

Report

Report to:	Social Work Resources Committee
Date of Meeting:	19 September 2018
Report by:	Director, Health and Social Care Executive Director (Finance and Corporate Resources)

Subject:	Use of Alternative Procurement Solution for Adult Supported Living Contract
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ provide details of the proposal to use a bespoke procurement route for the provision of Adult Supported Living

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the use of a “Procured Service Arrangement” for the purposes of establishing a contract for the provision of Adult Supported Living Services be approved.

3. Background

- 3.1. Adult Supported Living describes a broad range of housing and support options for vulnerable adults assessed as requiring care and support. Individuals will be assessed to identify needs and risks and will be involved in developing a support plan to meet the identified outcomes. The Council currently funds the delivery of a range of Supported Living services for 342 adults with learning disabilities, mental health and physical disabilities across South Lanarkshire. These services are, in the main, provided through a range of externally commissioned providers.
- 3.2. There are currently thirty service providers, delivering a range of supported living services. There are 3 main geographical providers. The Richmond Fellowship Scotland (TRFS), Key Community Support and Living Ambitions supporting the primary category of learning disability accounting for 53% of all service provision.
- 3.3. Between them, all providers currently deliver 832,091 hours of service per annum covering both day time and wakened night support. In addition to this, support through sleepover provision amounts to a total of 32,984 sleepovers per annum.
- 3.4. Following initial discussions between Social Work Resources and both Procurement and Legal Services surrounding the service requirements of the Adult Supported Living contract and the impact of Self-directed Support (SDS) upon this, it became apparent that a traditional procured arrangement such as a Framework or a Dynamic Purchasing System (DPS) would not provide sufficient flexibility to meet Service requirements.

- 3.5. The Social Care (Self-directed Support) (Scotland) Act 2013 imposes a duty on the authority to provide four options to all adults, children and carers eligible for support or provided with services. The options are intended to support the flexibility and creativity allowed under the social welfare and wellbeing duties relating to both adults and children.
- 3.6. After the Council has identified a person's needs in collaboration with the adult, child/family or carer, the authority is required to offer four options in relation to the relevant support identified at the assessment stage. The four options provided under the 2013 Act are:
- 3.6.1. **Option 1:** The making of a direct payment by the local authority to the supported person for the provision of support.
- 3.6.2. **Option 2:** The selection of support by the supported person, the making of arrangements for the provision of it by the local authority on behalf of the supported person and, where it is provided by someone other than the authority, the payment by the Council of the relevant amount in respect of the cost of that provision.
- 3.6.3. **Option 3:** The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision.
- 3.6.4. **Option 4:** The selection by the supported person of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of the support.
- 3.7. The Council is obliged to ensure that the supported person can use their direct payment in any way, provided that the support purchased via the payment is in line with the assessment and support plan, meets the supported person's "eligible need" and is within the criminal and civil law.
- 3.8. This flexibility is supported by the legal meaning of the term "services" as provided in the core assessment and service duties. This can encompass any form of support which will meet the person's needs and it need not be restricted to the provision of a service in the form of a Home Care Service or a Day Care Service. It can and should extend to any intervention or purchase which meets the needs and outcomes of the supported person.
- 3.9. The authority, working in partnership with providers in the area, is required to take practical steps to ensure that the supported person is provided with the right level of additional support and information as early as possible and throughout the provision of support. This is in order to ensure that the supported person can actively manage their support plan under the Option 2 arrangements.
- 3.10. Promotion of options for SDS - Social Care (SDS) (Scotland) Act 2013, section 19
- 1) a local authority must take steps to promote the availability of the options for SDS;
 - 2) for the purpose of making available to supported persons a wide range of support when choosing options for SDS, a local authority must, in so far as is reasonably practicable, promote—
 - a) a variety of providers of support; and
 - b) the variety of support provided by it and other providers.

- 3.11. The Council, with its statutory duty of care ultimately decides if the arrangement will meet the supported person's needs. The duty of care responsibilities of statutory bodies and individual staff cannot be set aside.
- 3.12. A traditional Framework is essentially a procured list of approved service providers who have proven capability and capacity to undertake the requirement. Services may be obtained from a Framework via either Direct Award (without further competition) or by Mini Competition amongst all of the service providers on the Framework.
- 3.13. The main drawback of a Framework however is the limitation that once established, the list of the service providers is effectively fixed for the entire duration and cannot be amended, effectively at odds with the flexibility required by SDS. In addition to this, the maximum duration of a Framework is 4 years.
- 3.14. The alternative procurement process of the DPS does, however, provide a greater degree of flexibility in that Providers are able to join the System at any time where they meet the minimum required compliance checks.
- 3.15. The DPS is, however, restrictive in one key area, in that a Direct Award cannot be made to a single Provider and the Council must instead conduct a Mini Tender with all Providers. This essentially means that if a service user (SU) chooses a Provider under SDS Option 2 the Council cannot guarantee that they will receive their services from them.

4. Public Contracts (Scotland) Regulations 2015 – Alternative Procurement Methods

- 4.1. The Council has sought alternatives to these traditional procurement routes and have ascertained that the amendments made within the Public Contracts (Scotland) Regulations 2015 for Social and Other Specific Services, as detailed at Regulation 76 of this, outline that:
 - ◆ the procedure employed may take into account the requirements and needs of the users;
 - ◆ the Council may also take into account the need to ensure quality, continuity, accessibility, affordability, availability and the comprehensiveness of the services; and
 - ◆ the procedure must be sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.
- 4.2. Providing that these conditions can be met, this allows the Council to employ a similar procurement process to that of a Framework or DPS, but incorporating the most advantageous aspects of both in order to meet the needs of the SU's within a compliant procured arrangement.

5. Proposed Approach

- 5.1. The process proposed by the Council will be termed as a "Procured Service Agreement", principally in order to completely differentiate between this and the standard Framework or DPS. The main aspects of this will be as follows:

5.1.1. Procurement Process:

- ◆ procured as with any other tender so as to employ standard exclusion grounds and stating the minimum requirements expected;
- ◆ a Fixed Price per hour will be set for standard services, which must be agreed to by bidders;
- ◆ evaluate on price/quality split of 95% quality and 5% price, with the option to vary this by a predetermined margin for mini competitions; and
- ◆ all bidders without exception who meet the minimum standards and agree to the fixed price will be admitted.

5.1.2. Main Features of Agreement

- ◆ agreement will have a term of 15 years and be permanently open to new providers in order to support SDS;
- ◆ a review of the exclusion grounds will occur every three years to ensure continued compliance. The option to amend terms and conditions to suit legislative changes at any time will also be included;
- ◆ existing Providers will retain all current SUs and at the new fixed rate, with the exception of SU's who have been predetermined as having complex needs. These SU's will instead transfer to the Agreement on existing hourly rates unless these are lower than the new Fixed Rate, in which case the rate will be increased to match this; and
- ◆ the Agreement will provide the facility for direct award to a provider chosen by a SU, or by Mini Competition for new SUs with complex needs.

5.1.3. Constraints

- ◆ to ensure that all Providers chosen by SU's are fit and proper, they will require to be assessed and accepted to the Agreement. Those who do not will require to be rejected and the SU informed of this;
- ◆ it is likely that some Providers will be reluctant to join the Agreement due to various factors, however, in doing so they will be unable to obtain business from the Council for the entire 15 year term; and
- ◆ continuity will still be provided for in the short term for those Providers who don't join the Agreement. In the medium term, the Council will look to transition existing SUs cared for by them to approved Providers.

6. Risks and Mitigations

- 6.1. With any Procurement approach there is a risk of challenge, however, this is considered as low given that it will support the continuity of service provision, the inclusion of bespoke services to meet the requirements of SU's and facilitate new providers joining at any time during its term.

7. Employee Implications

- 7.1. There are no employee implications associated with this report.

8. Financial Implications

- 8.1. There are no financial implications associated with this report.

9. Other Implications

- 9.1. There may be a risk that some providers will choose not to be part of the Procured Service Arrangement. This may limit choice for service users however all providers have the option to join the Procured Service Agreement.

9.2. There are no sustainable development implications associated with the report.

9.3. It should be noted that this report has been prepared by Social Work and the Procurement Service, with input from Legal Services.

10. Equality Impact Assessment and Consultation Arrangements

10.1. There is no requirement to carry out an impact assessment in terms of the proposals contained within this report.

10.2. There is no requirement to carry out any consultation in terms of the content of this report.

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21 August 2018

Link(s) to Council Values/Ambitions/Objectives

- ◆ deliver better health and social care outcomes for all
- ◆ protect vulnerable children, young people and adults
- ◆ focused on people and their needs

Previous References

- ◆ none

List of Background Papers

- ◆ none

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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