



City of Westminster

# Cabinet Member Report

**Meeting or Decision Maker:**

Cabinet Member for Adult Social Care,  
Public Health and Voluntary Sector

**Date:**

31 January 2024

**Classification:**

General Release

**Title:**

Learning Disabilities Housing Care and  
Support Services Interim Contracts –  
Direct Award

**Wards Affected:**

All

**Policy Context:**

Fairer Communities

**Key Decision:**

Yes – added to the Forward Plan on 11  
October 2023

**Financial Summary:**

This report covers expenditure of  
£3.79m for five contracts and relates to  
aggregated spend plus the new direct  
award value.

**Report of:**

Bernie Flaherty, Bi-Borough Executive  
Director for Adult Social Care and  
Health

## **1. Executive Summary**

- 1.1 This report seeks the direct award of four contracts which provide housing care and support for people with learning disabilities in the City of Westminster (WCC). These are:
  - i) Elmfield Way – Yarrow
  - ii) Cambridge Gardens – London Cyrenians
  - iii) Queens Park – First and Fifth Avenue – Yarrow
  - iv) Lapworth Court – Support for Living / Certitude.
- 1.2 WCC and the Royal Borough of Kensington and Chelsea (RBKC) (together Bi-Borough) commission housing care and support services to people with learning disabilities (LD), as part of the Councils' statutory duties under the Care Act 2014, to assess and meet the care needs of vulnerable adults and their carers. The core housing support services include budgeting support; tenancy sustainment; support to remain safe at home and in their own community; personal care tasks as required; ensuring that a healthy lifestyle is followed and general assistance to live independently. Approximately 100 adult residents are supported by these services in WCC. This report also includes some residential care services and other forms of supported living for residents with learning disabilities.
- 1.3 The contracts covered in this report provide care and support for some of our most vulnerable residents. They support our residents with learning disabilities to live as independently as possible in the community. In turn they help to deliver a Fairer Westminster.
- 1.4 A new Learning Disabilities Housing Care and Support Framework is in development so that these contracts can be tendered through a competitive and open process. This work is at an advanced stage. Extensive market engagement, including with residents, suppliers and professionals has already taken place. The new model offers greater strategic relevance and will enable the council to better meet its Care Act duties.
- 1.5 The requested direct awards will allow continuity of services and stability for vulnerable service users, their carers and suppliers. Suppliers will continue to work to the current specification.
- 1.6 The project board for this process, made up of Adult Social Care, Finance, Procurement and Commissioning staff have been working to develop and agree the shape and scope of the model of service, including running several market engagement events with suppliers, benchmarking costs and financial models against other boroughs and engaging with service users, professionals and carers in conjunction with the User Research team.

## **2. Recommendations**

2.1 That the Cabinet Member for Adult Social Care, Public Health and Voluntary Sector:

2.1.1 Approves the direct award of contracts for the 4 services confirmed below from 1 April 2023 to 31 March 2025, with a break clause at 30 September 2024:

- i) Elmfield Way – Yarrow
- ii) Cambridge Gardens – London Cyrenians
- iii) Queens Park – First and Fifth Avenue – Yarrow
- iv) Lapworth Court – Support for Living / Certitude.

2.1.2 Note the expenditure from 1 April 2023 to [decision date]. The existing contracts expired on 31<sup>st</sup> March 2023 therefore the current suppliers are working at risk.

2.1.3 Approve a waiver of the Procurement Code from the requirement to undertake a competitive tendering exercise in order to directly award the aforementioned contracts.

## **3. Reasons for Decision**

3.1 The Council has a statutory duty under the Care Act 2014 to:

- Ensure appropriate personalised care and support to meet the individual assessed needs of Service Users
- Maximise independence, focusing on choice and control for people in receipt of Learning Disability Services
- Ensure consistency and continuity of care, minimising service disruption for vulnerable adults with learning disabilities living in the community.

3.2 These direct awards will meet these aims and provide the necessary time to complete the development of a framework for the tendering of these services.

3.3 Under the Council's Scheme of Delegation, a Cabinet Member Decision is required due to the value of the contracts.

## **4. Background, including Policy Context**

4.1 The Council puts residents at the heart of what we do. User experience and involvement is central in the approach taken by Adult Social Care in the design and provision of services. This way we can be sure that what we do is going to improve the users experience and lead to better outcomes. It also helps maximise their independence and live well in the community and in turn offer improved outcomes.

- 4.2 Supporting our residents with a learning disability to live in our community is a key part of the Council's strategy to ensure that poverty and inequality are reduced, making Westminster a healthier and more equitable place.
- 4.3 The provision of quality care and a safe home for people with a learning disability supports the Council's aim of the city being a safe place where all discrimination is tackled and everyone feels welcome. The service provision included in this report is also designed to support residents as they age, and as needs get more complex offering more care and support over time.
- 4.4 Commissioners are also actively developing a Housing Care and Support Framework in order to develop the market and to give our residents more choice and control. This will provide a compliant route to the market for learning disability services and support our statutory duties.

Under the Care Act 2014 local authorities have to:

- 1.1.1. Promote diversity and quality in the care market.
  - 1.1.2. Must support local providers; and,
  - 1.1.3. Ensure there are a range of providers who can deliver services in accordance with needs and customers' requirements.
- 4.5 Robust contract monitoring and service development delivered by contract managers, Quality Assurance and Operational colleagues (e.g. social workers, safeguarding and resident feedback) will ensure that the services covered in this report continue to meet the high standards that the Council expects. Independent verification of these standards is also provided by the Care Quality Commission (CQC) who inspect our registered residential services and the personal care provided in supported living services via their domiciliary care CQC registrations.
  - 4.6 Building market resilience is a key priority for the Council. Over the last two years Commissioning and Commercial teams have taken positive measures to develop the market for learning disability services. This has included holding market engagement events, which were widely advertised and well attended. The feedback from these events is helping to develop the Housing Care and Support Framework. They will be followed by a Prior Information Notice (PIN) in order to advertise the new framework to as wider audience as possible.
  - 4.7 These direct awards are proposed so WCC has sufficient time to finalise the design of the Bi-Borough Learning Disabilities Housing Care and Support Framework and to use this model to procure future services. The awards will also provide time to follow governance procedures and to complete procurement and contract mobilisation.
  - 4.8 The current housing care and support services for bi-borough residents with learning disabilities have been in place for several years. The support is delivered through combined non-regulated and regulated (by the Care Quality Commission) services and have different service specifications in place. The

services are delivered from shared supported accommodation with individual tenancies and registered residential services.

- 4.9 Following a period of time with informal contracts in place, in September 2021 a process was internally approved to formalise the arrangements with LD suppliers. A number of contracts, both housing care and support and other learning disability support services (employment, day opportunities etc) have been signed off and led to the regularisation of contractual arrangements.
- 4.10 The longer-term aim has been to have a more coordinated and strategic approach for the LD housing care and support service contracts, and the project board for the procurement process has been meeting regularly to determine the scope and operation of the new model. Lessons learned from previous and current contracts are being incorporated into the development of the new procurement approach.
- 4.11 Input has been received from suppliers via two market engagement events, with a third planned for mid July 2023. The sessions have sought feedback on how the services should be grouped, with both geographical and needs based models discussed. The financial modelling of the contracts was also raised with suppliers. In particular, the proposal of a standard price was highlighted and supplier feedback has been taken into account when refining this proposal.
- 4.12 Further work is being undertaken to confirm the procurement model, with a recent workshop with internal stakeholders and the procurement team, examining the best options to meet the needs of both the Councils, the service users and suppliers. Consultation has been taking place with service users, carers and service professionals and will continue until the final model is decided.
- 4.13 A report setting out the procurement strategy for the new contracts, currently proposed to be a Light Touch Framework, will be presented internally in mid to late July 2023.

4.14 **The strategy timeline**

<b>Milestone</b>	<b>Start Date</b>
All direct awarded contracts signed	June 2023
Final Market engagement event	August 2023
Finalisation of Commissioning Intentions	Oct 2023
Gate 2 Procurement Strategy report	Nov 2023
Prior Information Notice Published	Nov 2023
Launch Procurement	Dec 2023

Submission deadline	End Jan 2024
Evaluation and Moderation	Feb 2024
Contract Award report signed-off	March / April 2024
Framework Awarded	May 2024
Phased call-offs for each LOT called off and mobilised	May – Oct 2024 (with additional contractual provision until March 2025 as contingency)
Framework Fully Operational	By March 2025

#### 4.15 Options and Analysis

In determining these recommendations for the four contract awards, four key options have been explored:

##### 4.15.1 Option 1 – Maintaining the status quo (Do Nothing)

This has been discounted as this is not a viable option as the contracts included within this report expired in March 2023. Therefore, this option could compromise the Councils ability to enforce our terms and conditions and could also impact continuity of service:

**Advantage:** By not awarding these contracts, the Council could engage the spot market and possibly find willing and capable learning disability service providers with the necessary skills, knowledge and experience of delivering contracts of this significant financial value and high-quality expectations.

**Disadvantage:** Our local business intelligence shows that there is insufficient capacity and capability in the spot market that is willing to accept and deliver these contracts. There are limited providers who have specialist experience and qualifications to support people with complex learning difficulties including positive behavioural support. A lack of formal contractual arrangements would put the Council at risk in terms of quality standards.

##### 4.15.2 Option 2 – Undertake a competitive tender exercise.

This is what the Council is looking to do via the development of a Housing Care and Support Framework for the call off of care contracts for adults with learning disabilities. There has been extensive engagement with service users, residents, carers, suppliers and other professionals. Feedback from this engagement will be embedded into the new contract model and contracts

(including those in this report) will be put out to tender once the final model and timetable is completed. It will take some time for this exercise to be completed and for contracts to be mobilised to new arrangements.

**Advantage:** The planned framework will enable the Council to comply with the WCC Procurement Code and the Public Contract Regulations (2015). In addition, it has the potential to attract new and suitable providers to the market who may be able to deliver the Council's financial and quality objectives.

**Disadvantage:** Existing providers may see the framework as a risk to their current business model and some suppliers, including new entrants may not be familiar with the Councils procurement and tendering processes. There are also risks in relation to the mobilisation of service provision where the incumbent provider does not succeed in their bid for these services. Significant Council resources will need to be allocated to this process in order to mitigate these risks.

#### 4.15.3 Option 3 – Direct award contracts

**Recommended option as set out in the body of the report.**

**Advantage:** The preferred recommendation as set out within this report is that these contracts are awarded to the incumbent providers whilst the Housing Care and Support Framework is in development. This approach ensures consistency and continuity of care for the most vulnerable residents in the borough.

It supports market stability, minimising disruption to Service Users. It also builds on the strategic relationships with the lead providers in the context of a fragile market.

**Disadvantage:** Over-reliance on a small number of learning disability providers including some with a large market share means that the risk of provider failure could have an adverse impact on service delivery. Price negotiations can also be impacted by the lack of an alternative and compliant route to market. However, the development of the HCS framework will help mitigate these risks.

## **5. Financial Implications**

- 5.1 This report covers expenditure of £3.79m for five contracts and relates to aggregated spend plus the new direct award value. These contracts form part of a larger group of contracts which were renewed via direct award. The other contracts have been approved via separate Cabinet Member reports.
- 5.2 The annual budget is £18m which is used to offset all LD placements and packages expenditure (cost centre W21710). It is the responsibility of the budget manager to ensure that both core and any flex cost remain within budget.
- 5.3 The total budget of £18m is for the whole of supportive living from which all expenditure relating to the contracts that are being renewed are paid from. However, there is a residual balance which is used to make spot placements and which are one off arrangements that may not be part of the main contract or purchase additional care hours if an assessment considers this to be necessary.

## **6. Legal Implications**

- 6.1 The recommendations made as set out at section 2.1 of this report seeks Lead Member approval for the direct contract awards to the providers listed at 2.1.1.
- 6.2 It is also recommended that in order to make these direct awards a waiver is being sought from the Council's Procurement Code to undertake a competitive tender process.

### **6.3 Public Contracts Regulations:**

- 6.3.1 The nature of the services being commissioned involve housing care and support services to people with learning disabilities ("the Services"). The Services have been commissioned and required as part of the Councils' statutory duties as set out under Part 1 of the Care Act 2014 to assess and meet the care needs of vulnerable adults and their carers. Under the Public Contracts Regulations 2015 (PCRs), the Services fall under the light touch regime (LTR) and subject to the requirements set out under Section 7, Regulations 74 to 77. The services provided under the contracts that are the subject of this report fall under the category of 'Social and Other Specific Services' as defined by the Public Contracts Regulations 2015 (PCR 2015).
- 6.3.2 Where the contract values for the direct awards fall below the relevant PCR threshold of £663,450 the full implications of the PCRs will not apply.
- 6.3.3 Where the contract values for the direct awards are above the relevant PCR threshold of £663,450, they will be subject to the full implications of the PCRs. While the proposed direct award is being treated as essentially new contracts,



the Councils should be mindful that given there has been no break in service provider and they have been operating on implied terms for the period between 2021-2023, the actual total estimated contract value is to be treated in the aggregate. As a result, the Council will be in breach of the PCRs and shall consider the advice on potential mitigation actions as set out at Section 6.4 of this report.

#### **6.4 Risks and mitigations:**

- 6.4.1 The Council has been advised that the proposed direct awards that are above PCR threshold with the providers will be non-compliant with the regulations. The implications of this could result in the decision to award being made subject to legal challenge. Non-compliance with the PCRs runs the risk of the common remedies being sought against the Council, namely a claim for damages or ineffectiveness.
- 6.4.2 In order to mitigate against the potential consequences of a legal challenge being brought as a result of these contract awards, the Council have in place standard collateral provisions under an awarded contract. These provisions will take effect where a bona fide and substantive procurement challenge is brought that will govern how the parties are to cooperate with one another to resolve the issues of the challenge. The Council may also rely on the appropriate contractual mechanisms in place to respond to any liability arising with the providers. The Council shall also have the right of early termination for any breach of the PCRs.
- 6.4.3 Additionally, the Councils may want to consider, if not already done, to issue a PIN notice to notify the market of its intention to re-procure the services. This may deter bidders from bringing a claim if they are aware that a bigger opportunity is in the pipeline. The Council should make the direct award for only a necessary amount of time to undertake a compliant procurement process. The value of the contracts is significant which increases the risk of a challenge. In mitigation, the Council is genuinely undertaking steps to procure the contracts in accordance with the PCR 2015 which is what a court would order the Council to do if a challenge was successful.
- 6.4.4 The decision makers need to consider what their future procurement strategy is and how it will be implemented over the next 18 months relating to these Services. It is apparent that making direct awards of this nature repeatedly cannot continue in the same vein which continues to pose significant risk of legal challenge to the Councils.

#### **6.5 Waiver approval:**

- 6.5.1 Under section 8 of the Council's Procurement Code ('the Code') approval of a waiver from the Code's requirement to competitively procure this service for a contract value of £1.5 million or more may be granted from the Cabinet Member following a recommendation to approve from the from the appropriate Executive Leadership Team member and internal approvals.

## 6.6 Contract approval:

- 6.6.1 Approval of the contract award for a contract value above £1.5 million is required from the appropriate Cabinet Member following internal approvals.
- 6.6.2 Approval of the contract award for a contract value below £1.5 million but more than £100,000 is required from the appropriate Executive Leadership Team (ELT) member following internal endorsement to approve. This is understood have been granted by the ELT member and no further approval is required by the Cabinet Member.

## 6.7 Publication of Contract Award Notices:

- 6.7.1 The appropriate contract award notices will need to be issued in accordance with Regulation 75 of the PCRs.

## 6.8 Contract preparations and execution:

- 6.8.1 Legal input should be sought in the preparation of the contracts and the drafting of the break clause. The contracts shall be executed by way of deed which requires the Council's seal in accordance with ss.4.3.6 of the Code.

## 6.9 Risks and Mitigations

Risk	Detail	Mitigation
Challenge from other suppliers.	The Councils are risk of legal challenge due to non-compliance with the PCR regulations.	The development of a procurement process to appoint suppliers to a Framework is under way and due to commence in Summer 2023.  There have been two market engagement events held with a further one scheduled for early June. The events have been widely publicised and well attended by suppliers.  A Prior Information Notice (PIN) of the Council's intentions will be published after the Market Engagement event in June.
Supplier failure.	Supplier is unable to provide service or ceases trading.	All providers are required to have an active and up to date Business Continuity Plan. These are reviewed on a regular basis along with periodic checks on financial stability via the credit safe system.

New procurement	Delays in procurement of new contracts.	The development of the procurement model is progressing well, with a detailed timetable drawn up and the project board meeting regularly to move the work forward.
Mobilisation	Impact of mobilisation on service users and delays in setting up new contracts.	Consultation is taking place with service users so their needs are integrated into the procurement process. The mobilisation will be phased and time built in to allow smooth transitions. Call-offs, where possible, will managed to allow as much mobilisation as possible.
Legal Challenge – Impact on Service Users	<p>Impact on service users in the event of a legal challenge to any of the direct awards proposed.</p> <p>Any break in service would be extremely disruptive and unsettling for service users, some of whom are very vulnerable.</p> <p>Where contracts include residential services, suspension of a provider / contract may result in a client having to leave their home.</p>	<p>If a supplier was no longer allowed to deliver, other currently contracted providers would be contacted to arrange alternative placements / services for clients. If applicable, service users with residential places could utilise direct payments / personalised budgets to remain in the homes.</p> <p>The procurement of the new HCS Framework is due to commence in late Summer 2023. The affected service would be given high priority when call-offs / new contracts begin.</p>
Delays in / non-signature of the DPIA.	The service includes sensitive personal data. Risk of processing of personal data by suppliers prior to the DPIA being signed off / any delays in the completion of the DPIA.	An overarching DPIA to cover all the contracts and suppliers has been drafted and further information is being sought both internally and from suppliers to complete it. The service area and procurement team will collaborate to ensure this is completed.

		Support is being provided by the bi-borough Information Governance / Caldicott Support Manager.
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## 6.10 Governance

6.11 The Cabinet Member Terms of Reference delegate the powers of this decision to the Cabinet Member. In accordance with Paragraph 33.12 of the Council's Access to Information Procedure, this proposed key decision was entered in the Forward Plan on 11 October 2023 and the necessary 28 clear days' notice has been given. A period of five clear days - the call-in period – must elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

## 7. Carbon Impact

7.1 The Council has begun work to baseline its Scope 3 (indirect) carbon emissions, which includes supply chain emissions as well as those associated with capital projects, investments etc., with the aim of establishing a net zero carbon target. Procurement and Commercial Services are working alongside the Climate Emergency team and others to pursue this goal, with two parallel workstreams:

- A Supplier Charter, with requirements at selection stage for all relevant contacts to monitor and report their emissions has been developed and was launched in April 2023. This is applicable to all new contracts, and is voluntary for existing contractors, with those with the highest carbon intensity and most time still to run being prioritised.
- In terms of existing contracts, the first stage of baselining work involves identifying existing contracts of a high value, with a high carbon intensity and opportunity to significantly reduce carbon emissions and working alongside those contractors to baseline the carbon emissions associated with our contract.

7.2 Due to the short term nature of these direct awards and the fact that they have not been deemed as contracts of priority in terms of carbon intensity/ opportunity to significantly reduce emissions it is not envisaged that carbon emissions will be reported as part of this contract period.

7.3 These direct awards are an interim solution proposed to be put in place until a new procurement exercise is completed. At that time the Supplier Charter requirements will be applicable, and we will be asking the successful bidders to report their carbon emissions so that we can hotspot and continuously reduce those emissions over time.

## **8. Equalities Implications**

- 8.1 Consistent with the Equality Act 2010, there will be no adverse equality implications for protected groups due to these proposed four contracts awards. Overall, the impact on vulnerable adults and younger adults with disabilities is assessed as neutral or positive, as service continuity will be secured in most cases with the same care worker from the existing provider.
- 8.2 At the Commissioning and Contract meetings, the Council systematically reviews the performance of each of the suppliers covered in this report. Robust monitoring of business intelligence and enforcing the contract ensures there are no adverse equality implications on the population.

## **9. Consultation**

- 9.1 There has been active engagement with Bi-Borough residents and other stakeholders, to ensure that provision is person-centred and has the full involvement of local people at all stages.
- 9.2 Initial engagement with residents, their carers and advocates took place across late 2020 to the summer of 2021 with a report published and shared in September 2021. The Advocacy Project was commissioned to support this engagement. They provided independent analysis confirming areas where residents, carers and all of those impacted by the proposed Housing Care and Support Framework wanted the service to consider. Unfortunately, this engagement took place during the Covid 19 pandemic and much of it was centred on digital engagement (digital surveys, Zoom and MS Teams meetings) and it was felt that more engagement should take place, including in-person events to gather people's views.
- 9.3 The renewed consultation concluded in July 2023. It included easy read documentation to support residents understanding of what is being proposed and supported this through workshops and surveys for stakeholders. An online survey was live for six weeks as per community engagement guidelines. In person events are taking place in order to ensure that our service users are fully included and able have real input and make changes to our proposals where this is wanted. Findings will be collated as a report that will be shared and support the outcomes that will inform the service specifications for the services.

**If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:**

Oliver Nolan: Care Market Manager (ASC) and Shazia Ghani Head of Care Markets (ASC)

## **BACKGROUND PAPERS**

**Commercial Gateway Review Board (CGRB) Report:** Direct Award – Learning Disability Services: CAR project ref 525\* (Commercially Sensitive)

For completion by the **Cabinet Member for Adult Social Care, Public Health and Voluntary Sector**

**Declaration of Interest**

I have no interest to declare in respect of this report

Signed: N. Butler-Thalassis Date: 23 January 2024  
NAME: **Councillor Nafsika Butler-Thalassis**

State nature of interest if any:

*(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 **Learning Disabilities Housing Care and Support Services Interim Contracts – Direct Award** and reject any alternative options which are referred to but not recommended.

Signed: N. Butler-Thalassis

Cabinet Member for Adult Social Care, Public Health and Voluntary Sector

Date: 23 January 2024

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:

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 Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (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 and Scrutiny Committee to decide whether it wishes to call the matter in.