

CABINET MEETING: 24th January 2019

**THE SUPPORTED LIVING SERVICE FOR ADULTS WITH A LEARNING
DISABILITY**

**PORTFOLIO: SOCIAL CARE, HEALTH and WELL-BEING
(COUNCILLOR SUSAN ELSMORE)**

AGENDA ITEM:

DIRECTOR OF SOCIAL SERVICES

Reason for this Report

1. To ensure that formal and appropriate contract arrangements for the provision of Supported Living Services for Adults with a Learning Disability are in place for 1st November 2019.
2. To authorise the Personal Domiciliary Care and the Housing Related Support contractual arrangements for the provision of Supported Living Services for Adults with a Learning Disability as set out in the proposed recommendation.
3. To delegate authority to the Director of Social Services in consultation with the Cabinet Member (Social Care, Health and Well-Being), the Council's Section 151 Officer, the County Solicitor and the Council's Monitoring Officer, to determine all aspects of the procurement process and the supported living model (including approving the evaluation criteria to be used, and authorising the award of the contracts) and all ancillary matters pertaining to the procurement.

Background

4. On 2 April 2015 Cabinet authorised the award of the Personal Domiciliary Care Supported Living Services contracts and the Housing Related Support Supported Living Services contracts to the successful tenderers with contracts to commence on 1 August 2015.
5. The contracts were awarded for a fixed term of three years with the option to extend for a further period or periods equating to no more than two years provided that the contracts did not extend beyond 31 July 2020.
6. The Social Service Directorate reported on this matter to Cabinet on 18th May

2018. Cabinet approved the model for the provision of Supported Living for citizens with a learning disability and the extension of the Contract to 31st October 2019.

7. The Directorate has secured a sustainable supported living service model where the providers deliver services which meet the outcomes of individuals as set out in their support plans, offering individuals more choice, control and independence in their lives.
8. There has been full review of the service delivery and service user consultation and engagement to ensure they are satisfied with how their care and support needs are being met and a high quality provision is being delivered. The Supported living model of support is tailored to the needs, wishes and interests of people and in line with the requirements of the Social Services and Well Being (Wales) Act 2014.
9. The contract value for the domiciliary care element of the contract currently amounts to £16.3m per annum. Annual costs relating to the housing related support HRS element of the contract amount to £1.9m funded via the Supporting People Programme Grant.
10. The Domiciliary Care and Housing Related Support services are integral to the delivery of the Supported Living Services (SLS) to citizens. The Council has issued two contracts for these services which are co-dependent for the effective delivery of the service
11. The external Supported Living Service consists of 100 schemes providing shared and self-contained accommodation with support for 311 individuals across six localities within the City.
12. The contracts for the external supported living services for adults with a learning disability have an expiry date of 31 October 2019
13. The quality of delivered care is registered and monitored by Care Inspectorate Wales (CIW). Case Managers/ Social Workers review care & support plans in conjunction with the supported living team will the individual and all stakeholders.

The Supported Living Model

14. The term 'Supported Living' describes a broad range of housing and support options. Supported Living can be defined as:
 - When an adult with a Learning disability rents/buys somewhere to live and receives Personal Domiciliary Care and Support from a domiciliary support provider that is not the owner/landlord of the accommodation.

15. The model of service provision is rounded in the Learning Disability service principles of:
- The right to an ordinary pattern of life within the community
 - The right to be treated as an individual
 - The right to additional help and support in developing maximum potential.
16. Supported living is an approach that is based on the belief that people have a right to decide where, how and whom they live with, and who should provide them with the support they need to do this. The fundamental principle is that you live in your own home, shared, with a partner, or on your own and you get the sort of care and/or support that works for you.
17. Supported living services are often associated with small group homes with three or four people sharing accommodation, living in an ordinary house in the community and in Cardiff we have developed a model of Core & Cluster – where the core flat will receive a higher level of care and support and the surrounding flats will receive targeted support. The development of this model has facilitated the closure of large scale institutional care
18. The current model is divided into 6 geographical localities across the City to encourage identity and integration into Community facilities enabling a person to be a member of their community.
19. Supporting People Programme Grant funding is allocated to each person for housing related support. Currently the providers deliver domiciliary support and housing related support to the individuals.
20. Our statutory obligation is to meet eligible assessed need; how that need is met will be through a variety of means to be determined by the citizen, families and with the case manager. Throughout we will continue to enable an individual to remain as independent as possible utilising a mix of support from universal services in their community as well as dedicated packages of care.
21. The Council's value-based principles for supported living are from a desire to ensure that there is an appropriate balance of arrangements which offer greater choice and control of care and support for people; for their family networks and meet statutory guidance and offer the city best value.
22. The Council will work in partnership with stakeholders to identify creative solutions to promoting a sustainable future in communities for people with learning disabilities. Partners will ensure that opportunities across localities are offered to people to ensure inclusion, for example opportunities for people to volunteer in their local area.
23. The matter has been presented to Community & Adult Services Scrutiny Committee on 9th January 2019.

Proposal

24. To ensure that formal and appropriate contract arrangements for the provision of Supported Living Services for Adults with a Learning Disability are in place

for 1st November 2019. It is proposed that the contracts for SLS (including the community care service and housing related support) will be delivered as a whole package by issuing the opportunity to the market for organisations who are willing to tender for both elements of the service.

25. To authorise the Personal Domiciliary Care and the Housing Related Support contractual arrangements for the provision of Supported Living Services for Adults with a Learning Disability as set out in the proposed recommendation.
26. The Council's expenditure is significant, hence it is proposed to secure the future supported living service via a tender/ procurement process on the basis of the "most economically advantageous tender" (known as MEAT) using quality and price criteria.
27. It is proposed to issue a longer term contract to secure the outcomes for people as directed in the Social Services & Wellbeing Act (Wales) 2014. The benefits of a longer term contract will allow the market to be sustainable, to co-produce and be creative in delivering a strengths based practice approach, focusing on well-being, assessment, care and support planning and reviews.
28. A key aspect of the Social Services & Well-being Act 2014 is that services should be co-produced. This is defined as follows: Co-production refers to a way of working whereby practitioners and people work together as equal partners to plan and deliver care and support. It is fundamentally about doing things 'with' rather than to people.
29. The Directorate will continue to develop a sustainable supported living model with an outcome-based led service provision, offering people more choice, control and independence in their lives. A key element of the new service will be to ensure that people have greater choice and control over their lives through access to universal services as well as specialist care. The Directorate will work with care provider organisations to ensure this happens and to promote inclusion for people, their families and the market place. The Directorate consider the supported living model would be the most effective and efficient way of delivering the service.
30. The Social Services & Well-being (Wales) Act 2014 includes a National Well-being Statement (described in overarching guidance) which describes the well-being outcomes that people who need care and support, and carers who need support, should expect in order to lead fulfilled lives. The approach to commissioning good lives aims to support people with learning disabilities and their families to experience these outcomes including the suitability of living accommodation – 'I live in a home that best supports me to achieve my wellbeing'.
31. To authorise the delegation and authority to the Director of Social Services in consultation with the Cabinet Member (Social Care, Health and Well-Being), the Council's Section 151 Officer, the County Solicitor and the Council's Monitoring Officer, to determine all aspects of the procurement process and the supported living model (including approving the evaluation criteria to be

used, and authorising the award of the contracts) and all ancillary matters pertaining to the procurement and proposals above.

Issues

32. There have been Employment Appeal Tribunal rulings that have questioned the established practice sleep in provision within Supported Living services by which staff are paid a standard amount to provide sleep-over cover. The two rulings concerned are *Esperon t/a Middle West Residential Care Home v Slavikovska* and *Whittlestone v BJP Home Support Ltd*. This is a developing area in terms of case law and the issue is being referred to the Supreme Court. The Court of Appeal judgement on 13 July 2018 ruled in favour of Mencap's appeal (**Royal Mencap Society v Tomlinson-Blake and Shannon v Rampersad -t/a Clifton House Residential Home**) against paying sleep-in shifts at the National Minimum Wage. This ruling has led to uncertainty for the market.
33. In July 2015, the Chancellor of the Exchequer announced that from 1 April 2016, the UK Government would introduce a requirement for all employers to pay a mandatory National Living Wage (NLW) for workers aged 25 and above. The NLW increase has had a significant impact on the market and workforce. The Chancellor of the Exchequer has announced another increase of the NLW in 2019, it is anticipated the prices from the market will reflect this increase.
34. From April 2018 the law changed as part of the Regulation and Inspection of Social Care (Wales) Act 2016. This will have an impact on registration, training, qualifications for the workforce and increased costs. The market estimate a 1.5% increase in cost to meet the above regulations.

Consultation

35. Delivery against the communication plan will ensure that all partners are informed of decisions and progress to manage anxiety and distress for people, their families and stakeholders.

Equality and Diversity

36. A full Equality Impact Assessment and action plan has been developed for the Supported Living Services project and a further Equality Impact Assessment has been carried out on the Supported Living Model. This is attached at Appendix 1.

The reason for the recommended decision:

37. To obtain the necessary approval in order to commence the procurement process to invite bids from the market in relation to Supported Living Services referred to as SLS, and which can also be described as community care and housing related support, for people with a Learning Disability.

38. The Procurement process will run in line with the Councils standing orders and Procurement Rules, as a “Part B” service. Although the Contract Regulations themselves do not require prior advertising of Part B services or any form of competitive tendering to be carried out for Part B services, they are still caught by general obligations such as **transparency, equal treatment and non-discrimination** that derive directly from the Treaty on the Functioning of the European Union (TFEU).
39. To delegate authority to the Director of Social Services in consultation with the Cabinet Member (Social Care, Health and Well-Being), the Council's Section 151 Officer, the County Solicitor and the Council's Monitoring Officer, to determine all aspects of the procurement process and the supported living model (including approving the evaluation criteria to be used, and authorising the award of the contracts) and all ancillary matters pertaining to the procurement.

Financial Implications

40. The report seeks delegated authority for the Director of Social Services, in consultation with the Cabinet Member (Social Care, Health and Well-Being), the Council's Section 151 Officer, the County Solicitor and the Council's Monitoring Officer, to determine all aspects of the procurement process for the re-commissioning of an external supported living service for Adults with a learning disability. The report also seeks authorisation for the production of an options appraisal paper in relation to the internal supported living model.
41. The current external supported living contract is made up of two elements; a personal domiciliary care element, with a current value of £16.3m, funded from the Social Services budget and a housing related support element, with a current value of £1.9m, funded from Supporting People Programme grant.
42. The internal supported living service has a budget of £2.5m. Given that expenditure on supported living forms a significant element of the Social Services budget, it is essential that best value is achieved through any procurement process.
43. As the housing support element of the contract is funded via Supporting People grant, the terms and conditions associated with any new contract must reserve the right for the Council to vary payment levels should grant levels decrease.

Legal Implications

44. The first recommendation is, put simply, to authorise the proposed overarching approach to the procurement of Supported Living Services for Adults with a learning disability. The proposal is to carry out a competitive

tender in order to award the services contracts, such length of contract to be determined.

45. The Services concerned fall under Schedule 3 of the Public Contracts Regulations 2015 (“the Regulations”) and accordingly are subject to the so called Light Touch Regime. What this means is that when procuring these Services the Council should comply with the mandatory requirements set out in the Light Touch Regime (Regulations 74-77). In particular, advertise the contract notice in OJEU, conduct the procurement in conformance with the information provided in the OJEU advert, set procurement time limits which are reasonable and proportionate to the services/procurement in question, comply with the EC Treaty based principles of transparency and equal treatment, and publish a contract award notice. Detailed legal advice should be sought on the proposed procurement strategy and proposed procurement route.
46. The proposed recommendation number 2 is to approve delegating authority to the Director of Social Services to deal with all aspects of the recommissioning of the Supported Living Services for Adults with a learning disability. This is a substantial delegation and delegates such matters as determining the evaluation criteria and the award of contracts. Legal advice should be sought as the proposed procurement is worked up.

Welsh Government Grant conditions

47. It is noted that the services are funded via Welsh Government funding under the Supporting People Programme. Normally Welsh Government grant conditions contain a proviso that the services funded via the grant are commissioned in accordance with all relevant legislation and accordingly the directorate should satisfy itself that it can comply with the same before proceeding.

Equality and other public duties

48. In considering this matter the decision maker must have regard to the Council’s duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a) Age, (b) Gender reassignment, (c) Sex, (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation, (i) Religion or belief – including lack of belief.
49. The report identifies that an Equality Impact Assessment has been carried out and is appended at Appendix 1. The purpose of the Equality Impact Assessment is to ensure that the Council has understood the potential impacts of the proposal in terms of equality so that it can ensure that it is making proportionate and rational decisions having due regard to its public sector equality duty. The decision maker must have due regards to the Equality Impact Assessment in making its decision.

50. The decision maker should also have regard when making its decision to the Council's wider obligations under the Social Services and Wellbeing (Wales) Act 2014; the Wellbeing of Future Generations (Wales) Act 2015; the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards

Best Value

51. As well as the obligations as set out above, the Directorate must also be satisfied that the proposal represents best value.

52. The decision maker must be satisfied that the proposal is within the Policy and Budget Framework, if it is not then the matter must be referred to the Council. All decisions taken by or on behalf the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers of behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Council Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances

HR Implications

53. There are no HR implications relating to this report.

RECOMMENDATIONS

Cabinet is recommended to:

54. agree the proposed overarching approach to the recommissioning of Supported Living Services for Adults with a learning disability; and

55. delegate authority to the Director of Social Services in consultation with the Cabinet Member (Social Care, Health and Well-Being), the Council's Section 151 Officer, the County Solicitor and the Council's Monitoring Officer, to determine all aspects of the procurement process and the supported living model (including approving the evaluation criteria to be used, and authorising the award of the contracts) and all ancillary matters pertaining to the procurement.

Claire Marchant
13th January 2019

The following appendices are attached:
Appendix 1 – Equality Impact Assessment