
Decision maker:	Cabinet member: Health and wellbeing
Decision date:	27 April 2017
Title of report:	Direct award of learning disability day service contract
Report by:	Strategic health and wellbeing manager

Classification

Open

Key decision

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates.

Notice has been served in accordance with Part 3, Section 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

Wards affected

Countywide.

Purpose

To approve the direct award to Aspire Living of a contract for the provision of daytime opportunities for learning disabled people at St Owen's Centre in Hereford.

Recommendation(s)

THAT:

- (a) the direct award of a contract to Aspire Living is approved for a period of 18 months from 15 May 2017; and**
- (b) the assistant director commissioning and transformation be authorised to negotiate the final contract price within the existing agreed budgetary provision.**

Alternative options

- 1 To undertake a full competitive procurement process to award the contract. This option is not recommended as there is insufficient time to procure a new service to provide continuity. The contract with the existing provider will end on 15 May 2017. To delay would leave learning disabled people without a service. To not provide this function would leave the council in breach of its duty to meet the eligible assessed needs of vulnerable adults and so open to legal challenge and reputational damage.
- 2 Not to re-commission the service. This would involve leaving the eligible assessed needs of vulnerable learning disabled people unmet, which is not recommended as it would result in the risks identified above, only for a longer period.

Reasons for recommendations

- 3 The current provider is terminating its contract early on 15 May 2017. It is necessary to secure the service in its current form to meet assessed needs and there is insufficient time to conduct a competitive procurement process. A direct award is the only viable option and during a recent soft market testing, only one provider, Aspire Living, expressed specific interest in operating the St Owen's Centre service. Aspire has the local capacity and credibility to provide the service.

Key considerations

- 4 The contract to the current provider began on 1 September 2014, after the council took the decision to transition its then in house services and re-commission them to the external market. A three year contract was awarded, with two options to extend by further periods of 12 months, taking the contract potentially to August 2019. Whilst the contract began on a block basis with an agreed volume of service, it was predetermined to change to a spot purchase with a variable volume and this change took place on 1 December 2015. The current provider has made a number of changes to the services during this term, including reducing the number of locations from which it operates. In November, the provider gave notice to terminate the contract in May 2017. A review of people's needs and service options has been undertaken and engagement with service users and families is in hand.
- 5 The current contract provides support to 147 people with a learning disability in seven locations across the county. They comprise a mixture of people funded by Herefordshire Council under a spot basis, some self-funders and some people using their direct payments. In addition, NHS continuing health care (CHC) funding supports some placements and one young person is funded by the council's children's wellbeing directorate. St Owen's represents the largest group of learning disabled people and the most complex service and accounts for the majority of the overall cost of the service. For the other services across the different locations in Hereford, Ross-on-Wye and Leominster, various social care providers operating in these areas offer a range of opportunities and support, which are expected to adequately meet the needs of service users. For all those services, other than St Owen's Centre, a choice of local provision will be offered to learning disabled people through social work reassessments, so that a formal re-procurement approach is not required. The offer will continue to provide services and support to people in the current market towns.
- 6 St Owen's Centre provides a service to 65 learning disabled adults, over five days of the week. The majority of people who are supported by this service present with very

Further information on the subject of this report is available from
Ewen Archibald, strategic wellbeing and housing manager on Tel (01432) 261970

complex support needs. To re-commission alternative models of support would require significant development of the current market and this is not achievable within the current timeframe. Soft market testing has been conducted and the provider Aspire Living was identified through this process as willing and able to take over operation quickly.

- 7 No individual social work review is required for the St Owen's Centre service as there is no significant change envisaged to the service itself. The current provider employees 30 staff at the centre and the council will review with Aspire Living the future staffing needs and provide support around the TUPE process, including the involvement of employees with a pension under the Local Government Pension Scheme (LGPS).
- 8 This service is delivered from council premises, namely St Owen's Centre and Centre 18 in Hereford. This is a shared site with Barrs Court College. The council's approach is to lease the premises to the incoming provider for an 18 month period, and to recover a 'service charge' in respect of utilities and running costs, as is the current practice. This approach has been agreed with the council's property services team.
- 9 The re-commissioning of this service will take nine months and it will be built into the commissioning cycle of activity.

Community impact

- 10 Provision of sustainable and appropriate support in the community for disabled people is consistent with the council's corporate plan and the Health and Wellbeing Strategy for Herefordshire. The engagement with the service user group and their families during February 2017 has made it clear that people value the services at St Owen's Centre. This has served to underline that the service is consistent with the vision that "Herefordshire residents are emotionally and physically healthy and feel safe and secure" as outlined in the adults wellbeing plan 2017-2020.
- 11 The adults wellbeing plan 2017-2020 also recognises that "a relatively small number of people will need a more substantial level of support. At these times formal adult social care services are there to assist." "People who engage with us can expect a support and care offer that is appropriate and proportionate to meet their needs."

Equality duty

- 12 Note: Under Section 149, the "General Duty" on public authorities is set out thus:

"A public authority must, in the exercise of its functions, have due regard to the need to -
 - eliminate discrimination, harassment, victimisation and any other conduct ... prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it."
- 13 The proposed approach will have no detrimental impact on any persons sharing a

protected characteristic. The decision will safeguard valued and appropriate support for a group of people with a shared protected characteristic and their carers.

Financial implications

- 14 The proposed contract for the service at St Owen's Centre will continue the current practice of spot payments for support of individuals, within a strategic context. The value of the St Owen's element of the service is approximately £747k for the duration of the proposed new contract. This figure is based on the current utilisation, which is a mixture of current council payments, the majority of which are spot purchases. Some learning disabled people use their direct payments to purchase services, some use CHC funding and one young person is funded by the council's education department. The value of the contract is not expected to increase following recent analysis. The cost of the service will be monitored during the term of the contract and as part of the forthcoming re-procurement process.
- 15 The contract will give consideration to the Transfer of Undertakings (Protection of Employment) regulations (TUPE). There are 30 staff which equates to 25 whole time equivalent (WTE) employees, of whom there are 7.6 (WTE) who were previous council employees. The Local Government Pension Scheme (LGPS) implications already existed in the previous contract and the numbers of LGPS staff has diminished through the current life of the contract. The proposed provider is expected to require an underwriting of risk in relation to financial liability towards LGPS scheme members.

Legal implications

- 16 The council has a number of statutory duties, namely the Care Act to ensure that it can provide opportunities throughout Herefordshire to meet the eligible needs of service users. Failure to provide such services would leave the council open to legal challenge by way of a Judicial Review, or other legal means if such services were not provided.
- 17 However, by agreeing to the recommendations in this report, the council is acting outside of its Contract Procedure Rules (CPR) found within the constitution given that it has effectively directly awarded this contract for service without a formal tendering process having been followed. The council is therefore at risk of a Judicial review or other means of legal challenge if it is challenged over its decision making process. Due to the size of the contract, namely just shy of £750,000, it is above the European Contract procedure requirements and therefore a waiver under paragraph 4.6.18.1 of the CPR cannot be granted in any circumstance.
- 18 However due to the fact that Aspire was the only provider which expressed any specific interest in the St Owen's element, it is suggested that the risk of challenge for these reasons is low.

Risk management

- 19 The provider is terminating the contract early and the timescale is very short, it will end delivery on 15 May 2017. A thorough tender process to include consultation, key decision and mobilisation would take nine months. As this is urgent, it requires a contract to be agreed via a direct award. Through a soft market testing exercise, only one provider was identified as being interested in delivering this service.

- 20 If the direct award is agreed, the council will work closely with both the incoming and exiting providers to ensure a smooth mobilisation and transition of services.
- 21 If the decision to issue a direct award is declined, the council must still discharge its legal obligations to meet need. As there is not capacity within the wider provider market generally to offer support to the high number of people with complex needs and no other provider has expressed an interest in running the St Owen's Centre, the council would need to continue the delivery by transferring the service back. An insourcing of this kind would not be consistent with the current and recent practice and would increase operating costs over the long term arising from the LGPS. The impact of this will include significantly increased costs, and the likelihood that it would not be economically or logistically possible to outsource the service again in the future.

Consultees

- 22 Engagement with service users and family members has taken place after the provider announced its intention to end the contract early. This feedback has underlined the vulnerability of the St Owen's user group and desire for continuity, so informing the approach to use a direct award process.

Appendices

None.

Background papers

None identified.