

Living in Hackney Scrutiny Commission
Hackney Council
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05 July 2018

Cllr Margaret Gordon
Chair of Scrutiny Panel

Dear Cllr Gordon,

1. Context

The Mayor's manifesto commits the Council to *"reviewing all its external contracts, looking to expand in house services and increase collaboration with other Councils to improve standards and skills in the construction industry."*

I understand this commitment is partly reflected in the planned development of a Sustainable Procurement Strategy led by the Cabinet Member for Finance and Housing Needs, which will include a defined approach to outsourcing and insourcing of services.

I also note from discussions that there is some appetite among Scrutiny Members that the Scrutiny Panel feeds into this work.

With this in mind I am writing to set out the findings which the Living in Hackney Scrutiny Commission drew from recent work relevant to the above. This is in regards to items exploring the performance and management of some of the larger contracts the Council has with its housing services providers.

We should be clear that our findings relate to updates received on the performance of one specific partnering contract, and a single discussion item focusing the benefits and risks and issues with our on our housing partnering contracts generally.

However, we are handing this evidence over in the hope it can be of assistance in any investigations along the lines of those mentioned above. For our part, this Commission will use it to inform follow up items on a number of issues specific to Housing Services.

2. Points of learning from the evidence gathered:

- Large, long term partnering contracts have helped facilitate very significant levels of investment in the Council's housing stock.
- Some partnering contracts work very well.

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- However, the evidence we have gathered points to the vision of large and long term partnering contracts achieving true partnership working having been misguided.
- Quite stark examples of poor behaviour by partnering contractors have been shared with us.
- It is clear that large long term partnering contracts rely on close and intensive management to ensure value for money for residents. Quality assurance and resident feedback mechanisms should be fully separated from the contractor.
- We support Housing Services' efforts to ensure that this is in place. This includes their termination of an external Clerks of Works contract and it now delivering this function in house.
- Clerks of Works perform a vital role in ensuring quality and value for money for the Council through inspection of materials and workmanship. A restructure resulting in a reduction in capacity of the internal Clerks of Works function appeared to put it under considerable strain. We are concerned that reducing service capacity before seeking to expand it may have compounded known difficulties around recruitment and retention to these positions. 5 of the 9 Clerks of Works in place in March 2018 were filled by agency staff.
- Along with Clerks of Works Quantity Surveyors are crucial to effective quality and cost assurance, helping to ensure the Council pays a fair price for work and improving capacity for quality assurance. We support the work of Housing Services to expand its numbers of Quantity Surveyors.
- Future investigations by the Commission will ask for further detail around the stability of the Clerks of Works and Quantity Surveying functions, and around work to better achieve recruitment and retention of permanent staff.
- We note the very challenging labour market. We make the explicit recommendation that the Council's Housing Services puts in all steps necessary to achieve stable and sustainable in-house Clerks of Works and Quantity Surveying functions. Given the range of issues identified in this report we feel this approach would deliver savings, increased quality and better value for money in the longer term. Future scrutiny items should test this hypothesis further.
- We feel there should be further separation of resident feedback channels (via Resident Liaison Officers) from the contractors delivering works. We feel that Housing Services should seek to incorporate the Resident Liaison function internally, resourced via amendments to contract specifications and values. This will better ensure that Resident

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Liaison Officers are working fully on behalf of and advocating for residents, and that residents have more confidence in the function.

- We support the efforts of Housing Services to tackle aggressive pricing by contractors in the form of under-pricing at tendering stage followed up by over-pricing during the contract's lifecycle. We support work to ensure internal capacity is in place for rigorous checks and scrutiny. Alongside this, we also support work by the Council to adapt procurement processes associated with construction contracts. We heard this was in order to better ensure that information being put forward by contractors at tendering stage was fully and expertly assessed.¹
- We feel the issues identified in our evidence gathering give a strong rationale for the manifesto commitment to review external contracts to look to expand in house services, and to work with other Councils to help deliver improvement to the standards and skills in the construction industry.

3. Summary of findings

The focus of the work has been on Housing Services' partnering contracts (partnering contracts 1 – 9). We understand that these account for large shares of the approximately £246 million in housing contracts which the Council has in place².

The first set of evidence comes from the Commission keeping a specific partnering contract under review over the course of one year – that for Specialist Electrical Services with Morgan Sindall. This was in order to sample test contract management and contractor performance improvement generally.

Updates received on this contract have been very disappointing. There have been significant quantitative performance issues around the completion of repairs and planned works. More widely, there have been deficiencies in the quality of some works, the behaviours of the contractor regarding claims for works and in the level of intensive support Housing Services has needed to provide; up to and including the completion of aspects falling very much in the contractor's remit.

We have heard how Housing Services has sought to drive improvement in the contract. This has been through providing advice and support, but also by

¹ A fuller review might explore this in more detail. We were advised that external consultants would be tasked with carrying out checks on the information put forward by potential contractors. We support work to better ensure accurate submissions of information in order to help tackle aggressive pricing. However, the evidence we have gathered has left us with a view that quality and cost assurance functions around construction contracts should be internalised wherever possible. A fuller review might ask questions around whether this function could be internal to the Council.

² Refers to value of Housing Services contracts on the Hackney Contract Register as stated in paper to Commission

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very close monitoring of works and the issuing of warning notices which will better allow for termination if needed.

Our exploration of the contract has also highlighted the balance Housing Services has needed to achieve in terms of setting down high standards and holding contractors to account against them, whilst also recognising that there is not always the capacity in the market to easily replace them. There had been very few expressions of interest from other potential suppliers for the contract when this was tendered. With Morgan Sindall being responsive to the Council's concerns it was felt that termination was not the appropriate measure at the points of us receiving updates.

We feel that our monitoring of this contract lends weight to the rationale for the manifesto commitment around reviews of all contracts and seeking to expand in house capacity. We appreciate the need for a phased approach, and Housing Services needing to achieve stability for residents by ensuring that adequate internal capacity is in place. This is a challenge in the current market climate.

Our monitoring of this contract suggests that Housing Services is already on a journey towards more direct delivery of works; we heard that it was now able to deliver the majority of emergency lighting works itself rather than to pass this to the contractor. Pre the manifesto commitment mentioned above, we heard that the Cabinet Member for Housing Services had a vision for greater internal delivery. However, there was also caution sounded around the need for a sustainable and incremental approach. We support this.

It is likely that the Commission will receive a further update around the latest position of this contract at a later point.

The second set of evidence was gathered from a one off discussion item on housing contractor performance and management more broadly. This was mainly focused on the partnering contracts 1-9.

Partnering approaches to construction contracts can be broadly defined as an approach which encourages openness and trust between parties to a contract. They are common in the industry. The approach was devised (not by this Council) as a response to previous approaches being criticised as adversarial.

Partnering arrangements can include long term contracts covering multiple projects. It has been said they can better lead to effective working relationships being achieved, and learning from one project or project element being transferred to the next one.

The Council has delivered very significant levels of investment in the Council's housing stock through partnering contracts. Large shares of the Decent Homes Programme was facilitated by them. They are currently being used to deliver further transformative improvements to our estates. The case was

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made that in the vast majority of cases this very high volume of work was being delivered successfully and without incident.

We also heard how the behaviour of some partnering contractors has been excellent.

However, the item highlighted a range of issues. An overarching one – which Housing Officers acknowledged – was that the vision of the partnering approach achieving fully trusting and collaborative relationships between contract providers and their clients, has been found to have been misguided.

We heard stark examples of poor behaviours in partnering contracts. These included instances where contractors had overcharged for works, proposed to deliver (and charge for) work which was not required, incorrectly claimed work to be complete, and delivered substandard jobs. These mirrored but also exceeded the issues encountered within our more regular monitoring of the Morgan Sindall contract.

The item left us with a view that rather than working truly in partnership with their clients, some providers appear to be seeking to take advantage of the collegiate ethos and – in the words of a paper submitted to us – ‘relying on client representatives not looking too closely at the pricing or invoicing’.

On pricing by contractors, we heard that overpricing of works (and other forms of aggressive pricing) was a common issue in the industry, and that there were risks of providers under-pricing in order to win contracts before seeking to re-coup shortfalls through aggressive pricing.

Our short investigations have suggested Housing Services’ recent responses to these issues to have been reasonable.

We support their work to bring greater separation between contractors and quality assurance functions. This has included terminating a contract for external delivery of the Clerks of Works function and a move to an in house model. We also support work to improve internal processes so that Clerks of Works are fully involved in quality assuring work prior to payment.

We do have concerns around Housing Services having reduced Clerks of Works resources to a level which put it under pressure, and from which expansion and greater support was required. We are likely to ask questions around progress towards delivery of a stable and sustainable Clerks of Works function at later points.

Along with Clerks of Works, Quantity Surveyors play a crucial role in quality and cost assurance in contract management. We heard that Housing Services was expanding its numbers of Quantity Surveyors and we support this. We also appreciate the challenges around recruitment and retention in these positions. The Commission will request updates on the work of the service to best achieve sustainable and stable functions.

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We make the explicit recommendation that the Council's Housing Services puts in all steps necessary to achieve stable and sustainable in-house Clerks of Works and Quantity Surveying functions. Given the range of issues identified in our investigations, we feel this approach would deliver savings, increased quality and better value for money in the longer term. Future scrutiny items by this Commission or the Scrutiny Panel should test this hypothesis further.

With resident feedback offering a crucial source through which improvements can be achieved, we have concerns around what we see as an inadequate division of feedback channels from the contractors delivering the work. This is in the form of Resident Liaison Officers often being employed by partnering contractors delivering works, rather than the Council. Housing Services appears to share our concerns around this and has put in steps enabling it to play a greater intermediary role between Resident Liaison Officers and our residents. Officers stated that they would prefer for these functions to be delivered internally. We support this and push Housing Services to seek to do so wherever possible.

We also support the Council's work to tackle aggressive pricing by contractors in the form of under-pricing at tendering stage followed up by over-pricing during the contract's lifecycle. We support their work to ensure internal capacity is in place for rigorous checks and scrutiny. Alongside this, we also support work to adapt procurement processes associated with construction contracts. We heard this was in order to better ensure that information being put forward by contractors at tendering stage was fully and expertly assessed.³

4. Detailed findings - monitoring of Specialist Electrical Services Contract

4.1 Background

At its meeting on the 14th June 2018 the Commission reviewed the latest correspondence relating to its exploration of the performance and management of a specific contract.

That contract – with Morgan Sindall - had replaced a contract with a different supplier of Specialist Electrical Services which had been disbanded due to performance issues. The new contract went live in October 2016.

Given the issues with the previous contract the Commission asked to receive an update on the performance of the new one 6 months into its lifecycle. This was to gain assurance around this specific contract and also to sample test

³ A fuller review might explore this in more detail. We were advised that external consultants would be tasked with carrying out checks on the information put forward by potential contractors. We support work to better ensure accurate submissions of information in order to help tackle aggressive pricing. However, the evidence we have gathered has left us with a view that quality and cost assurance functions around construction contracts should be internalised wherever possible. A fuller review might ask questions around whether this function could be internal to the Council.

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improvement in contractor selection and contract performance management generally.

The first update on the new contract (received in April 2017) showed that the contract had not launched well. Further updates received – in November 2017, February 2018 and most recently June 2018 – have continued to be disappointing albeit with some fluctuations.

This is in relation to quantitative data around the completion of repairs and planned works.

However, the paper submissions and the discussions on them have shown concerns to extend beyond this; to the quality of works, the behaviours of the contractor in its liaison with the Housing Services in some cases, and the extent to which Housing Services has needed to both expend its own resources on activities it was the contractor's responsibility to do, and to micromanage the contract in order to cajole improvement. These are detailed under sections 4.2 – 4.5.

4.2 Quantitative performance

Morgan Sindall are Housing Services' back up contractor for electrical repairs. This means they perform the reactive repairs which the internal Council repairs function (the DLO) does not have the capacity to deliver directly.

Morgan Sindall was asked to deliver 1452 reactive repairs between October 2016 and April 2018.

In the worst performing monitoring period only 24% of repairs jobs allocated to Morgan Sindall were completed. Performance did recover after that point. However, the most recent three reporting periods have still seen between 35% and 44% of jobs raised with Morgan Sindall not being completed.

Morgan Sindall were also contracted to deliver planned works. A number of these have been downsized, delayed, and or transferred to another contractor to deliver due to poor progress by Morgan Sindall.

At the time of the first update in April 2017, none of the £810,000 worth of works which should have been delivered by that point had been. At a later point the Estate Lighting, Lateral Mains and Internal Rewiring programmes which had been planned had been downscaled. At a further point the (already downscaled) Internal Rewires programme was transferred over to another contractor due to the lack of progress by Morgan Sindall.

We do note that the June 2018 showed Morgan Sindall to have improved its capacity to take on greater numbers of reactive repairs jobs without significant impact on performance, to have made good progress towards the delivery of the latest estate lighting programme, and to appear to be on track for starting the lateral mains programme in July.

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However, this did not discount from planned works on estates previously committed to not being delivered and backlogs in repairs cases building. The Council's Director of Housing Services who was in attendance at the June meeting acknowledged that issues remained.

4.3 Quality

There have also been quality issues with some of the work delivered. We heard that poor site supervision by Morgan Sindall had left them needing to redo works due to its standard and quality falling below the required standards. We were advised that these quality issues had been associated with sub-contractors and a lack of oversight and supervision by Morgan Sindall.

We understand that only through close inspection activity by Housing Services were these issues identified and rectified.

4.4 Need for very close management by the Council, and the Council having to fulfil role of contractor

Significant Council resources have been deployed on the management of the Morgan Sindall contract. As mentioned above, the Council has found itself needing to carry out quality assurance of works delivered by subcontractors which Morgan Sindall should have been doing directly.

Housing Services themselves also gave a damning assessment of Morgan Sindall's ability to design and manage programmes, which had led to it effectively needing to do so on its behalf. The paper received in November stated that:

Overall MS had demonstrated a lack of project management and electrical design skill. The client officers are constantly having to inform MS officers what they should be considering and how a program should be put together. MS should have the capability to organise, design and deliver electrical programs, however they have not been able to demonstrate this to the degree we were led to believe during the tender and mobilisation stage.

In the November meeting Officers reported having found there to have been a need to manage and supervise the contract more closely than should have been the case. In February we heard that client-side arrangements had needed to be strengthened, with progress meetings now held every two weeks.

This added to the additional resources which had already expended on managing the contract and seeking to help facilitate improvement. For example, further to Morgan Sindall changing their entire project management team (in December 2016) in response to the Council's close management and raising of concerns with the calibre of the previous team, the Council then provided training and spent considerable time working with the new project management team. Despite this, continued poor performance led to four Early

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Warning Notices (EWN) having been issued by March 2017. A third restructure was delivered in late 2017, meaning the Council needed to work with another new client-group.

4.5 Aggressive pricing

The November paper to the Commission advised of issues which the service defined as aggressive pricing. The paper suggested that this took the forms of Morgan Sindall seeking to claim for works or elements of works which were already incorporated into other payment arrangements, and also claiming for greater amounts of work than appropriate.⁴

The update received in February 2018 reported that these issues appeared to no longer be in evidence further to detailed discussions with Morgan Sindall, although that the service would continue close monitoring.

When giving evidence to the Commission officers reported that aggressive pricing was a common issue, and that there were risks that providers would under-price in order to win contracts before seeking to recoup this at later points. It was felt in hindsight that some of the prices put forward by Morgan Sindall were unrealistically low.

5. Detailed findings - general item on contracts managed by Housing Services

5.1 Background

Following the disappointing performance of the new Specialist Electrical Services contract and historical issues with another former contract emerging during last year, the Commission asked for a broader item in relation to housing contractor performance and management. We hoped to gain an insight into the details of our larger contracts and the benefits and risks of these arrangements.

This was presented to the Commission in its November meeting.

The item was mainly focused on the partnering contracts which Housing Services has in place. We understand that these Partnering Contracts (1-9) account for large shares of the approximately £246 million in housing contracts. For example, we were advised that £89 million of works was being delivered within Partnering Contract 1.

5.2 Partnering Contracts - definition

We understand that partnering in relation to construction contracts can be broadly described as an approach which encourages openness and trust between parties to a contract.

⁴ This is our interpretation of the following extract of the paper submitted to the Commission in November 2017: *“Although all works are priced using Schedule of Rates (SOR), there have been occasions where MS have added items, which formed part of the original SOR, and where therefore included as part of the pricing framework. In additional quantities were also inflated.”*

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This approach was devised in response to criticism of previous approaches to construction contracts for being adversarial. In partnering, there is a focus on parties being dependent on one another for success. Longer term partnering contracts can - it is felt - bring greater opportunity for establishing effective working relationships which benefit all parties, and customers. Partnering contracts can cover multiple projects; this is referred to as strategic partnering⁵.

5.3 Current and previous use of Partnering Contracts by Housing Services

The Council's current Partnering Contracts include agreements for the delivery of the Housing Investment Programme (a programme delivering improved kitchens, bathrooms, roofs and windows), Major Works (the improvement or repair communal and structural parts buildings), and a range of other services including the maintenance of lifts and door entry systems.

Some of the individual contracts within the Council's Partnering Contract are for five year terms.

The Council previously took a Partnering Contract approach to the delivery of its Decent Homes Programme.

A paper provided to us included extracts of reports to Cabinet during 2002 which set out the benefits of taking a strategic partnering approach in the delivery of Decent Homes. These included the putting of the Council in a better position to deliver large programmes of work, the gaining of input from experts at early points, faster works completion and the ability to transfer points of learning from one project to another.

5.4 Benefits and successes of partnering contracts

It should be noted that the use of partnering contracts has coincided with the delivery of significant improvement to the conditions of the Council's housing stock. Large shares of the Decent Homes and more recent improvement programmes were facilitated by these contracts. In the March 2018 meeting we heard how the last two years alone had seen the delivery of new windows to 195 blocks and new roofs to 117 buildings and that 2,800 and 2,673 homes had received new kitchens bathrooms respectively.

Whilst acknowledging issues which we detail further below, Officers and the Cabinet Member also pointed out that the majority of works within these large programmes had been delivered effectively and successfully.

In addition, some of the Partnering Contracts are working very well. We heard that the providers fulfilling Contracts 6 and 7 have been exemplary in their behaviours.

This said, there are a range of issues with other partnering contracts which the Council has acknowledged, and is seeking to address.

⁵ Drawn from designingbuildings.co.uk article ['Partnering in construction'](#)

5.5 Issues with Partnering Contracts - aggressive pricing and dishonourable culture

The partnering approach was designed to foster trusting and collaborative relationships between contract providers and their clients.

Evidence shows this vision to have been idealistic.

We mentioned earlier aggressive pricing by Morgan Sindall – a provider of one of our Partner Contracts - in the form of excessive claims for works.

However, the paper submitted to us highlighted that these behaviours and others were common in other partnering contracts, and across the industry generally. Stark examples were given to us where contractors had overcharged for works, proposed to deliver (and to charge for) work which was not required, incorrectly claimed work to be complete, and delivered substandard jobs.

Rather than working truly in partnership with their clients, some partnering contract providers appear to be seeking to take advantage of this approach whilst relying – in the words of the paper submitted to us – ‘on client representatives not looking too closely at the pricing or invoicing’, and on clients not having internal resources to carry out full checks of works.

5.6 Response by the Council to these issues

It was Housing Services themselves who confirmed to us the range of issues with the partnerships contracts. We are grateful for their candour in this regard.

They also detailed their recent responses to them, which appear from this short investigation to be reasonable.

A key one has seen greater separation of quality assurance from external contractors, and Housing Services building up and best aligning its internal resources so that it can perform this function more effectively itself.

Clerks of Works are crucial to the quality assurance process. Their role is to ensure value for money for the client rather than the contractor, through detailed inspection of the materials and workmanship throughout the building process.

The Council previously contracted out the Clerks of Works function to an international consultancy and construction company (MACE). As part of work to reduce the service's reliance on external providers, this contract was terminated and replaced with an internal function. We support this. We also support the Council's work alluded to in the November paper around ensuring effective systems are in place to better ensure full sign off of works before payments are made and Clerks of Work involvement in this¹.

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Quantity Surveyors are another important resource in ensuring effective delivery by contractors. Quantity Surveyors are construction industry professionals with expertise on costs and contracts. Effectively deployed, they can help ensure the Council and its residents pay a fair and reasonable price for works, and improve the capacity for quality assurance. In meetings Officers have confirmed that the Council has increased its numbers of Quantitative Surveyors. We support this⁶.

In questions to Officers Commission Members have often queried the mechanisms through which feedback is received by residents, and how this is used to help drive improvement. We see resident feedback as another important element of quality assurance.

Perhaps reflecting the over optimism around the capacity of partnering contracts to engender trusting and reliable relationships, there has been what we feel to have been an inadequate division of feedback channels from the contractors delivering the work.

This has been manifested in Resident Liaison Officers being employed by the contractors rather than by the Council. Resident Liaison Officers are generally responsible for helping ensure a customer focus in work. They will be a contact point for customers and perform duties such as door to door visits and survey drops.

From papers to the Commission and in accounts given to us, Housing Services appear to share our concerns around this, and to be working to play a greater intermediary role between Resident Liaison Officer and our residents.

In November's meeting itself and in response to questions, the previous Director of Housing confirmed that he shared the Commission's desire for these resident liaison functions to be delivered in house wherever possible. He confirmed that partnering approaches had led to environments in which significant amounts of oversight work were contracted out to major providers, but that learning had later shown closer management and monitoring of these contracts to be required.

He asked that the Commission report any specific concerns to him directly around the effectiveness of Resident Liaison Officer services delivered by contractors, as this could better enable the council to cease the elements of contracts which gave this role to contractors.

We would support the Council's building of an evidence base to better enable more independent Resident Liaison functions to be delivered within existing partnering contracts. In addition - given the issues highlighted around the limited extent to which partnering has translated into trustful relationships - we see there being room for the Council in any future major contracting to seek to

⁶ Any more substantial future visit to this topic by the Commission might seek to explore the effectiveness of the Quantitative Surveying function in the Council.

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take on itself greater elements of the Resident Liaison work by default, and for this to be reflected in future contract specifications and values.

6. Concluding remarks

I hope the findings documented here are of some assistance in any work by the Scrutiny Panel around approaches to procurement, reviews of contracts, and the scope for greater in house delivery.

Yours sincerely,

Cllr Sharon Patrick



Chair, Living in Hackney Scrutiny Commission

Evidence referred to in this paper.

This paper refers to evidence submitted to and gathered by the Commission in 4 of its meetings. The records of each item referred to are available via the links below:

Meeting of 5th April 2017

- *Update on the performance of the Specialist Electrical Services Contract –*

mginternet.hackney.gov.uk/mgAi.aspx?ID=28378

Meeting of 20th November 2017

- *Update on the performance of the Specialist Electrical Services Contract*

mginternet.hackney.gov.uk/mgAi.aspx?ID=30281

- *Wider context on contracts managed by Housing Services item:*

mginternet.hackney.gov.uk/mgAi.aspx?ID=30282

Meeting of 21st march 2018

- *Cabinet Question Time - Cllr Clayeon McKenzie, Cabinet Member for Housing Services*

<http://mginternet.hackney.gov.uk/mgAi.aspx?ID=31145>

Meeting of 14th June 2018

- *Item 9 - Response to Commission letter on Housing Services' Specialist Electrical Works Contract*

mginternet.hackney.gov.uk/ieListDocuments.aspx?CId=119&MId=4428&Ver=4

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¹ Whilst we support the work to internalise the Clerks Of Works function, we should be clear that we maintain concerns around ensuring that adequate numbers are in place, and the Council having reduced the resource in a restructure before soon after seeking its expansion. In November 2017 we were advised numbers had reduced from 12 to 6 following a restructure and that staff remaining were now under pressure. We were advised that the service was seeking to alleviate this by exploring the possibility of recruiting a dedicated post to fulfil record keeping tasks, and by developing a business case to expand the Clerks of Works numbers. This appeared to have been successful as in March 2018 we were advised that the numbers had increased to 9.