

# London Borough of Hammersmith & Fulham

CABINET

1 APRIL 2019



## AGREEMENT FOR DIRECT CONTRACT AWARD OF CONTRACTS FOR THE PROVISION OF DAY SERVICES FOR OLDER PEOPLE

Report of Cabinet Member for Health and Adult Social Care – Councillor Ben Coleman

### Open Report with Exempt Appendix

Appendix A to this report is currently exempt from disclosure on the grounds that it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972, and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### Classification - For Decision

**Key Decision: Yes**

**Other services consulted: None**

**Wards Affected: All**

**Accountable Director:** Lisa Redfern – Strategic Director of Social Care

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## 1. EXECUTIVE SUMMARY

1.1. This report seeks:

1.1.1. a waiver from the Council's Contract Standing Orders (under CSO 3.1) of the requirement to seek competitive bids and approval for the direct award of 12-month contracts to the following providers of day services to older people in Hammersmith & Fulham (H&F):

- Nubian Life
- London Care
- Alzheimer's Society

- 1.1.2. a waiver from the Council's Contract Standing Orders (under CSO 3.1) of the requirement to seek competitive bids and approval for the direct award of a six-month contract to the following providers of day services to older people in Hammersmith & Fulham (H&F):
    - Notting Hill Genesis (also known as Elgin)
- 1.2. The contract values for the services are included in the exempt appendix A.
- 1.3. H&F CCG had historically part funded the Nubian Life day centre, however from April 2019 they are withdrawing their element of £75,440. To maintain service continuity and service viability the Council is assisting to fund this gap.
- 1.4. Contracting Notting Hill Housing to provide services until October 2019 and decommissioning thereafter, will give rise to a contract saving and will allow the Council to make a contribution towards existing in-year savings, and also establish a grant fund that will encourage small community groups to provide day services for older people.
- 1.5. The contracts for day services were extended, by a Leader's Urgent Decision, from April 2017 to March 2018, following which a three Borough wide review was initiated. In March 2018 providers were issued letters of comfort requesting that they continue with existing arrangements.
- 1.6. The direct awards will cover the period April 2019 – March 2020 for Nubian Life, London Care and Alzheimer's Society; and April 2019 – October 2019 for Notting Hill Genesis. During this time a local strategic review of the preferred model of future provision will be undertaken. Then through a competitive procurement exercise to establish a primary provider of day services for older people (including those with dementia), and the establishment of a grant fund that will fund smaller, local community organisations. This is with the intention of increasing the plurality of providers, and embedding services within the community.
- 1.7. These day services support older people who have been assessed as eligible for support from Adult Social Care. Through this support people are able to continue living at home with relative independence and carers are enabled to continue in their caring role.

## **2. RECOMMENDATIONS**

- 2.1. To approve a waiver under Contract Standing Order 3.1 for the requirement for seeking competitive tenders for the reasons set out in section 3 below.
- 2.2. To approve a direct award for 12 months from April 2019 to March 2020 for Nubian Life, Alzheimer's Society and London Care, and six months for Notting Hill Genesis, from April 2019 to October 2019, whilst a review and procurement exercise is undertaken.
- 2.3. To approve the establishment of a £35,000 grant fund from October 2019 to fund day service provision by local community groups.

### **3. REASONS FOR DECISION**

- 3.1. The contracts for each of the four service providers expired in March 2017, at which time a three Borough review of older people's day centres was underway, covering WCC, RBKC and LBHF.
- 3.2. During 2017 - 2018 the disaggregation of the shared services arrangement meant that the review no longer included Hammersmith & Fulham.
- 3.3. In March 2018 the then Director of PSR issued providers with letters of comfort and provision has continued.
- 3.4. A competitive procurement exercise is required in line with the Council's Standing Orders and competition rules, but this must follow a strategic review of current provision, future demand, best practice and ultimately Hammersmith & Fulham's preferred model of provision to ensure that what is procured is fit for purpose, sustainable and financially efficient.
- 3.5. During this review and subsequent procurement, residents require continuity of services that provide a care and support system that promotes health and wellbeing, maximises individuals' independence and prevents escalation to more costly services.
- 3.6. Due to H&F CCG withdrawing their £75,440 investment in Nubian Life day centre the Council has had to increase its funding of this service to maintain financial sustainability and ensure service viability as the service is at capacity.
- 3.7. Failure to provide these services would compromise the Council's compliance with the Care Act 2014.

### **4. PROPOSAL AND ISSUES**

#### **The Services**

- 4.1. The four services in question are based on a traditional building based model. Services do provide older people who have an eligible social care need with care and support in a safe environment. A range of different interventions, such as personal care, health promotion and meals, are delivered in the centres. Annual contracted capacity and indicative utilisation metrics are included in the table below.

Table 2: Annual contracted capacity

| <b>Service</b>       | <b>Capacity/ Utilisation 2018-19</b>    |
|----------------------|---|
| Nubian Life          | 15 places Tues-Fri<br>(over-subscribed) |
| London Care          | 12 new referrals per quarter            |
| Alzheimer's Society  | 16 places Mon-Fri                       |
| Notting Hill Genesis | 25 places Mon-Fri                       |

|  |   |
|--|---|
|  | 15 places Sat-Sun<br>(under-utilised on all days) |
|--|---|

### **Statutory requirements**

- 4.2. Under the Care Act 2014 local authorities have a duty to:
- promote diversity and quality in the care market
  - must support local providers; and,
  - ensure there are a range of providers who can deliver services in accordance with needs and customers' requirements.
- 4.3. The Care Act 2014 also directs local authorities to extend support to carers. Day centres provide a valuable respite resource for carers.

### **Performance, strategic relevance and case for change**

- 4.4. The current model of building based day service provision is becoming anachronistic and limits the choice residents would like to see emerge through greater independence models. Alternative models that give residents greater choice of activity.
- 4.5. Performance reporting suggests that some services may be underutilised, can operate inefficiently and that greater value for money could be achieved.
- 4.6. The Council's legal advisors have noted the Council is not currently compliant with Standing Orders given that all four existing services are provided out of contractual arrangements.
- 4.7. The Council will make a £75,000 saving in 2019 – 2020. By embarking on a procurement exercise subsequent to local strategic review, the Council will seek to make a 15% efficiency saving on the current cost of existing services in support of the Council's efficiency target. This is in addition to absorbing additional cost as a result of H&F CCG withdrawing funding from Nubian Life.
- 4.8. Residents require continuity of services throughout this period of review and re-procurement. Failure to ensure this would compromise compliance with the Care Act 2014.

### **Future model and procurement strategy**

- 4.9. In transforming services the Council intends to move away from commissioning only traditional building based day centres to create plurality of providers offering more diverse activities embedded within the community that facilitate and support personalisation.
- 4.10. This presents an opportunity to retain existing strengths in prevention whilst improving the use of resources and offering greater value for money, as well as variety.

- 4.11. The review will better articulate the preferred model of provision but early thought has focused on the procurement of a primary provider of traditional building based services and the creation of a grant fund to encourage smaller community based groups to provide alternative services. Engaging the primary provider in a five year contract would provide financial stability and, with correctly aligned incentives, encourage innovation and a relentless focus on outcomes.
- 4.12. Funding that is currently directed towards Elgin (Notting Hill Genesis) will be used to create a community grant fund that will support provision from local community groups ensuring that day services, in whatever guise (e.g. allotment schemes, lunch clubs etc.) are absolutely embedded within the community.
- 4.13. The review is an opportunity for commissioners to work closely with older people and their carers in service design and procurement and for commissioners to challenge themselves to genuinely co-produce the future model.
- 4.14. The proposed new model should be presented to Cabinet early in the 2019 -2020 financial year in order to ensure that there is adequate time to engage the market in procurement, embed new providers and support transition across services.
- 4.15. The table below sets out an indicative timetable for service review and procurement, based on receiving permission to proceed in January 2019; note that some activities will run concurrently.

Table 3: Draft procurement timetable, prepared by Tim Lothian.

| <b>Activity</b>  | <b>Start date</b> | <b>End date</b> |
|--|-------------------|-----------------|
| <b>Pre- tender activities</b>  |                   |                 |
| Set up Service Review Team   | February 2019     | February 2019   |
| Publish PIN (Prior Information Notice)   | February 2019     | February 2019   |
| Engage with internal stakeholders, provider market, customers and carers. Confirm budget position. | March 2019        | March 2019      |
| Draft Procurement Strategy & Business Case, to include procurement route                           | March 2019        | March 2019      |
| Governance process, approval by July 2019 Cabinet  | April 2019        | July 2019       |
| Drafting of contract documentation (in conjunction with Legal Services and Procurement)            | April 2019        | July 2019       |
| Obtain TUPE information from incumbent providers   | June 2019         | June 2019       |
| <b>Tender period</b>   |                   |                 |
| Publish ITT  | July 2019         | July 2019       |
| Tender period, including responding to tenderers' clarification questions                          | July 2019         | August 2019     |
| <b>Post tender activities</b>  |                   |                 |
| Evaluation of tenders  | September 2019    | September 2019  |
| Draft Recommendation of Contract Award report  | October 2019      | October 2019    |

|  |               |               |
|--|---------------|---------------|
| Governance process, award by Cabinet Member  | November 2019 | November 2019 |
| Notify tenderers of outcome and standstill period  | December 2019 | December 2019 |
| Three-month contract mobilisation period (including Contract Award Notice and Contracts Finder, TUPE consultation and execution of contract) | January 2020  | March 2020    |
| Contract start   | April 2020    | April 2020    |

4.16. Officers consider that the proposed contract awards are in the best interests of vulnerable residents and the provider market. Risks associated with not agreeing an award are set out below:

- Not agreeing the waiver and the proposed direct contract awards would create a gap in service provision and leave eligible borough residents and their carers without the necessary support required to live as independently as possible in the community.
- The Council has a statutory duty under the Care Act 2014 to promote vulnerable peoples' health and wellbeing in order to maximise their independence.
- Subject to approval, these contract waivers and direct awards will safeguard the Council against challenge due to ceasing these services without appropriate consultation and undertaking equalities impact assessments.

4.17. The analysis of options considered and their associated risks is set out in section five (5) below.

## **5. OPTIONS AND ANALYSIS OF OPTIONS**

### **Option One: Contract extension.**

#### **This is the recommended option**

- 5.1. Agree to directly awarding 12 month contracts to three providers (Nubian Life, Alzheimer's Society, London Care), with a three month break clause in each.
- 5.2. Agree to directly awarding a six month contracts Notting Hill Genesis with a three month break clause.
- 5.3. The establishment of a £35,000 grant fund from October 2019 to fund day service provision by local community groups.
- 5.4. This will enable the strategic review to conclude whilst ensuring continuity of provision. The review will inform the development of a new model of provision that represents value for money and is fit for purpose, including the resilience to adapt to increasing need.

- 5.5. The Council will make an approximate £75,000 saving in 2019 – 2020. Subsequently, by embarking on a procurement exercise subsequent to local strategic review, the Council will seek to make a 15% efficiency saving on the current cost of existing services in support of the Council's efficiency target.
- 5.6. Officers have reviewed the risk and, whilst acknowledging the possibility of legal challenge, still consider this option to be the preferred course of action as it will ensure the Council remains compliant with the Care Act 2014, and ensure business continuity.
- 5.7. The Council has received correspondence from legal advisors to the Council with specific reference to the Alzheimer's Society, explaining that we are currently exposed to risk by being out of contract and advising that we must take action imminently. Further detail is included in the exempt appendix.
- 5.8. A PIN notice will be placed in OJEU at a later date to indicate future procurement activity and will reduce the risk of legal challenge.

**Option Two: Contracts lapse and continue based on implied contract terms.**

**This is not the recommended option.**

- 5.9. The 'Do Nothing' option, which allows the current contracts to lapse and to continue on implied Terms and Conditions until the review and tender process are concluded, represents risks due to the lack of surety of service, and the consequent exposure to risk and uncertainty for the Council.
- 5.10. The Council has received advice from legal advisors to the Council with specific reference to the Alzheimer's Society, explaining that we are currently exposed to risk by being out of contract and advising that we must take action imminently.

## **6 CONSULTATION**

- 6.1 Service providers are being consulted on the options and advised of the proposed continuation of service. All providers have been delivering services for H&F Council for a number of years, early conversations show a keenness to continue delivery.
- 6.2 Operational managers and those referring to these services have also been consulted as part of this process, and are key stakeholders in the review process.

## **7 EQUALITY IMPLICATIONS**

- 7.1 The award of these contracts will have a neutral or positive impact on certain protected groups, under the terms of the Equality Act 2010. It is not anticipated that the services received by customers will vary significantly from what is currently received. A full equality impact assessment will be undertaken with the development of the proposed future model of provision.
- 7.2 Implications verified by Peter Smith, Head of Policy & Strategy, tel. 020 8753 2206.

## **8 LEGAL IMPLICATIONS**

- 8.1 The services provided under the four contracts discussed in this report come under the category of “social and other specific services”, which means schedule 3 of the Public Contracts Regulations 2015 (**PCR 2015**) will apply. The threshold for such services is currently £615,278, and any contract above this value must be procured in line with the PCR 2015 rules on social and other specific services.
- 8.2 The proposed direct awards in this report are each under the current threshold and therefore do not need to be procured in accordance with the full PCR 2015 rules. Nonetheless, the council must still comply with the general principles of transparency, equal treatment, non-discrimination and proportionality. Accordingly, undertaking a procurement competition would be encouraged in order to adhere to these principles.
- 8.3 We do not have any information regarding the original procurement of these services and the maximum extensions permitted under the original contracts. Although the value of the direct awards being sought are below the threshold, the contracts have been in place for a number of years. Accordingly, the cumulative value of each contract (including the proposed direct awards) is likely to be above the threshold, and therefore there is a risk that the council will be challenged by a company that operates in this industry but is not receiving one of the direct awards. The company may argue that the council has deliberately granted these direct awards for a short period to avoid them being subject to the full PCR 2015 rules, which is a contravention of regulation 6(6) of the PCR 2015.
- 8.4 The council’s counter-argument would be that the short period of award not an artificial subdivision of the contract into smaller parts, as a full procurement competition is planned for these services and the short period of award is a consequence of that.
- 8.5 Before granting the direct awards the council should therefore consider:
- 8.5.1 How likely it is to receive a challenge; and
  - 8.5.2 How confident it is that it could defend such a challenge.
- 8.6 *Legal implications completed by Hector Denfield, associate at Sharpe Pritchard LLP, on behalf of Hammersmith & Fulham Council;*  
[hdenfield@sharpepritchard.co.uk](mailto:hdenfield@sharpepritchard.co.uk)

## **9 FINANCIAL IMPLICATIONS**

- 9.1 Financial implications are included in the exempt appendix A.

## **10 PROCUREMENT IMPLICATIONS**

- 10.1 Procurement implications are included in the exempt appendix A.

## **11. BACKGROUND PAPERS USED IN PREPARING THIS REPORT - none**



## **LIST OF APPENDICES**

Exempt Appendix A