


Executive Decision Report

<p>Decision maker(s) at each authority and date of Cabinet meeting, Cabinet Member meeting or (in the case of individual Cabinet Member decisions) the earliest date the decision will be taken</p>	<p>Cabinet Member for Adults & Public Health</p> <p>Executive Director for Adult Social Care</p> <p>Date of Decision: 14 July 2016</p>	 <p>City of Westminster</p>
<p>Report title (decision subject)</p>	<p>CONTRACT EXTENSIONS AND DIRECT AWARD OF CONTRACTS FOR LEARNING DISABILITIES SERVICES</p>	
<p>Reporting officer</p>	<p>Mike Boyle, Director of Strategic Commissioning & Enterprise Adult Social Care & Health</p>	
<p>Key decision</p>	<p>Yes</p>	
<p>Access to information classification</p>	<p>Public</p>	

1. EXECUTIVE SUMMARY

- 1.1 Adult Social Care Strategic Commissioning and Enterprise is in the process of developing a Procurement Strategy for services for People with Learning Disabilities across the three boroughs. The proposed Procurement Strategy will be outlined in a separate paper. The aim of the new strategy is to improve outcomes for customers by increasing choice and control through personalised services and will include the option for customers to use Individual Service Funds as a mechanism to purchase some or all of their care and support.

- 1.2 This report requests approval to waive the WCC Procurement Code to allow the direct award or extension of six contracts to existing providers.
- 1.3 The direct award or extension of contracts will help provide market stability and the opportunity for market development prior to the implementation of the Procurement Strategy and would allow for a phased introduction of a proposed new model for LD Services between 1st April 2017 and 30th June 2017.
- 1.4 This report also seeks approval to extend the existing contract for learning disability short breaks services in WCC and RBKC for an additional year to 31st January 2018 in order to establish the best approaches to ensure choice, control and sustainability for short breaks services.

2. RECOMMENDATIONS

- 2.1 The recommendations in this report will align the end dates for LD accommodation services across the three boroughs to allow for a phased introduction of a proposed new model for LD Services between 1st April 2017 and 30th June 2017.

Officers recommend:

- 2.2 That in accordance with section 2.9.3.2 of the WCC Procurement Code, the Chief Procurement Officer agrees to waive the requirement to conduct a competitive exercise in order to allow the direct award or extension of contracts to existing providers for the continuation of services as set out in Table 2.3.1 below.
- 2.3 That the Cabinet Member for Adults & Public Health agrees the direct award or extension of contracts to existing providers for the continuation of services on the terms set out in Table 2.3.1.

Table 2.3.1

Provider	Contract	Length of extension	Value of extension
Outlook Care	Supported Housing (4 units)	1 st April 2017 – 30 th June 2017	55,075
Westminster Society	Residential Care (5 homes, 19 units)	1 st April 2017 – 30 th June 2017	153,749
Westminster Society	Supported Housing (88 units dispersed)	1 st April 2017 – 30 th June 2017	229,005
Yarrow Housing	Supported Housing (3 units)	1 st April 2017 – 30 th June 2017	37,213
Yarrow Housing	Supported Housing (2 units)	1 st April 2017 – 30 th June 2017	30,914
Cyrenians	Supported Housing Partnership	1 st April 2017 – 30 th June 2017	90,741

- 2.4 That the Cabinet Member for Adults and Public Health agrees to extend the following contract for Learning Disability Short Breaks Service is extended to 31st January 2018 to allow time to review and consider the suitability of ISFs for short breaks services:

Table 2.4.1

Provider	Contract	Length of extension	Value of extension
Westminster Society	Short Breaks Service (2 homes, 21 units)	1 st February 2017 31 st January 2018	1,013,886

3. REASONS FOR DECISION

- 3.1 Direct award or extension of contracts for existing services is required to provide time to re-model and recommission in a strategic way in line with Adult Social Care strategic priorities in order to deliver service transformation and budget savings from 2017-18.
- 3.2 The direct award or extension of contracts relating to existing provision allows the alignment of those contract end dates to fit with the phased start of the remodelled services. This avoids the council being “out of contract” or tendering for very short term arrangements that would not be viable, or moving too quickly to individualised arrangements before building more mechanisms for choice of provider. It would help provide market stability and opportunity for market development prior to the establishment of Strategic Partners, a Framework Agreement and an Approved List as required in the Procurement Strategy.
- 3.3 Adult Social Care Strategic Commissioning and Enterprise (ASC) is in the process of developing a Procurement Strategy for services for People with Learning Disabilities across the three boroughs, as detailed in a separate paper to be presented alongside this paper. The aim of the Procurement Strategy is to improve outcomes for customers by increasing choice and control through personalised services.
- 3.4 Local authorities have a duty under the Care Act to ensure there is a viable market delivering choice for customers. It is intended to move away from the current commissioning and procurement cycle whereby contracts go out to tender every three to five years and are awarded to a small group of providers. For people not wanting to hold direct payments, there would be contractual arrangements for providers delivering flexible support to ensure safeguarding, safety and quality of providers. Providers would set out clearly within each person’s individual service fund arrangement the fixed or core costs of the service (night cover, shared support etc.) any management costs and the amount available for flexible support. These ISFs would be managed by a provider chosen by the customer and they would work together to plan how to use the flexible part of the customer’s Personal Budget. It is predicted that this model will bring in further providers as sub-contractors offering specialist services.

4. INTRODUCTION AND BACKGROUND

- 4.1 The LD Procurement Strategy (which is contained in an accompanying Key Decision Report) requires the establishment of Strategic Partners, a Framework Agreement and an Approved List of providers. This will involve market warming events and consultation with providers, going to tender etc. There is insufficient time to fully develop and consult on the strategy before the expiry of a number of contracts that are in scope for the strategy. There is a separate report on the Procurement Strategy detailing the benefits of the new approach including providing more choice for customers, bringing new providers into the local market and how both of these goals comply with our obligations under the Care Act. This report requests direct award or extension of contracts to existing providers in order to facilitate this process.
- 4.2 During the extended period of these services, Commissioners will be working with providers around quality issues and the development of flexible support strategies. Current provision varies in quality and an opportunity to develop provision in line with the Care Act and the personalisation agenda will be welcome.

5. PROPOSAL AND ISSUES

- 5.1 Direct award is required for five accommodation based services where the services have previously been subject to contract extensions. The two Westminster Society Services were extended for three years from 1 April 2014 and the Outlook Care and Yarrow Housing contracts were most recently extended to 31 March 2017 as part of the 2013-14 SP Procurement Strategy.
- 5.2 Contract extension is required for the Supported Housing Partnership – Cyrenians service. The current contract ends on 31 March 2017 (as yet unsigned) and there is provision to extend to 31 March 2018.
- 5.3 A contract extension is also required for the short-breaks service to January 2018). This is a joint service with RBKC. There have been no previous contract extensions for this service.
- 5.4 The total core spend on these services is circa £3.4 million per annum as detailed in Appendix A.

6. OPTIONS AND ANALYSIS OF OPTIONS

6.1 Do Nothing

- 6.1.1 Failure to extend the existing contracts (by extension or direct award) will not allow time to implement the LD Procurement Strategy. This is because,

implementation will involve a process of market engagement, consultation, establishment of Strategic Partners and establishment of an Approved List and a Framework Agreement. There will be a risk to customers if alternative arrangements are not in place before contracts end. There is a risk to the Council of operating out of contract as the service provision will not cease with the expiration of contracts. For this reason this option is not recommended.

6.2 Tender for New Services

6.2.1 Re-tendering for existing services will be contrary to the LD Procurement Strategy and does not help with our duties under the Care Act to shape the market to ensure customers have a variety of options to consider when making up their personal support plan. The LD Procurement Strategy seeks to promote customer choice. Re-tendering for existing services will limit choice and will be a missed opportunity to engage with and develop the market and explore ways of delivering better value for money. For this reason this option is not recommended.

6.3 Extend Existing Contracts and Directly Award Contracts to Existing Providers

6.3.1 Extending existing contracts and direct award of contracts to existing providers will allow time for implementation of the LD Procurement Strategy (which is contained in an accompanying report). The development and implementation of the strategy will include market engagement and the development of new models of service as described above. There is little risk of challenge due to the short length of extensions and awards.

6.3.2 Extending existing contracts and direct award to existing providers, along with bringing forward the end dates of some contracts in H&F and RBKC, will align the end dates of the contracts in scope. This will allow a single procurement exercise for these services and will realise the benefit in the savings in Procurement Team resources and attendant cost savings that running a large procurement exercise brings. Further, a single procurement exercise will generate great interest in the market, bringing in new providers, and could lead to savings due to economies of scale.

6.3.3 The appointment of strategic partners forms an integral part of the LD Procurement Strategy. This provision will be cost neutral if the strategic partners are existing service providers as they will be in place to work on the introduction of Individual Service Funds during the period leading up to the contract end.

This is the recommended option.

7 CONSULTATION

7.1 There has been no consultation on contract extensions and direct awards due to the short length of the extensions and because there will be no impact on customers.

- 7.2 There will be consultation regarding the LD Procurement Strategy. A meeting will be held with existing contract providers for the services that are in scope to consult on the role of strategic partners. Consultation with customers will be undertaken in conjunction with strategic partner organisations and will necessarily follow the establishment of strategic partners.

8 EQUALITY IMPLICATIONS

- 8.1 The services included in this report are for vulnerable people with learning disabilities. There are no negative equality implications associated with the recommendations in this report. The requested extensions and direct awards will offer service continuity and support the improvement of services proposed in the LD Procurement Strategy.
- 8.2 The proposals in this report have a positive impact on equality implications as they are designed to facilitate the transition to new arrangements which are contained in an accompanying Key Decision Report. The proposed new contract arrangements in the LD Procurement Strategy will extend choice, control, quality, community engagement and person-centred approaches, offering better solutions in line with people's needs, backgrounds and identity.

9. LEGAL IMPLICATIONS

- 9.1 Health and Social Services fall within the Light Touch Regime (LTR) under Chapter 3, Section 7 of the Public Contracts Regulations 2015 ("Regulations 2015"), as set out in Schedule 3 for contracts relating to social and other specific services. Services subject to the LTR, with a contract value that exceeds the current threshold of £589,148 is subject to the full requirements of Regulations 2015. The contracts for the services in this report for people with learning difficulties fall within the LTR. The contracts that are below the LTR threshold do not need to be advertised in accordance with Regulations 2015 as they are not subject to the full EU procurement rules.
- 9.2 The relevant Council can also consider modifying contracts to extend the term under Regulations 72(1) (b), (e) and 72(8) of Regulations 2015 so long as the relevant requirements are met.
- 9.3 The recommendations in this report are to extend and or award contracts without advertising in accordance with the relevant Council's Contract Standing Orders, Procurement Code and Contract Regulations ("Orders, Code or Regulations").
- 9.4 A waiver is required for non-compliance with the relevant Orders, Code or Regulations with regards to the process and advertising of the contracts prior to award or to grant an extension. Justification for such waiver have been sought to be explained in the body of this report. Which arise from a proposed procurement strategy for all three borough councils that will introduce a new model for learning disability services.

- 9.5 The legal implications are as follows with regards to the contracts outlined in Appendix A.
- 9.6 The values of these contracts also fall below the LTR threshold for the extended term. These contracts should continue until each contract's expiry date. Thereafter consideration should be given entering into a new contract with the providers', subject to the relevant waiver being obtained from the Council's Code.

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1 The total core spend on these services is circa £3.4 million per annum as detailed in Appendix A.
- 10.2 The total extension amount is £1.6 million and extends the contracts through 2016/2017 into 2017/2018. This potentially places pressure on the Adult Social Care budget as there are MTP savings expected from contract retendering exercises in 2016/2017.
- 10.3 The savings to be achieved in 17/18 (approximately 10 - 12%, £160,000 to £192,000) will be established over the next year during the period of the learning disability strategic review. Details will be outlined in the separate Procurement Strategy report.
- 10.4 Any potential pressures that are realised will be managed through existing resources within Adult Social Care revenue budgets.

11. IMPLICATIONS FOR BUSINESS

- 11.1 The Approved List could potentially promote local business opportunities for care and support providers including small and medium enterprises.

12. RISK MANAGEMENT

- 12.1 Market testing is a key strategic risk on the Councils Shared Services Risk register, risk number 4 delivering the best possible services at least cost to the local taxpayer. Direct Awards, in this case, are being applied to align the service contracts with the LD Procurement Strategy thus ensuring business continuity to the service user. Business Continuity is also a key strategic risk and the report recommendations would support that, in this case, the Service Department are willing to accept the procurement risk. The Adult Social Care Department monitor risk in accordance with corporately agreed protocols, where risks escalate they are discussed at Senior Leadership Team level and if necessary may inform the Shared Service Register.

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

13. PROCUREMENT STRATEGY IMPLICATIONS

- 13.1 The contract extensions and direct contract awards detailed in this report are essential to the LD Procurement Strategy. Failure to extend the existing contracts (by extension or direct award) will not allow time to implement the LD Procurement Strategy. This is because implementation will involve a process of market engagement, consultation, establishment of Strategic Partners and establishment of an Approved List and/or Framework Agreement. There will be a risk to customers if alternative arrangements are not in place before contracts end. There is a risk to the Council of operating out of contract as the service provision will not cease with the expiration of contracts.
- 13.2 This report seeks approval to directly award or extend contracts for six accommodation based services. This will require a waiver to the Procurement Code. There is provision in the Procurement Code (paragraph 2.9) for waivers to the requirements of the Procurement Code to be allowed in exceptional circumstances.
- 13.3 Paragraph 2.9.3.3 of the Procurement Code allows that where the total contract value exceeds £1.5m (or £300k for consultancy agreements), a Cabinet Member decision is required in accordance with the Terms of Reference for each Cabinet Member. Such a decision will be required in regard to the following contracts:
- WCC – Outlook Care – Supported Housing (4 units)
 - WCC – Westminster Society – Residential Care (5 homes, 19 units)
 - WCC – Westminster Society – Supported Housing (88 units dispersed)
 - WCC – Yarrow Housing – Supported Housing (3 units)
 - WCC – Yarrow Housing – Supported Housing (2 units)
- 13.4 Other than those mentioned in 13.1 above, there are no procurement strategy implications pertaining to the extension of the contract for the Supported Housing Partnership and Short Breaks services in this report as there is provision in each contract for extension..
- 13.5 Paragraph 8.5 of the Procurement Code states that exercising an option to extend the contract shall require the same approvals as the contract award, appropriate to the aggregate value of the contract: Paragraph 8.5.4 of the Procurement Code states that for contracts worth £1.5m and above, the Executive Director, on the recommendation of the Gate Review Panel, approves extension or variation to that contract where the additional cost of the extension or variation is less than 10% of the original contract value. A briefing note shall be sent to the Cabinet Member advising them of the extension. Such a decision is required in regard to the following contract:

- WCC – Cyrenians – Supported Housing Partnership Agreement (50% of 4 units).

13.6 Paragraph 8.5.5 of the Procurement Code states that the relevant Cabinet Member, on the recommendation of the Gate Review Panel, approves extension or variation to that contract where the additional cost of the extension or variation is 10% or more of the original contract value. Such a decision is required in regard to the following contract.

- WCC – Westminster Society – Short-breaks (67% of 9 units planned and 7 units unplanned).

Timetable

Stage	WCC
CoCo Board	Mon 2 May
CAB	Tue 10 May
HFBB	n/a
Cabinet Member Board	tbc
Political Cabinet	n/a
Cabinet Approval	n/a

14. IT STRATEGY IMPLICATIONS

14.1 There are no IT systems implications for the Direct Award or extensions of the contracts for the services in this report.

Background papers used in the preparation of this report

Contact officer(s):

David Goulding, Procurement and Contracts Officer. David.Goulding@H&F.gov.uk

For completion by the **Cabinet Member for Adults & Public Health**

I have no interest to declare / to declare an interest in respect of this report

Signed: _____ Date: _____.

NAME: Councillor Rachael Robathan

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Contract Extensions and Direct Award Of Contracts For Learning Disabilities Services** and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Adults & Public Health

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal & Democratic Services, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy & Scrutiny Committee to decide whether it wishes to call the matter in.

APPENDIX A

Service area 1: LD Accommodation with care						
Contracts In Scope	Contracting Borough	Annual Contract Value	Contract Start Date	Contract End Date	Proposed End Date	Cost of Extension
Supported Housing (4 units) Outlook Care	WCC	220,301	15 Jul 2002	31 Mar 2017	30 Jun 2017	55,075
Residential Care (5 homes, 19 units) Westminster Society	WCC	614,995 + PB	1 Aug 2005	31 Mar 2017	30 Jun 2017	153,749
Supported Housing (88 units dispersed) Westminster Society	WCC	916,020 + PB	1 Apr 2004	31 Mar 2017	30 Jun 2017	229,005
Supported Housing x (3 units) Yarrow	WCC	148,850	1 Apr 2004	31 Mar 2017	30 Jun 2017	37,213
Supported Housing (2 units) Yarrow	WCC	123,656	1 Apr 2004	31 Mar 2017	30 Jun 2017	30,914
Supported Housing Partnership Agreement (50% of 4 units) Cyrenians	WCC 50%	362,962	1 Nov 2013	31 Mar 2017	30 Jun 2017	90,741
Short breaks (67% of 9 units planned & 7 units unplanned) Westminster Society	WCC 67%	1,013,886 core	27 Jul 2015	31 Jan 2017	31 Jan 2018	1,013,886
TOTAL WCC		3,400,670				1,610,583