



Report of: Executive Member for Health and Social Care

Meeting of:	Date	Ward(s)
Executive	27 th April 2017	All

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SUBJECT: Procurement Strategy – A Dynamic Purchasing System for Learning Disability Accommodation and Support Services

1. Synopsis

- 1.1 This report seeks pre-tender approval for the procurement strategy in respect of Islington Council establishing a Dynamic Purchasing System (DPS) for the procurement of learning disability accommodation and support services in accordance with Rule 2.5 of the Council's Procurement Rules.
- 1.2 The intention is to establish a DPS for the procurement of accommodation and support services for people with learning disabilities. This will include supported living, residential care and nursing care. A DPS is a fully electronic procurement instrument that enables the purchasing of services.

2. Recommendations

- 2.1 To approve the procurement strategy for establishing a DPS for the procurement of learning disability accommodation and support services, as outlined in this report.
- 2.2 To delegate authority to award any subsequent call-offs from the DPS to the Corporate Director of Housing and Adult Social Services.

3. Background

3.1 Nature of the service

A great deal of work has taken place in Islington over recent years to review and improve accommodation services for people with learning disabilities through increasing the choice, quality and value for money of services, whilst supporting people to access services that maximise their independence in local services and in the local community. However, there is more work to be done to

ensure that local services offer real choice and flexibility to people with learning disabilities and to enable commissioners to work with providers to tailor and develop services to meet individual need.

Currently many services are still commissioned in a way which inhibits this choice and flexibility, with a reliance on large block contracts with a small group of local providers, as well as a large section of the local accommodation market being occupied by our directly provided services. Outside of these arrangements, many services are purchased for individuals outside of any formal commissioning framework, under 'spot purchasing' arrangements, often out of borough. This procurement strategy provides an opportunity to explore a more personalised approach, and to improve choice and value for money.

Local accommodation services are currently offered through a partnership of landlords offering designated and specialist accommodation with support providers offering support within this accommodation. In some cases those partnerships are formal and secure (for example where the parent organisation is the same or where Islington Council is the landlord). However, in a number of cases landlords are separate organisations with their own business interests, and many are making explicit their intentions to only offer their accommodation where they can also secure part or all of the support arrangements. This risks to undermine current and future commissioning intentions, and severely restrict choice for service users.

The Care Act 2014 introduces new duties on local authorities to facilitate a vibrant, diverse and sustainable market for high quality care and support in their area. The Care Act states that local authorities must shape the local market to offer people with care and support needs a range of provision, and commissioning and procurement practices must facilitate a diverse range of services to ensure service users have a real choice of personalised solutions.

The block contracts, which we currently rely on for most of our local provision, offer limited flexibility and commit the local authority (and service users) to long periods with incumbent providers, with service developments achieved through traditional contract monitoring. When contracts come to an end, reprocurement processes are lengthy, and involve wholesale changes which lead to a period of uncertainty for providers, the council and service users.

Islington needs to consider more flexible approaches to commissioning and procurement that help create a market which is more responsive to individual needs and to evolving commissioning intentions in order to meet the needs of a population that has higher expectations and increasingly complex needs, with budgets that are reducing.

This, alongside related projects to develop new local accommodation, support people to move to more appropriate and local services, and transform directly provided services, will help Islington to reduce its reliance on out of area provision and help drive better quality, outcomes, personalisation and value.

A DPS is a fully electronic procurement instrument. The establishment of a DPS follows the restricted procedure. The first stage is the selection process. All providers who meet the minimum requirements of the selection criteria would be admitted to the DPS. In the second stage, all providers who have been admitted to the DPS will be invited to tender for each subsequent procurement. The specific (anonymised) support package(s) for one or more service users, will be published to all providers admitted to the DPS to bid to provide the specific services for which they are registered. A key benefit of a DPS is that there is no limit to the number of providers admitted to the DPS, and it remains open for new providers to join or re-apply. This enables the DPS to develop and evolve in order to respond to changing demand for and supply of services.

Over the last six months alternative commissioning and procurement options have been reviewed. Islington have joined a tri-borough framework for Supported Living which is led by Waltham Forest & includes Enfield and Hackney. Whilst this may provide some opportunities, limitations have also been identified. The tri-borough framework does not include a number of our local Islington providers and not all providers pay the London Living Wage. The framework is closed to new providers, which limits its flexibility in responding to emerging needs and evolving commissioning intentions. Overall, whilst the framework is under review, at the moment very few services have been successfully procured through

it. Options to work with other boroughs have also been explored, including joining others Dynamic Purchasing Systems, but the opportunities of working with other commissioners are restricted by the differing commissioning intentions, timescales and governance requirements of neighbouring boroughs.

Work is ongoing to evaluate our need for supported accommodation and how best to secure accommodation in which support can be provided for vulnerable adults. Due to the restricted supply of specialist accommodation it may be necessary to put in place separate procurement arrangements in due course to secure accommodation. Those arrangements could be run in conjunction with a DPS for support services where necessary. For example, accommodation with low levels of 'core' support may be block contracted, with a DPS system in place to purchase individualised support packages.

Islington already has an e-procurement provider, ProContract, which includes a DPS platform. Feedback from authorities using ProContract for DPS is positive, in terms of the functionality of the electronic system.

Consultation with local providers affected by new procurement methods has begun, through our Learning Disability Provider Forum. Providers recognise the need for change, and whilst there is some level of anxiety about how changes may affect them, providers are keen to work with us to ensure our procurement methods enable user choice and control as well as fairness and transparency.

3.2 Estimated Value

It is not expected that establishing a DPS will incur additional costs. Islington Council already purchases ProContract as its e-procurement tool, and the DPS function is available within that package. Existing staffing resources in commissioning, assessment, brokerage and procurement would be sufficient to set up and manage the new system. Administrating a DPS would involve a change in practice for some staff currently involved in brokering accommodation and support services.

Current spend on Learning Disability accommodation and support services was £14.5m in 2015/16. Within this £5.8m is spent on local block-contracted Supported Living and the remainder on residential and nursing care services. Once a DPS is set up it will be used to purchase care and support for new service users and/or for existing service users as and when their current arrangements come to an end, either because their needs have changed or because the contract for their existing services are coming to an end. It will only be used to procure local services, but this will include services for people that may be returning to borough from out of area placements.

Between 2012/13 and 2015/16 the expenditure on Supported Living grew from £3.6m to £5.8m, reflecting increasing demand for this type of service and the opening of a number of new block contracted services. Our existing block contracts come to an end during 2018-19 and it is the intention that a DPS could be used as one of the options to procure support in these services, in conjunction with arrangements to secure the accommodation. In addition there are a number of new Supported Living services currently in development which will open in the next three years. The value of the support contracts is not precisely determined, but support may again be procured through the DPS.

The detail of the criteria for registering providers on the DPS and for awarding contracts in the second stage is to be determined and will be developed in consultation with local providers, service users and families. The overall intention is that the first stage will be used to select provider based on their competence and capability including; Suitability to pursue this professional activity; economic and financial standing, and technical and professional ability. The intention will be for an outcome-focussed approach to commissioning and purchasing through the DPS, rather than setting restrictive ceilings on hourly rates or unit costs, as the latter approach can inhibit innovation and personalisation. Service users will all have personal budgets and agreed outcomes and providers will be bidding on the basis of their capacity to achieve those outcomes within the agreed personal budget(s). Where there is more than one provider who meets the award criteria within budget, we would enable service users and family preference to determine the successful provider. This is in line with the direction of travel for adult social care and health to achieve value for money by a fair and transparent allocation of resources to individuals, giving them a strong voice in how their needs should be met and enabling providers to find innovative solutions to meet need within the available resources.

3.3 **Timetable**

Block contracts for affected services are in place through 2017, with contract end dates from early 2018 to 2019. Therefore, a DPS should be in place and tested by the end of 2017.

Consultation has begun with providers currently offering services in Islington. Further consultation will be planned with providers and with family carers and service users as details are agreed.

If agreement to establish a DPS is reached at the Joint Board, further key dates are:

27th April: Seek approval from Executive
April – June: Prepare contract, specification and tender documentation,
Consultation with providers, family carers and service users
July 2017: Advertise DPS for Learning Disability Accommodation with Support
August 2017 Evaluate first stage
Sept 2017: Begin using DPS for new placements in Learning Disability Accommodation
From Jan 2018: Begin using DPS for recommissioning block contracted services

3.4 **Options appraisal**

Other Options Considered:

1. To continue with current arrangements of a mixture of block contracts and spot purchasing.

The limitations of block contracting are the lack of responsiveness and personalisation that can be achieved at a time when the Care Act requires care markets to be shaped to respond to need and offer choice and control to customers. Block contracting alone will also become increasingly difficult as housing providers seek to secure contracts for direct support. A DPS, in conjunction with some block contracting, could enable housing providers to fulfil their business needs whilst enabling them and other providers an opportunity to offer support under a DPS.

2. Using the Tri-Borough Supported Living Framework

Islington have joined the Tri-Borough Supported Living Framework, but limitations have been discovered as set out earlier in this report. It is unlikely to meet all of Islington's commissioning and procurement needs.

3.5 **Key Considerations**

The Care Act 2014 states that local authorities must shape the local market to offer people with care and support needs a diverse and vibrant range of provision, and commissioning and purchasing practices should facilitate this, to ensure people have a real choice of services that can offer personalised solutions.

Currently the local service provision for this type of care and support is dominated by a limited number of service providers. This has its own associated risks if these providers go into administration, or if there are issues related to quality and/or safeguarding.

A requirement for providers to pay the London Living Wage will be included as a condition of this contract if there is no cross border interest in the contract following OJEU notice or if cross border bidders do not expect to use employees for this contract who are established in another EU member state.

3.6 **Evaluation**

This tender will be conducted in two stages, known as the Restricted Procedure as the tender is 'restricted' to a limited number of organisations. The first stage is Selection Criteria through a Selection

Questionnaire (SQ) which establishes whether an organisation meets the financial requirements, is competent and capable and has the necessary resources to carry out the contract. The SQ is backwards looking and explores how the organisation has performed to date, its financial standing, information about their history and experience.

The second stage is 'call-off' from the DPS and is now forwards-looking using Award Criteria. All suppliers who meet the selection criteria at the first stage are automatically invited to tender for every support package we issue. Bids are evaluated on the basis of the tenderers' price and ability to deliver the services as set out in the evaluation criteria in order to determine the most economically advantageous offer.

With a DPS the first stage will ensure that providers joining can demonstrate experience and competence in delivering high quality and outcome-focussed services to this client group. With a vulnerable client group, it will be essential to ensure that suitable selection criteria is used. This means that selection criteria will be more specific than for some DPS, but this high level would be proportionate and objectively justifiable to ensure the organisations have the appropriate technical and professional abilities to perform the contract ensuring the safety of the service users

The first stage will include the contract, service specification and method statements to transparently set out expectations of the service. This will include detailed expectations around quality, outcomes and value for money. The overall strategy for people with learning disabilities is to support people to have good health and well-being, to live as independently as possible, to be fully included in our community, to have good access to universal services and to learn, progress and develop throughout their lives. The specification will reflect this and require successful providers to demonstrate an ability to work with people in a proactive way which encourages independence and reduces reliance on specialist services, as appropriate. This will include a requirement to work creatively within service users allocated personal budgets.

The DPS will include a core specification and standard contract, but the DPS will be sub-divided into Lots. Initial Lots are likely to include

Lot 1: Support within designated accommodation (where accommodation is already secured)

Lot 2: Support with accommodation (where suppliers are asked to identify/supply accommodation)

The second stage 'call-off' will involve advertising anonymised support packages which specify outcomes for individuals and their personal budget allocations. All bids will be expected to come within the personal budget or they will be automatically discounted. For this reason the evaluation criteria will be 90% outcomes and 10% price.

The outcomes framework against which suppliers will be evaluated will be developed with local stakeholders, but will include content similar to, for example, the Adult Social Care Outcomes Framework, which has four domains:

Domain One: Ensuring quality of life for people with care and support needs

Domain Two: Delaying and reducing the need for care and support

Domain Three: Ensuring that people have a positive experience of care and support

Domain Four: Safeguarding adults whose circumstances make them vulnerable and protecting them from avoidable harm

The detail of service specifications, selection criteria and award criteria will be developed over the coming months in co-production with service users, family carers and providers.

3.7 Business Risks

Whilst the block contracting arrangements have historically given providers some comfort and financial stability in terms of business planning, the other potential consequence is that when the contracts are due for tender there are substantial risks for local providers where the majority of their business has been tied in with the Council.

The Council could potentially purchase packages of care from providers through the DPS on a spot rather than block purchase basis. This offers providers the opportunity to diversify in terms of spreading risk and the potential for new business. It also ensures that changes in provision are based on packages of support rather than large block contracts, so over time local service provision evolves incrementally, in line with service user need and choice.

- 3.8 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to sign the Council’s anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.
- 3.9 The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.6 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the service	Learning Disability Accommodation and Support Services See paragraph 1.1
2 Estimated value	The agreement is proposed to run for a period of 3 years with an optional extension of 2 years. The framework agreement has an estimated value of between £5m and £8m of Islington Council spend. See paragraph 3.2
3 Timetable	July 2017: Advertise DPS August 2017 Evaluate first stage Sept 2017: Begin using DPS for new placements From Jan 2018: Begin using DPS for recommissioning block contracted services See paragraph 3.3
4 Options appraisal for tender procedure including consideration of collaboration opportunities	The outcome of options appraisals are included in this report See paragraph 3.4
5 Consideration of: Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications	A requirement to pay LLW will be included as part of the contract. TUPE will apply See paragraph 3.5
6 Evaluation criteria	The price/quality split will be 10% price and 90% quality/outcomes

	The award criteria price/quality breakdown is more particularly described within the report. See paragraph 3.6
7 Any business risks associated with entering the contract	There are some business risks but these are low and manageable. See paragraph 3.7
8 Any other relevant financial, legal or other considerations.	See paragraph 4 below

4. Implications

4.1 Financial implications:

The recommendation of this report is to approve the procurement strategy for a dynamic purchasing system for learning disability accommodation and support services. The DPS will be provided, managed and supported from existing Adult Social Services resources (systems and staffing) and therefore will not result in a budget pressure for the Council.

Potentially the DPS will be used to purchase all supported living services which total approximately £5.8m, the move to DPS will enable the service to deliver departmental MTFS savings and ensure value for money any additional cost arising from this will have to be managed within existing resources.

4.2 Legal Implications:

The Council has a duty to make arrangements for providing residential accommodation and care for persons who by reason of illness and disability are in need of care and attention which is not otherwise available to them (section 21 National Assistance Act 1948 (as amended). The Care Act 2014 also provides the council with duties and powers to meet the needs for care and support of eligible adults (sections 18 and 19). The Council has power to enter into contracts with providers of such services under section 1 of the Local Government (Contracts) Act 1997. The Executive may provide Corporate Directors with responsibility to award contracts with a value over £2 million using revenue money and over £5 million using capital money (council's Procurement Rule 16.2).

The social care services being procured are subject to the light touch regime (Light Touch Services) set out in Regulations 74 to 77 of the Public Contracts Regulations 2015 (the Regulations). The threshold for application of this light touch regime is currently £589,148.00.

The value of the proposed contract is above this threshold. It will therefore need to be advertised in the Official Journal of the European Union (OJEU). There are no prescribed procurement processes under the light touch regime. Therefore the council may use its discretion as to how it conducts the procurement process provided that it: discharges its duty to comply with the Treaty principles of equal treatment, non-discrimination and fair competition; conducts the procurement in conformance with the information that it provides in the OJEU advert; and ensures that the time limits that it imposes on suppliers, such as for responding to adverts is reasonable and proportionate. The council's Procurement Rules require contracts over the value of £500,000 to be subject to competitive tender. Following the procurement a contract award notice is required to be published in OJEU.

In compliance with the requirements of the light touch regime in the Regulations and the council's Procurement Rules the proposal outlined in the report is to advertise a call for competition in OJEU and procure the service using a competitive tender process. In using the proposed Dynamic Purchasing System, as set out in Regulation 34, contracts may be awarded as required to the highest scoring tenderer subject to the tender providing value for money for the council.

4.3 Environmental Implications

No negative impacts are expected.

4.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment has been completed. This proposal is not expected to discriminate or have negative impacts on people with protected characteristics. All those people affected will have learning disabilities and many will have additional needs, disabilities and/or other protected characteristics. Procuring services through a DPS rather than existing practices will increase choice and control through enabling the use of a personal budget to purchase accommodation with support and will help ensure services are designed around individual needs and preferences, including needs and preferences which are related to protected characteristics.

5. Reason for recommendations

- 5.1 There is currently no adequate strategy in place for the commissioning and procurement of local accommodation with support for adults with learning disabilities. Existing arrangements and those available in partnership with other authorities carry significant risks and limitations. A DPS will greatly improve Islington's options and ability to meet the requirements of the Care Act and meet the needs of local people with appropriate services.

Final report clearance:

Signed by:



7 April 2017

Executive Member for Health and Social Care

Date:

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