card such as JIB or CSCS will be considered acceptable evidence
5. The Authority is mindful of the industry skills shortage and the need to address this through appropriate apprenticeships, including adult training in up skilling. The Authority's contractors and supply chain will in consultation with the Authority and other interested parties develop and implement a programme that addresses the skills shortage and provides training opportunities to local residents.
6. The Authority recognises the right of all construction workers to be employed under and to be protected by the appropriate national industry collective agreement. The Authority requires full compliance with all appropriate national agreements applicable to the construction industry.
7. All contractors and their supply chain will accept the right of any trade union that is a signatory to an appropriate national agreement, to appoint shop stewards, workplace health & safety representatives and Union Learning Reps. All trade union accredited representatives will be granted appropriate time and facilities to carry out their responsibilities.

8. The Authority, its contractors and their supply chain are committed to a fair and transparent recruitment policy. All contractors and their supply chain will actively ensure that the engagement of labour is based on the individual's ability to meet the needs of the project and the specific tasks for which they are recruited to undertake.

9. The Authority its contractors and their supply chain agree it's not acceptable for anyone to use or make reference to any form of blacklist.

10. The Authority recognises the benefit trade unions bring to the workplace and the rights of workers to hear from trade union representative. The Authority's contractors and their supply chain are required to allow access to nominated trade union officer from trade unions that are signatories to the appropriate national agreements. Access shall mean access to welfare facilities during working times so as to allow them to consult with their members and potential members.

11. The Authority supports the Get Britain Building campaign, which is aimed at supporting and sustaining the British construction industry. Consequently, all relevant construction contracts will be required to comply with our Authority's Sustainable Buying Standard for Highways and Construction Materials, which requires structural steel and other relevant materials to be covered by BES 6001 Responsible Sourcing of Construction Product certification, or equivalent.