

LEARNING DISABILITY INDEPENDENT SECTOR DAY OPPORTUNITY SERVICES
CLLR WAYNE FITZGERALD, CABINET MEMBER FOR INTEGRATED ADULT SOCIAL CARE AND HEALTH
SEPTEMBER 2015
Deadline date: N/A

Cabinet portfolio holder: Responsible Director:	Cllr Wayne Fitzgerald, Cabinet Member for Integrated Adult Social Care and Health. Wendi Ogle-Welbourn, Corporate Director of People and Communities
Is this a Key Decision?	YES If yes has it been included on the Forward Plan : Yes Unique Key decision Reference from Forward Plan : KEY/07AUG15/01
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO
Is this a project and if so has it been registered on Verto?	YES / NO Verto number:

RECOMMENDATIONS
<p>The Cabinet Member is recommended to:</p> <p>1. To approve the award 112 individual contracts listed in Appendix 1 to this report. The contract period to deliver day opportunity services is to run from 6 September 2015 to 6 September 2016.</p>

1. SUMMARY OF MAIN ISSUES

- 1.1 The Council has existing 112 individual contracts for directly commissioned day opportunity services where the Council, at the request of service users utilising their personal budgets, directly commission learning disability day opportunity services. The existing contracts were awarded as individual contracts in an earlier decision dated 31 March 2014. Each existing contract expires on September 5 2015; at which time the Council's intention was to put in place a quality and purchasing framework arrangement through means of a competitive tender. The Council carried out early consultations prior to going out for a competitive

tender. As part of the early consultations, the Council held meetings to engage with existing and potential providers to develop a pricing and financial model to support the provision of a framework arrangement. The purpose of the pricing and financial model is to ensure the delivery of cost effective day opportunity services with consistency and clarity in prices for the Council, and provide an equitable and sustainable income for providers to maintain and develop their services.

- 1.2 At these meetings, and in subsequent discussions, the existing and potential providers raised concerns in relation to the Council's proposed pricing and financial model and its potential impact on their capacity to maintain and develop their services. The current independent sector day opportunity provider market is primarily comprised of small and medium sized enterprises (SMEs). As a consequence of these discussions, the Council took the view that the local market was not in a sufficiently developed and robust state to sustain a procurement exercise when the existing contracts expire. In recognition of the providers' concerns, and cognizant of its duty under the Care Act and Social Value Act to ensure the sustainability of service providers, prevent service provider failure and provide equal opportunity for SME organisations to bid for tendered contracts, the Council decided to delay the competitive tendering exercise by 12 months. The 12 month contract periods will allow the Council to further engage the market to develop an appropriate pricing and financial model.

2. PURPOSE OF THIS REPORT

- 2.1 This report is for the Cabinet Member for Integrated Adult Social Care & Health to consider exercising delegated authority under paragraph 3.4.3 and 3.4.8 (a) of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (b).

3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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4. DETAILS OF DECISION REQUIRED

- 4.1 The Cabinet Member for Integrated Adult Social Care & Health is asked to approve the award of 112 individual contracts as outlined in appendix 1 The extended contract periods to run for a period of 6 September 2015 to 6 September 2016.

5. CONSULTATION

- 5.1 The Council, as part of its market engagement, has engaged and consulted current and potential new market entrants in the independent sector in the development of a financial and pricing model. The success of this engagement and consultation, in eliciting the views of current and potential new market entrants, led to the decision to delay the competitive tendering exercise.
- 5.2 Engagement and consultation with day opportunity service providers has been at both a sector/group and individual service provider level.

6. ANTICIPATED OUTCOMES

- 6.1 The outcomes of the 12 month contract award will be that current and new market entrants will be in a position to successfully engage in a competitive tendering exercise to establish an approved day opportunity provider's procurement framework.

- 6.2 To achieve this outcome the Council will engage with, and support, current and potential new market entrants to engage with the development and modelling of the day opportunity financial and pricing model.

7. REASONS FOR RECOMMENDATIONS & ANY RELEVANT BACKGROUND INFORMATION

- 7.1 The reason for the recommendation is to ensure that both existing and potential new market entrants are able to successfully participate in a competitive tendering exercise to establish a day opportunity procurement framework.
- 7.2 The original intention was to subject the independent sector provision to competitive tender when the current contracting arrangements end on 5 September 2015. However, the outcome of the market engagement with current and potential new service providers on the proposed financial and pricing model was that the local market was not sufficiently developed to sustain a tendering exercise at this time.
- 7.2 The 12 month contract will allow the Council to further develop the financial and pricing model in consultation with current and potential new service providers in order to ensure they are able to successfully participate in a competitive tendering exercise in compliance with the Council's contract rules.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The option of undertaking a competitive tendering exercise at the point the current contracting arrangements ended was considered and rejected as the outcome of the market engagement with current and potential new service providers on the proposed financial pricing model, which would underpin the tendering exercise, was that the market was insufficiently developed for the procurement exercise to be a success. The award of individual one year contracts will allow the Council to further engage with the market to ensure it is able to successfully engage in a future tendering exercise.
- 8.2 The option of the Council not directly commissioning the provision of day opportunities, thereby requiring eligible service users to purchase these themselves through means of utilising their personal budget as a direct payment, was considered and rejected. The rationale for rejecting this option was that both the market as a whole, and the majority of service users, are not in a position to make this a viable option.
- 8.3 If the recommendation of awarding 1 year individual contracts is rejected, and a competitive tender is undertaken, it is anticipated the current service provider base will reduce which will lead to considerable disruption to services. The Council will also be in breach of its duty under the Care Act and Social Value Act to ensure the sustainability of service providers, prevent service provider failure and provide equal opportunity for SME's to participate in tendering exercises.

9. IMPLICATIONS

9.1 Legal implications

Section 5 of the Care Act 2014 places a general duty on the Council to promote the efficient and effective diversity and quality in the provision of services. The Council must have regard to the matter set out in section 5(2) Care Act 2014 and in particular, the need to ensure that the Council is aware of the current and likely future demand for services and to consider how providers might meet that demand, the importance of ensuring the sustainability of the market and have regard to the importance of promoting the well-being of adults in its area with care and support.

The Council must have regard to this general duty in its decision – making on this issue.

9.1.1 Procurement

The Council has considered its obligations for awarding each individual contract under the Public Contract Regulations (PCR) 2015. The day opportunity services fall within the ambit of PCR Schedule 3 contracts which require the Council to comply with the procurement regime if the value of each contract exceeds the EU threshold of £625,050.

The PCR 2015 also requires the Council to consider the value of any successive contracts of the same type awarded during the last 12 months. Essentially, this means that if the overall contract value (combining the total value of all the existing individual contracts and the value of the new 12 month contracts) exceeds the EU threshold, then the procurement regime will apply.

On the basis that individual contracts are being awarded, the value of each individual contract to be extended will not exceed the EU threshold value for the procurement regime to apply. Additionally, as the existing contracts were awarded on 31 March 2014, that is longer than 12 months ago, the overall contract value for new 12 month contract will also not exceed the EU threshold.

9.1.2 Better Care Act and Social Value Act

The Council has a statutory duty under the Care Act to ensure the sustainability of the service provider market and prevent service provider failure. This duty is complimented by the Social Value Act which places a duty on the Council to provide Small and Medium Sized Organisations (SME's) with an equal opportunity to bid for contracts being tendered. The outcome of the engagement with current and potential new market entrants in the independent sector, who are predominately SMEs, was that the majority were not in a position to engage with the procurement exercise originally envisaged at the end of the current contracting period.

9.1.3 Overview

In terms of achieving the best outcome for the service users, is to sustain and develop the current SME day opportunity provider market, and to delay undertaking a procurement exercise by 12 months to prepare the market to be able to successfully participate.

10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

None

11. BACKGROUND DOCUMENTS

PCC Cabinet Paper on Day Opportunity Transformation.