

	<p align="center">London Borough of Hammersmith & Fulham</p> <p align="center">CABINET MEETING</p> <p align="center">30 MARCH 2015</p>
<p align="center">AGREEMENT FOR DIRECT AWARD OF CONTRACTS FOR THE PROVISION OF DAY SERVICES FOR OLDER PEOPLE</p>	
<p>Report of the Cabinet Member for Health and Adult Social Care : Councillor Vivienne Lukey</p>	
<p>Open Report.</p>	
<p>Classification - For Decision</p> <p>Key Decision: Yes</p>	
<p>Wards Affected: All</p>	
<p>Accountable Executive Director: Liz Bruce Executive Director of Adult Social Care</p>	
<p>Report Author: Laxmi Jamdagni ASC Commissioner</p>	<p>Contact Details: Tel: 020 7361 3926 E-mail: Laxmi.jamdagni@rbkc.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1. This report seeks a waiver from the Council's Contract Standing Orders (under CSO 3) of the requirement to seek competitive bids and approval for the direct award of three contracts to Notting Hill Housing (for Elgin Resource Centre), Nubian Life and Shanti to extend the day services to older people in the London Borough of Hammersmith and Fulham (H&F) for two years from 1 April 2015 until 31 March 2017 with a break clause of three months.

- 1.2. 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 and family carers are enabled to continue in their caring role.
- 1.3. The contracts for these services expire on the 30th March 2015 and there is no facility within these contracts to be extended.
- 1.4. The cost to H&F over the two year extension period will be a total of £980,784: The Service and values are set out in Table 2, 3 and 4 of Section 2 of the report (Recommendations).

For Elgin Resource Centre - £564,336

For Nubian Day Centre - £233,048

For Shanti Day Centre - £183,400

- 1.5. The report also requests that Cabinet delegate to the Executive Director of Adult Social Care and Health the authority to realise any contract efficiency savings during the term of the contract.

2. RECOMMENDATIONS

- 2.1 That approval be given to the award of three contracts to Notting Hill Housing (for Elgin Resource Centre), Nubian Life and Shanti to extend the day services to older people for two years from 1st April 2015 until 31st March 2017 at an estimated total cost of £980,784
- 2.2 That approval be given to a waiver under Contract Standing Order 3 for the requirement for seeking competitive tenders for the reasons set out in Para 9.5 of this report.
- 2.3 That authority be delegated to the Executive Director of Adult Social Care and Health to realise any contract efficiency savings during the term of the contract.

Table 1 – H&F Day Services for Older People

Provider	Service Name	Description	Current Contract Start/End	Annual Contract Value	Health Annual Contribution	ASC Annual Contribution	Total Value for Contract 24 months- 01/04/15 – 31/03/17
Notting Hill Housing	Elgin Day Centre	Provision of 25 places per day weekdays + 10 places Weekends	Ends March 2015	£282,168	£0	£282,168	£564,336
Nubian Life	Nubian Life	Provision of 16 places per day weekdays	Ends March 2015	£116,524	£74,738*	£116,524	£233,048
The Asian Health Agency	Shanti	Provision of 10 places per day weekdays	Ends March 2015	£91,700	£0	£91,700	£183,400

* This is Section 75 funding for black and minority ethnic elderly and dementia services.

3. REASONS FOR DECISION

- 3.1. The current services are well regarded and support the Adult Social Care (ASC) strategy of supporting older people to remain living in their own homes and of supporting family carers in their caring role.

- 3.2. Officers have been tasked with identifying the best way forward to introduce the Care Act 2014 requirements of Personal Budgets for each ASC customer from April 2015 and ensuring a good range of services are available. This paper outlines the need for market stability of the current arrangements in order to meet this target.
- 3.3. A waiver from the Contract Standing Orders is required as the current contracts contain no further provision to extend. In line with the requirement set out in 3.2 previous attempts to move services away from block contracted provision to a model using personalised budgets have shown that there is a significant risk of destabilising the market. Commissioners are currently exploring different models of service delivery which may not result in a reprocurement exercise.

4. INTRODUCTION AND BACKGROUND

- 4.1 Day services provide older people who are eligible for support from ASC with care, support and companionship in a safe, warm and stimulating environment. Nutritious hot meals and drinks and seated exercises are also part of the day services offer, which is tailored to meet individual needs according to the agreed care plan following assessment by the social work team.
- 4.2 The current strategy for ASC and the Hammersmith and Fulham Clinical Commissioning Group (CCG) is to ensure there are sufficient community services to ensure more people can be supported in their own homes and to reduce reliance on hospital services for the provision of health treatment. This means that day services will increasingly cater for older people with more complex needs.
- 4.3 The planned introduction of the Personalisation of services included the setting of targets to provide more people with Personal Budgets and Direct Payments. This approach was outlined in the previous Key Decision Report of 11 November 2013 "Approval to vary contracts for Older People's Day Services to enable a phased approach to move the services to Personal Budgets and Direct Payments ". The decision was made to extend the contracts for these services to 30 March 2015.

5. PROPOSAL AND ISSUES

- 5.1 A Personal Budget is the amount allocated to a customer that is equivalent to the cost of the services they have been assessed as

needing. This doesn't involve the transfer of any funds, but means that the customer has the information about the cost of the services listed in their care plan. A Direct Payment is the transfer of funds to a customer's bank account so that they can purchase services directly from the supplier of their choice.

- 5.2 Work to Personalise day service provision has continued, including draft plans to cease contract funding arrangements and to transfer funding to Direct Payments. It has involved consultation with the organisations that provide services and the people that use them. This goal has proved hard to achieve for a variety of reasons, and contract extensions are requested in order to identify the best way forward.
- 5.3 There is a duty under the Care Act to promote diversity and quality in the market of care and to support providers in their local area. In particular, local authorities must act to ensure that there is a range of providers of services available, which together offer services shaped by the demands of individuals, families and carers. Nubian Life and Shanti provide services targeted at the African Caribbean and Asian communities respectively. The Care Act also directs local authorities to extend support to carers. Day centres provide valuable community resources for carers, especially working carers, offering respite from the burden of normal caring duties.
- 5.4 Although there has been good involvement of provider organisations up to this point, there had been a set agenda of moving away from block contracts. The Care Act and the local importance of voluntary sector provision require a new agenda of discussion that can address the issues of Personalisation, choice, levels of activity, increasing complexity of need and sustainability of local services.
- 5.5 Providers need a medium to long term approach to accommodate any planned change of direction in such a specialist service area, and especially with a growing older population.
- 5.6 The contracts for these services expire on the 30th March 2015 and there is no facility within these contracts for an extension. The Contract Standing Orders permit the direct award of contracts in certain circumstances as outlined in section 9.

6. OPTIONS AND ANALYSIS OF OPTIONS

6.1

Options	Analysis
Option 1- Do nothing	<ul style="list-style-type: none"> • The services will be out of contract (from 30 March 2015), leaving the services vulnerable to closure. • Without this provision the council would be unable to make the necessary services available to eligible clients.
<i>Option 2 – Introduce a system based on Personal Budgets and Direct Payments</i>	<ul style="list-style-type: none"> • Consultation highlighted that customers did not want the burden of managing their own budgets • The notion of choice would be challenging for the large number of older people who lack capacity to make decisions about which services to use. • Customers expressed their desire to continue with their current service provision • The move away from block contracts which give guaranteed income, to a system based on Personal Budgets and Direct Payments, introduces new levels of risk to the provider. Business planning strategies need to be developed to address this as well as the council's requirement to achieve savings from contract awards. • The funding of voids (under-utilisation in some day services) would transfer from the council to the provider, significantly increasing the risk for providers, and destabilising some organisations and risking service closure. It requires a medium to longer term approach to manage this risk effectively
Option 3 – Seek contract extensions of two years	This option would enable officers to maintain the current market which customers are satisfied with, and identify a model of service delivery in line with Care Act requirements.

7. CONSULTATION

- 7.1 A regular Older People's Day Services Provider Forum, convened and supported by ASC officers, met bi-monthly during 2013 and part of 2014 to discuss the move to Personal Budgets. It has had key speakers, including the Shared services ASC lead for personalisation. Commissioners have planned further meetings with providers in 2015.
- 7.2 All providers have consulted with customers on the options available under achieving the implementation of Personal Budgets, and the outcomes of these have been used to shape the current proposals.

8. EQUALITY IMPLICATIONS

- 8.1 It is envisaged that by awarding these contracts the impact on the protected groups will be neutral or positive. It is not anticipated that the services received by current service users will vary significantly from what is currently received. Eligibility for access to these services is not affected and the impact of any reductions in current levels of funding will be minimised through careful discussion with the provider organisations.
- 8.2 For any future arrangement of services, the take up of the service by diverse communities in the context of local population data analysis will be carefully monitored to ensure no adverse impact.

9. LEGAL IMPLICATIONS

- 9.1 "Health and Social Services are Part B services for the purposes of the Public Contracts Regulations 2006 (Regulations). Currently Part B services are subject only to a few provisions of the Regulations – namely, obligations relating to technical specifications and post contract award information.
- 9.2 The Council will have to submit an award notice to the Official Journal of the European Union which will alert economic operators to the new contract. This is not necessarily an issue unless there is a market for these particular services outside the UK, in which case there is a risk that an economic operator could challenge the award on the basis that the new contract was not previously advertised. It cannot be said with certainty that there is no risk of challenge, however, on the basis of the

information provided by client officers, it is felt that a risk of challenge in this particular case is low.

Implications completed by: Kar-Yee Chan, Solicitor (Contracts), Bi-borough Legal Services, 020 8753 2772."

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1 The proposed budget for the three contract awards from 1 April 2015 to 31 March 2017 is £1,130,260.

Table 2 – Notting Hill Housing, Elgin Day Centre

	2015/16		2016/17		Total Cost of proposal
<i>Please separate revenue and capital implications into two tables</i>	Proposed budget figure £	Costs of proposal £	Proposed budget figure £	Costs of proposal £	Costs of proposal £
Current Budgets					
Council Revenue budget	282,168		282,168		
Council Capital budget					
External funding sources, e.g. TfL, NHS etc.					
SUB TOTALS	282,168		282,168		
Start-up Costs					
Lifetime Costs		282,168		282,168	564,336
Close-down Costs					
TOTALS	282,168	282,168	282,168	282,168	564,336
Over/(under) spend		0		0	

Table 3 – Nubian Life

	2015/16		2016/17		Total Cost of proposal
<i>Please separate revenue and capital implications into two tables</i>	Proposed budget figure £	Costs of proposal £	Proposed budget figure £	Costs of proposal £	Costs of proposal £
Current Budgets					
Council Revenue budget	116,524		116,524		
Council Capital budget					
External funding sources, NHS (CCG) .	74,738		74,738		
SUB TOTALS	191,262		191,262		
Start-up Costs					
Lifetime Costs					
Close-down Costs					
TOTALS	191,262	191,262	191,262	191,262	382,524
Over/(under) spend		0		0	

Table 4 – Asian Health Agency, Shanti

	2015/16		2016/17		Total Cost of proposal
<i>Please separate revenue and capital implications into two tables</i>	Proposed budget figure £	Costs of proposal £	Proposed budget figure £	Costs of proposal £	Costs of proposal £
Current Budgets					
Council Revenue budget	91,700		91,700		
Council Capital budget					

External funding sources, e.g. TfL, NHS etc.					
SUB TOTALS	91,700		91,700		
Start-up Costs					
Lifetime Costs		91,700		91,700	183,400
Close-down Costs					
TOTALS	91,700	91,700	91,700	91,700	183,400
Over/(under) spend		0		0	

- 10.2 The costs of the proposal can be met from within H&F Adult Social Care budgets and any saving negotiated will contribute to the Medium Term Financial Savings Plan for ASC
- 10.3 The proposed budgets and cost for the three contract awards are shown in the tables above, section 10.1.
- 10.4 The contract awards are based on existing contract costs and the current budgets match the costs.
- 10.5 The report requests authority that Cabinet delegate to the Executive Director of Adult Social Care and Health the responsibility for negotiating any contract efficiency savings or variations to the contract. Any efficiency savings that result from the contract re-negotiation will contribute to the ASC Procurement savings in the Medium Term Financial Savings.
- 10.6 Implications completed by Andrew Jones, H&F Head of Finance – Business Planning and Monitoring. 0208 753 2531.

11. IMPLICATIONS FOR BUSINESS

- 11.1 Whilst Notting Hill is a larger London wide organisation, this report also recommends extensions for Nubian Life and Shanti which are small borough based organisations.

12. RISK MANAGEMENT

- 12.1 Ending the current block contract arrangements, and thereby the total guaranteed funding regardless of service level and demand, would represent a transfer of risk from the Council to the service providers and this needs to be re-examined in respect of the new duties of the Care Act. At present current service users have shown no interest in taking the option to transfer to direct payments and purchase other services, preferring to continue using the services as they are. Therefore if the council as intended, terminated the fixed provision and moved away from the block arrangements, there is a risk of service closure and Council would not be able to guarantee availability of places for those people that needed them. It is therefore in the council's best interest to award interim contracts for two years only with a three month break clause. When the longer term impact of the Care Act is evident the council can consult with the market.
- 12.2 There is a risk of challenge from other providers, but this risk is low because of:
- the specialist nature of these services and the requirement of a property from which to deliver them
 - the contract awards are two years
 - planned work with existing and other providers to develop future models of delivery.
- 12.3 There is a risk of funding voids for the two years of the contract award, but this will be mitigated by delegated authority to negotiate the activity levels with each of the current providers and break clauses in the contract, should there be insufficient budget provision in future years.
- 12.4 The management of commissioning and procurement risk remains the responsibility of the Adult Social Care department. A framework for the management of risk exists in the department for the assessment and monitoring of risk according to the risk appetite of the department. Risks are outlined in section 12 of the report. There are no strategic risks associated with the report content.
- 12.5 Implications completed by Michael Sloniowski, Tri-borough Risk Manager, 0208 753 2587.

13. PROCUREMENT AND IT STRATEGY IMPLICATIONS

- 13.1 The existing arrangements for provision of day services for older people are due to expire on 31st March 2015. Normally, a competitive tendering exercise would be run to procure a new contract. However, for reasons explained in the report, the Council does not currently have the certainty and clarity about the future delivery model required to run an efficient procurement.
- 13.2 Day services for older people are currently defined as being “Part B” under the Public Contract Regulations 2006 (as amended) and not therefore subject to the full mandatory regulated procurement regime that services defined as “Part A” are. However, the new Public Contract Regulations 2015 come into force 24th February 2015 and will remove the distinction between Part A and Part B services. At the time of writing, statutory guidance has yet to be issued on how contracts nearing their expiry date but which need to be extended after 24th February (for reasons of essential service continuity) should be treated. Legal advice on this matter will need to be sought.
- 13.3 Should legal advice indicate that a variation to the current contract’s period is permissible under the 2015 regulations, waivers to the Council’s Contracts Standing Orders are permitted under section 3.1 where these are agreed by the appropriate persons – in this case Cabinet – where they believe the waiver is justified; for instance, it is in the interests of the Council (and in this case vulnerable service users) to do so.
- 13.4 The risk of possible challenge from another service provider to a continuation of the current arrangements exists. This would be mitigated by the placing of an indicative notice stating the Councils’ intention to run a competitive tendering exercise in 2016-17. It would also support pre-procurement dialogue between commissioners and potential providers on how best to meet the longer term impact of the Care Act, including payment models that suit service users, the council, and are commercially viable to service providers.
- 13.5 Whilst the existing arrangements remain in place, Commissioners should continue to seek service and efficiency improvements from the current provider for the duration of the contract, in line with the Council’s contracts review programme.
- 13.6 The Director of Procurement & IT Strategy supports the report’s recommendations. Implications completed by Joanna Angelides

Procurement Consultant, H&F Corporate Procurement Team, FCS. 0208
753 2586

LOCAL GOVERNMENT ACT 2000

LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	None		