LEADER’S URGENCY REPORT

May 2017

LEARNING DISABILITY PROCUREMENT STRATEGY & DIRECT AWARD OF CONTRACTS FOR FLEXIBLE SUPPORT

Report of the Leader – Councillor Stephen Cowan

Open Report

Classification - For Decision

Key Decision: Yes

Other services consulted: Finance, ASC Procurement, Corporate Procurement, Risk Management, Legal

Wards Affected: All

Accountable Director: Mike Boyle, Director of Strategic Commissioning and Enterprise Adult Social Care and Health

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Reasons for Urgency:

1. Section 5 of the Care Act 2014 places express obligations on the Council to secure the supply of care services, assure its quality through contracts, design strategies to meet local need and to market shape;
2. Two existing contracts for vulnerable adults with learning disabilities expires on 30th June 2017;
3. The attached Report sought approval at 5 June 2017 Cabinet, now cancelled, to waive the Council’s Contract Standing Orders to allow the direct award of a contract to each of the two existing providers;
4. The direct award of the contracts will assist in stabilising the provider market and secure services for vulnerable adults with learning disabilities pending the implementation of the revised strategy and procurement approach.

Date by which decision is required: 5 June 2017

The Leader has signed this report

DATE: 9 May 2017
1. EXECUTIVE SUMMARY

1.1 This report sets out a revised strategic approach for the delivery of learning disabilities (LD) services within Hammersmith & Fulham, a replacement procurement strategy, and justification for the direct award for two LD service contracts to existing providers.

1.2 Approval is sought to:
   a) procure delivery providers with a revised strategic approach of the strategic requirement included, and
   b) use the competitive procedure with negotiation rather than competitive dialogue.

1.3 Currently services are delivered by two block contracts for supported housing and residential care for people with LD. The contracts have a total annual value, exclusive of Personal Budgets, of £2,789,158 (see Table 1).

1.4 Approval is also sought to waive the Council’s Contract Standing Orders to allow the direct award of a contract to each of the two existing providers.

2. RECOMMENDATIONS

2.1 To waive Hammersmith & Fulham’s Contract Standing Orders, in accordance with Table 3.1 of the same, to allow two contracts for learning disability services and which expire on 30th June 2017, to be extended to 30th June 2018 by means of a direct award to the existing providers (see Table 1).

<table>
<thead>
<tr>
<th>Provider</th>
<th>Contract</th>
<th>Length of Extension</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yarrow Housing (YH)</td>
<td>9 Homes, 43 units</td>
<td>(1 year) 30th June 2018</td>
<td>£2,657,276</td>
</tr>
<tr>
<td>Metropolitan Housing Trust (MHT)</td>
<td>3 Homes, 12 units</td>
<td>(1 year) 30th June 2018</td>
<td>£131,882</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>12 Homes, 55 units</strong></td>
<td></td>
<td><strong>£2,789,158</strong></td>
</tr>
</tbody>
</table>

2.2 To approve:
   a) the revised strategic approach for the procurement of support and services to promote choice and control for people with learning disabilities, and
   b) the procurement of the delivery provider contract using the competitive procedure with negotiation. This procurement procedure will replace the one approved by Cabinet on 5 September 2016.

2.3 To note the contract term of seven years with the option to extend for a further period of up to five years. Subject to the outcome of the procurement exercise, it
is envisaged that providers will require approximately two years to review, evaluate and implement personalised approaches and start to deliver any efficiencies. The development of the provider market and any potential innovations will take further time to develop. The contract term, will encourage provider investment in the service; allowing the full benefits of the transformation to be realised and to create an attractive offer for a limited provider market.

3. REASONS FOR DECISION

3.1 The Care Act 2014 sets out express obligations for local authorities to promote customer choice, options for customers to manage their personal budgets and to market shape.

3.2 Two existing contracts for accommodation-based support for 55 people with learning disabilities, have not been subject to a competitive tender for several years. The original YH arrangement was established by a health authority service in 1989, based on implied terms rather than a formal written contract. The service was transferred to the Council in 1995 and 1996. Following agreement on an LD strategy, in Oct 2013, the Cabinet approved the direct award of a 2-year contract to allow for planning, review and remodelling of the service. With the change to a Shared Service prompting a review of the strategic approach, two further direct awards were approved totalling 21 months. Previously part of these Yarrow contract, the 52 month MHT contract was tendered in 2013. In July 2016, the Cabinet agreed to invoke the contract termination clause to co-terminate on 30th June 2017 with the YH contract.

3.3 Since April 2014 contract terms have been renegotiated with YH to realise efficiencies of over 12% or £333,471. MHT has also identified savings and added value initiatives. This procurement exercise will address the compliance issues relating to direct awards, transparently test the competitiveness of the current service delivery and facilitate the selection of a pre-qualified delivery provider to develop the service to meet the Council’s strategic aims.

3.4 The direct award of contracts will also assist in stabilising the market and provide time for additional customer and provider engagement, and if approved, the procurement of the new delivery provider contracts.

3.5 The proposed delivery provider contracts fall within the Light Touch Regime of the Public Contracts Regulations 2015, allowing significant flexibility in the procurement procedure to maximise benefits. The proposed competitive procedure with negotiation has several advantages over the previously agreed competitive dialogue procedure for the three-borough service:

- It is more suited to a smaller value procurement as it is less costly and resource intensive;
- Subject to bidder agreement, procurement timescales can be reduced, if necessary;
- There is flexibility to reserve the right not to negotiate and simply award on initial tenders, if appropriate;
• It allows the Council, if required, to reduce the number of bidders in successive stages;
• To develop a sustainable provider market to improve customer choice.

The alternative open and restricted procedures do not provide the ability for the Council to address issues which arise in tenders; a risk with the procurement of services that contain elements of design and innovation for vulnerable LD adults.

3.6 It is anticipated the revised contract model will realise efficiencies and added value benefits, as well as further in-contract efficiencies through continuous improvement. Indicative savings shown in Appendix 2 – Business Case, section 06, “Costs & Benefits” will be subject to verification upon receipt of bids and clarified in the Contract Award Report to Cabinet.

4. INTRODUCTION AND BACKGROUND

4.1 In July 2016, the Cabinet Member for Health and Adult Social Care and the Leader of the Council, agreed to waive the London Borough of Hammersmith & Fulham’s Contract Standing Orders and extend the existing contract with Yarrow Housing by direct award, and to invoke the break clauses in the Metropolitan Housing Trust contract, for both to terminate on 30 June 2017. This allowed time for and supported the development of a new strategy for the learning disabilities services.

4.2 In September 2016, the Cabinet approved the procurement of a strategic provider to deliver flexible support for people with learning disabilities using the competitive dialogue procedure and the award criteria weighting of 40% price and 60% quality.

4.3 Following additional engagement with customers, provider soft market testing and the recruitment of additional project and procurement skills, the OJEU Prior Information Notice, used as the call for competition, was due to published in April 2017.

4.4 In March 2017 the Royal Borough of Kensington and Chelsea and Westminster City Councils’ decision to end the Shared Service arrangement with Hammersmith & Fulham, has prompted the Adult Social Care Strategic Commissioning and Enterprise to review the Adult Social Care procurement strategies for services across the three boroughs. In April Hammersmith & Fulham decided to procure the LD flexible support service separately.

4.5 YH’s Care Quality Commission rating is “good” across all services. They are also leading on the development of new supported housing accommodation within the borough for people with complex physical health needs. MHT continue to work closely with the Council to develop staff skills relevant to the increasing level of customers’ needs.

4.6 The Housing Strategy for Learning Disabilities highlights the growing need for supported living and suitable housing. Increasingly people with eligible needs
have mobility or behavioural issues requiring specific support. Work is underway to improve access and choice of suitable accommodation and support and more fit for purpose housing. Delivery providers will be expected to improve support pathways; expanding choice and access to accommodation.

4.7 Over thirty percent of the adult LD service provides care and support to older adults with complex needs. The remaining customers have a range of needs and are from a range of age groups. Anonymised profiles demonstrating typical customer history and level of need are included at Appendix 4. The service is predominantly delivered in supported living accommodation and two residential care homes as detailed at Appendix 1.

5. BUSINESS PROPOSALS AND ISSUES

5.1 A Business Case is included at Appendix 2.

5.2 Evidence (TLAP 2015) shows positive impacts of flexible support with improved well-being, outcomes, satisfaction and efficiency. Paid support is targeted only where needed, making the most of networks, families, and assistive technology.

5.3 Evidence from Southwark (Better Lives, 2015) demonstrated significant savings over 4 years for a provider moving from a block contract to contracts for 83 ISFs.

5.4 Indicative efficiencies are anticipated compared to the existing block contracts, as well as added value benefits, and further in-contract efficiencies through continuous improvement. This is supported by a pilot project undertaken during 2015/16. To maximise efficiencies requirements will be based on outcomes underpinned by key performance indicators linked to a capped proportion of the provider’s income. Where projected efficiency savings are exceeded the Council will share in any gain with the delivery provider.

5.5 Tender documentation, although based on the earlier procurement strategy, is well advanced and requires minimal alteration for the revised strategy.

5.6 Tender prices and in-contract efficiency savings will need to be considered in the context of the changing economic climate of: increasing inflation; the introduction of the London Living Wage (LLW); the increased Care Quality Commission registration costs; the potential impact of the National Minimum Wage (NMW) and National Living Wage (NLW) on sleep-over shifts; an increasing number of young adults with more complex and higher levels of need; an increasing older proportion of the LD population with age-related needs, and the uncertainty of staff retention and costs following the referendum to leave the European Union.

5.7 As similar activities performed by the current delivery providers are to be performed by the successful bidder TUPE may apply. The Council will adopt a neutral position on the applicability of TUPE and require bidders to undertake their own due diligence and seek professional advice on its applicability and impact on their costs.
5.8 The procurement of delivery provider contracts with a strategic performance element will ensure personalised approaches are developed as well as choice in how needs and outcomes are met. The contract would require the delivery provider to:

- deliver flexible support to meet the needs of people’s desired outcomes and the required quality standards including those delivered by other providers;
- have systems accountable and personalised approaches to ensure people are fully involved in how and when their support is arranged;
- focus on outcomes maximising people’s community/family networks, and assistive technology, so paid support is used only where needed;
- promote choice for individuals in how and when their support is delivered.

5.9 Care Act statutory guidance states Councils should have an Individual Service Fund (ISF) offer. An ISF gives a person choice about how their needs are met and how support is provided, without having to manage the budget (as in a Direct Payment). The delivery provider holds and accounts for the budget and works with the person to plan support and deliver it flexibly in line with needs and outcomes. An ISF agreement between the person and provider sets out costs, support and how to end the agreement.

5.10 Appendix 3 sets out in detail the proposed procurement approach plan.

6. OPTIONS AND ANALYSIS OF OPTIONS

6.1 There are several procurement and contract options available to the Council in relation to the service contracts:

a. Allow current contracts to expire and offer customers direct payments;
b. Allow current contracts to expire and move to spot contract arrangements;
c. Re-procure new contracts for all block arrangements;
d. Commence a procurement exercise to establish a contract for flexible support; but have available other options e.g. spot contracts and block contracts.

Analysis of Options

6.2 Option a: is not recommended, although there is a strategic aim to increase uptake of direct payments, these will not be suitable or favoured by all customers, requiring the continuation of direct contracts with delivery providers.

6.3 Option b: Moving entirely to spot arrangements is not recommended as it will not allow the Council and the delivery providers to develop the market to meet the market shaping, choice and control requirements of the Care Act 2014.

6.4 Option c: Re-procuring all as block contracts is not recommended as it does not support market choice for customers with learning disabilities. It does not offer the flexibility required to be fully responsive, accountable and person-centred.
6.5 Option d: is the **recommended option** as a contract for the delivery of flexible support with a delivery provider, retaining the option to have some separately procured block contracts, adds to the range of contractual approaches available to the Council, underpins strategic objectives, and meets the Care Act 2014 obligations of promoting choice.

7. CONSULTATION

7.1 There has been extensive consultation with Hammersmith & Fulham customers and advocates regarding the Learning Disabilities Procurement Strategy. Meetings with customers and provider soft market testing have been held on the proposed procurement. Existing providers have also been consulted on the proposed extension.

7.2 Customers will be provided with updates on the procurement process and will be involved in the evaluation of delivery providers.

7.3 Existing providers have been formally advised of the ending of the Shared Service arrangement between the three councils and the impact on the current procurement strategy agreed on 5 September 2016. The Council also confirmed the continuing commitment to service changes to comply with the Care Act 2014.

8. EQUALITY IMPLICATIONS

8.1 The services included in this report are for vulnerable people with learning disabilities. The proposed contracts will enhance the boroughs existing offer by extending choice, control and community engagement. The improved flexibility of support to meet people’s needs will have a positive impact on people with LD therefore an Equalities Impact Assessment has not been completed.

8.2 The requested direct award will maintain service continuity and support service improvements as proposed in the Learning Disability Procurement Strategy.

9. LEGAL IMPLICATIONS

9.1 With reference to the recommendation under paragraph 2.1 (b) of this report, the principles of awarding a contract in accordance with Regulation 76(1) of the Public Contract Regulations 2015 ("the Regulations"); allows the London Borough of Hammersmith & Fulham to determine the procedure to be applied to award a contract and take into account the specificities of the service in question. However, the procedure must ensure compliance with the principles of transparency and equal treatment of economic operators.

9.2 The recommendation to directly award the two separate contracts to the incumbent providers without advertising, subject an approved waiver, under the Council's Contract Standing Orders relate to contracts for the provision of
services that fall within the Light Touch Regime (LTR) under Chapter 3 Section 7 of the Regulations as set out in Schedule 3 for contracts relating to social and other specific services. Albeit, that the contracts fall under the LTR, contracts with a value above £589,148 are subject to the full extent of EU procurement rules under the Regulations. The proposed contracts to be directly awarded to the providers should comply with the Treaty principles of openness, fairness, and transparency.

9.3 Due to the contract value in respect of the direct award to Yarrow Housing there is a risk of challenge, in that, the council has fallen foul of the Regulations. A procurement challenge may be mitigated to some degree as a tri borough procurement strategy has commenced, in which, a PIN Notice was about to be issued with reference to all three councils. However, due to the recent decision of the Royal Borough of Kensington and Chelsea and Westminster City Council giving notice to the London Borough of Hammersmith & Fulham to terminate the current shared services arrangements. A review of the current tri borough procurement strategy has had to be undertaken as the decision made by the other two councils may have an adverse effect to this strategy and the provision of the service being delivered in the future. An approved waiver to directly award these contracts for a further interim period will enable the revised procurement strategy plan recommended to be completed.

Shared Legal Services – Sharon Cudjoe/Solicitor – Tel: 020 7361 2993

10. FINANCIAL AND RESOURCES IMPLICATIONS

10.1 The annual contract values for the 2 contracts to be extended for 1 year is £2,789,158 as detailed in section 1.8 of the report. These contracts are fully budgeted for within the ASC budgets, with a recharge to Health for any services they access at full cost of service.

10.2 The Yarrow Housing contract has delivered savings in 2014/15 of £300k and in 2015/16 of £33,471. Total savings £333,471 as detailed in section 3.2.

10.3 The procurement strategy to support services and promote choice for people with Learning Disabilities, is anticipated to deliver efficiencies, however, these may be offset by cost pressures i.e. London Living Wage. The full financial implication of the procurement exercise will be detailed in a further cabinet report to award the contract.

Finance comments by: David Hore, 020 8753 4498
11. **IMPLICATIONS FOR BUSINESS**

11.1 The strategic delivery transformation will potentially promote local business opportunities for care and support providers including small and medium enterprises.

11.2 It is anticipated that borough-based organisations will express interest in submitting bids for the procurement of the delivery provider and any additional support staff employed are likely to live locally.

12. **RISK MANAGEMENT**

12.1 Market Testing is a corporate risk, delivering the best possible service at least cost to the local taxpayer. The report acknowledges that the Council has had to re-assess its procurement approach following the decision of Westminster City Council and the Royal Borough of Kensington and Chelsea to withdraw from Shared Services. The priority has therefore been to mitigate the risk of service interruption, risk 6 on the corporate risk register by recommending a direct award to the current service providers. This will result in creating the additional time necessary to re-evaluate the procurement approach, enabling a full review to take place of the options available outside of a Shared Service.

12.2 Faced with unprecedented pressures on social care budgets an additional market risk exists resulting from National Government funding. The provider market continues to experience cost pressures with Councils continuing need to achieve efficiencies. This is impacting on and limiting the number of companies willing to bid for services.

Risk Management implications verified by: Michael Sloniowski, Shared Services Risk Manager telephone 020 8753 2587.

13. **PROCUREMENT IMPLICATIONS**

13.1 The services being procured are defined under the Public Contract Regulations 2015 as “Social and other Specific Services” and fall under the “Light Touch” procurement regime. Their financial value is above the EU threshold of £589,148 for “Light Touch” services, meaning a mandatory contract advertisement must be placed in the Official Journal of the EU. After placing the advertisement, however, the council has considerable discretion in how the procurement is run, so long as it is conducted in a fair, transparent and non-discriminatory manner.

13.2 ASC Procurement supports the report’s recommendation and the procurement strategy detailed in Appendix 2. Given the innovative nature of the proposed delivery model, the importance of getting the various aspects of the contract right for all concerned, and attendant risks, makes the running of a conventional tender problematic. ASC Procurement supports the use of competitive procedure with negotiation (CPN) compared to the previously approved competitive dialogue procedure. In comparison, the competitive procedure with negotiation
will require less procurement and project management resources and carries less risk. It is more suited to the value of this procurement, should deliver quality outcomes, as well as avoiding potentially costly problems occurring in final tenders and service delivery. The council can also reserve their right not to negotiate if tenders allow.

13.3 The Procurement Team have provided advice and support to the service department in the drafting of this report and will continue to do so during procurement through to contract award.

13.4 Whilst the existing arrangements remain in place, Commissioners should continue to seek service and efficiency improvements from the current providers for the duration of the contracts, in line with the Council’s contracts review programme.

13.5 It is noted that it is proposed that the contract term is for seven years with the option to extend for a further period of up to five years. There should be a fundamental review in year five of the contract to (i) assess the performance and success of the model and contract in the first five years (ii) come to a view for Member decision as to whether the model is the best one to continue with to meet future needs after year seven (iii) to come to an informed decision whether to enact the option to extend for 5 years or start a procurement process in year 6.

**Procurement comments provided by Michael Sprosson, ASC Commercial Development Lead, email: michael.sprosson@rbkc.gov.uk**

**Corporate Procurement comments 13.4 and 13.5 provided by Joanna Angelides, Procurement Consultant, Ext. 2586**

14. **IT STRATEGY**

14.1 There are no IT system implications for the two direct awards of contract for the services detailed at section 2.3 of this report.

14.2 To improve efficiency for both the Council and delivery provider there will be a requirement for the delivery provider to design and implement a shared IT platform for the reporting on performance and access to individual support plans.

15. **SOCIAL VALUE**

15.1 The Public Services (Social Value) Act (2012) requires public bodies in England and Wales to consider how the services they commission and procure might improve the economic, social and environmental well-being of the area.

15.2 The following social value benefits are intrinsic and core to the delivery of effective flexible support for adults with learning disabilities, maximising community assets and vulnerable adults’ ability to experience choice and independence and play a full role in the community:
a) Create meaningful employment opportunities and training for customers;  
b) Create employment and training opportunities for local people, such as personal assistants, carers and trainers and/or micro enterprises.

16. PRIVACY IMPACT ASSESSMENT

16.1 PIA screening has been undertaken. There will be a full PIA prior to procurement commencement as any new providers may need to hold or share information about individuals.

17. INDICATIVE TIMETABLE

<table>
<thead>
<tr>
<th>Stage</th>
<th>Deadline</th>
<th>Governance Stage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deadline for Receipt of Final Reports for Cabinet</td>
<td>22 May 2017</td>
<td></td>
</tr>
<tr>
<td>Cabinet Agenda Despatch</td>
<td>24 May 2017</td>
<td>5 June 2017</td>
</tr>
</tbody>
</table>

17.1 A detailed project plan is included at Appendix 3.

Background Papers – All published

Care Act 2014: care and support statutory guidance DH 2016  
https://www.gov.uk/guidance/care-and-support-statutory-guidance

Individual Service Funds (ISFs) and Contracting for Flexible Support. Practice guidance to support implementation of the Care Act 2014, TLAP 2015  
http://www.thinklocalactpersonal.org.uk/_library/Resources/SDS/TLAPISFsContractingFINAL.pdf


http://www.local.gov.uk/documents/10180/7519026/lq+procurement+-+National+social+care+category+strategy+for+local+government/dc65f5a4-5c2d-4ba4-92c7-a25b8f58fa09

Refer to Cabinet Papers:

- Direct Award of a Contract for a Learning Disability (LD) Service and Early Termination of the Contract for a LD Service – 4 July 2016
- Extension of Contract with Metropolitan Housing Trust Provision of Supported Accommodation for People with Learning Disabilities – 26 March 2015;
Appendix 1 – List of Accommodation Based Services In-Scope (for privacy and security address details have been omitted)

<table>
<thead>
<tr>
<th>Borough</th>
<th>Service Provider</th>
<th>Post Code</th>
<th>Units</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>LBHF</td>
<td>Metropolitan</td>
<td>W12 9</td>
<td>5</td>
<td>Primarily tenancy related support living service for customer with a wide range of needs. Residents are of mixed gender and wide age range.</td>
</tr>
<tr>
<td>LBHF</td>
<td>Metropolitan</td>
<td>SW6 1</td>
<td>3</td>
<td>Shared living service for customer with complex needs.</td>
</tr>
<tr>
<td>LBHF</td>
<td>Metropolitan</td>
<td>W6 0</td>
<td>4</td>
<td>Shared living service for customer with wide range of needs. Current residents are aged 50-63 and mixed gender.</td>
</tr>
<tr>
<td>LBHF</td>
<td>Yarrow</td>
<td>SW6 5</td>
<td>5</td>
<td>Shared living service for customer with complex needs. Current residents are aged 49-60 and mixed gender.</td>
</tr>
<tr>
<td>LBHF</td>
<td>Yarrow</td>
<td>W12 9</td>
<td>4</td>
<td>Shared living service for customer with wide range of needs. Current residents are aged 20-76 and are of mixed gender.</td>
</tr>
<tr>
<td>LBHF</td>
<td>Yarrow</td>
<td>W6 0</td>
<td>5</td>
<td>Shared living service for customer with complex needs. Residents are currently aged 47-56 and male.</td>
</tr>
<tr>
<td>LBHF</td>
<td>Yarrow</td>
<td>W14 0</td>
<td>4</td>
<td>Registered residential shared living service for customer with complex physical health needs. Current residents are predominately female aged 48-68.</td>
</tr>
<tr>
<td>LBHF</td>
<td>Yarrow</td>
<td>W3 7</td>
<td>6</td>
<td>Registered residential shared living service for customer with complex physical health needs. Current residents are predominately female aged 49-75.</td>
</tr>
<tr>
<td>LBHF</td>
<td>Yarrow</td>
<td>W6 7</td>
<td>3</td>
<td>Shared living service for customer with wide range of needs. Current residents are female and age 50’s.</td>
</tr>
<tr>
<td>LBHF</td>
<td>Yarrow</td>
<td>W12 9</td>
<td>6</td>
<td>Service for customer with complex needs including physical health. Current residents are aged 51-61 and mixed male/female.</td>
</tr>
<tr>
<td>LBHF</td>
<td>Yarrow</td>
<td>SW6 2</td>
<td>6</td>
<td>Registered residential shared living service for customer with complex physical health needs. Current residents are predominately female aged 49-75.</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>LBHF</td>
<td></td>
<td>55</td>
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