

CABINET MEETING: 24 JANUARY 2019

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

**SOCIAL CARE, HEALTH AND WELL-BEING (COUNCILLOR
SUSAN ELSMORE)**

AGENDA ITEM: 9

Reason for this Report

1. To ensure that formal and appropriate contract arrangements for the recommissioning of the existing 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 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 people 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 people more choice, control and independence in their lives.
8. There has been full review of the service delivery and citizen 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 citizens 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 element of the contract amount to £1.9 million, 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 to citizens. The Council has issued two contracts for these services which are co-dependent for the effective delivery of the service
11. The commissioned 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 current contracts have an expiry date of 31 October 2019.
13. The quality of delivered personal care is registered with, and regulated by, Care Inspectorate Wales (CIW). Social workers review care and support plans in conjunction with the supported living team who monitor the quality of services, with the citizen, and other interested parties such as families or health services.

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 grounded 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 citizens 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 citizens live in their own home, shared, with a partner, or on their own and receive the care and/or support that works for them.
17. Supported living services are often associated with small group homes with three or four citizens sharing accommodation, living in an ordinary house in the community. In Cardiff there is a model of core & cluster – where the core flat residents 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. This enables citizens to be a full and active member of their community.
19. Supporting People Programme Grant funding is allocated to each citizen for housing related support. The current providers deliver both domiciliary support and housing related support to the citizens.
20. Social Services 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 with care and support, their family members and with the social worker. The aim is to enable citizens 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 based on the principles of ensuring that there is an appropriate balance of arrangements, which offer greater choice and control of care and support for citizens, and connection to family networks, as well as offering best value.
22. The Council will work in partnership with stakeholders to identify creative solutions to promoting a sustainable future in communities for citizens with learning disabilities. Partners will ensure that opportunities across localities are offered to citizens to ensure inclusion, for example opportunities for citizens to volunteer in their local area.
23. This matter has been presented to the Community and Adult Services Scrutiny Committee on 9th January 2019. The recommendations arising from the Committee's feedback have been taken into account by the Directorate in developing the proposed supported living service model and the Committee supports the proposals and commends the report to Cabinet. A copy of Community & Adult Services Scrutiny Committee letter is attached at Appendix 2. A detailed response has been made to the specific issues raised by the Scrutiny Committee.

Proposal

24. In order 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 supported living services (including the personal domiciliary care service and housing related support) will be delivered as a whole package. This will be achieved by issuing the opportunity to the market for organisations who are willing to tender for both elements of the service.
25. 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. It is proposed that the tender evaluation weighting is 60% Quality and 40% Price. This will ensure that the successful bidder would be able to deliver a high quality service at a competitive price, offering best value.
26. The bidder will be required to submit their prices in line with the identified bandings of High, Medium, Moderate and Low. These bandings will reflect the care and support needs of the citizens receiving a service.
27. It is proposed to issue a longer term 8 year contract to secure the outcomes for citizens 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 work in partnership with the Council 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 service provision, offering citizens more choice, control and independence in their lives. A key element of the new service will be to ensure that citizens 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 citizens, 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 citizens 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 citizens with learning disabilities and their families to experience these

outcomes including the suitability of living accommodation – ‘*I live in a home that bests supports me to achieve my wellbeing*’.

31. Cabinet is asked 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 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 regarding *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 and commissioners of supported living services where sleep-in shifts are a usual aspect of the operating model.
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 with the introduction of the Regulation and Inspection of Social Care (Wales) Act 2016. This will have an impact on registration, training, and qualifications for the workforce. The market estimate a 1.5% increase in cost to meet the above regulations.
35. The proposed recommendation number 3 is to approve delegating authority to the Director of Social Services. It is recognised that this is a substantial delegation which will make provision for the timescales in procurement timetable to be appropriately met. This level of delegation is consistent with the Council's scheme of delegation. The Cabinet may determine on any particular matter under consideration by the Cabinet pursuant to this Section 2, that a decision on any such particular matter (or any part thereof) may be delegated to a senior officer who is within the Assistant Director tier of management responsibility or above. The decision will need to be made in consultation with the relevant cabinet members and published (with call in attached).

Consultation

36. A detailed communication plan will be put in place to ensure that all partners are informed of decisions and progress. The communication plan will seek to manage potential concerns raised by citizens, their families and stakeholders throughout this procurement process.

Equality and Diversity

37. A full Equality Impact Assessment (EIA) and action plan has been developed for the supported living services project and a further EIA has been carried out on the supported living model. This is attached at Appendix 1.

Reason for the Recommended decision:

38. To obtain the necessary approval in order to commence the procurement process to invite bids from the market in relation to supported living services, for citizens with a learning disability.
39. The procurement process will run in line with the Council's 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).
40. To seek Cabinet's agreement 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 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

41. 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 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.
42. 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.

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 3 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:

1. agree the proposed overarching approach to the recommissioning of supported living services for adults with a learning disability; and
2. 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 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.

SENIOR RESPONSIBLE OFFICER	CHRISTINE SALTER CORPORATE DIRECTOR RESOURCES
	18 January 2019

The following appendices are attached:

Appendix 1 – Equality Impact Assessment

Appendix 2 – Letter from Chair of Community & Adult Services Scrutiny Committee