

## **Cabinet – 21 April 2021**

### **Direct Payment Support Service Tender**

**Portfolio:** Councillor Rose Martin, Adult Social Care

**Related portfolios:** Councillor Timothy Wilson, Children's Services

**Service:** Adult Social Care

**Wards:** All

**Key decision:** Yes

**Forward plan:** Yes

#### **1. Aim**

The aim of this report is to outline and seek approval for the proposal for the future provision of direct payment support services.

#### **2. Summary**

- 2.1. This report outlines proposals for the re-procurement of the current direct payment support service (DPSS) funded by Adult Social Care (ASC) and Children's Services, which is a key decision because it will continue to commit the Council to incur significant expenditure and it affects all wards across the borough.
- 2.2. The current DPSS Framework was commissioned by the Council, led by the ASC Directorate and expires on 5 October 2021.
- 2.3. The Council is preparing to re-tender this service to continue to deliver four levels of direct payment support:
  - Level 1 – Advice, guidance and support
  - Level 2 – Advice, guidance, support and payroll
  - Level 3 – Advice, guidance and nominated accounts
  - Level 4 – Advice, guidance, nominated accounts and payroll
- 2.4. It is proposed by ASC and Children's Services that up to 3 providers, per level of direct payment support will be awarded contracts, for a maximum period of up to 5 years, following completion of a compliant tender process.
- 2.5. In order to ensure continuity of service when the existing contract expires, there is a need to seek delegated authority for the Executive Director of Adult Social Care to accept tenders and award contracts, allowing for the

management of the complexities to ensure a compliant tender process, concluding the tender evaluation and making recommendations prior to the expiry of the current contract.

### **3. Recommendations**

- 3.1. That Cabinet delegates authority to the Executive Director of Adult Social Care in consultation with the Executive Director of Children's Services and the Portfolio Holders for Adult Social Care and Children's Services to agree a contract modification with existing providers for the period of up to 12 months up to 5 October 2022 to allow for the completion of review and amendment of the service the specification and a 90 day transition between new and outgoing providers; should this be necessary.
- 3.2. That Cabinet delegates authority to accept tenders and award contracts for the provision of DPSS services, for a period of three years, with the option to extend on an annual basis for a further period of up to two years, to the Executive Director of Adult Social Care, in consultation with the Executive Director of Children's Services and the Portfolio Holders for Adult Social Care and Children's Services following completion of the tender.
- 3.3. That Cabinet delegates authority to the Executive Director of Adult Social Care in consultation with the Executive Director of Children's Services and the Portfolio Holders for Adult Social Care and Children's Services to enter into contracts for the provision of DPSS services and to subsequently authorise the sealing of any deeds, contracts or other related documents for such services.
- 3.4. That Cabinet delegate authority to the Executive Director of Adult Social Care in consultation with the Executive Director of Children's Services and the Portfolio Holders for Adult Social Care and Children's Services, to authorise any variations to the contractual arrangements or other related documents for such services should this be required throughout the duration of the term of any contracts and provided they are in line with the Council's Contract Rules and any relevant legislation, including Public Contract Regulations 2015.

### **4. Report detail - know**

#### **Context**

- 4.1. The current DPSS contractual framework was commissioned by the Adult Social Care (ASC) Directorate in October 2017 and expires on 5 October 2021. The framework is used by both ASC and Children's Services to deliver direct payment support services and to support the personalisation agenda<sup>1</sup> through the uptake of direct payments.

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<sup>1</sup> **Personalisation** is a social care approach described by the Department of Health as meaning that "every person who receives support, whether provided by statutory services or funded by themselves, will have choice and control over the shape of that support in all care settings".

4.2. The local Clinical Commissioning Group operates a Personal Health Budget (PHB) system and may signpost PHB holders to providers on the Council's DPSS framework should they require support. The arrangements and cost of this is funded by the CCG as an additional cost, within the PHB holder's PHB and without any Council responsibility.

4.3. The Council's current DPSS framework provides four levels of direct payment support:

Level 1 Advice, guidance and support - This level of support provides ongoing information on all aspects of direct payments (DPs). This support is provided to direct payment recipients (DPR's) who receive their own direct payment (DP) funds, but require support to employ a care agency/day care provider to meet care/support needs. There is a one-off annual charge for this level of service averaging a cost of £1.50 per week (range of £75.00 to £80.00 per annum).

Level 2 Advice, guidance, support and payroll - This level of support provides assistance with the recruitment and selection of personal assistants (PA's); advice, guidance and support with all aspects of employment legislation; provision of a payroll service. Regular ongoing support is required with this level of support around the provision of payroll. This support is provided to DPR's who receive their own DP funds and require support to employ a PA(s) to meet care needs. The average weekly fee is £10.35 per week (range of £9.00 to £11.50);

Level 3 Advice, guidance and nominated accounts - This level of support provides the same as level 1 plus the DPSS opens an individual bank/building society or similar account that will be used to receive DP funds. This support is provided to DPR's who are unable to manage their DP funds themselves but need nominated account support to pay a care agency/day care provider. The average weekly fee is £7.81 (range of £7.50 to £8.00);

Level 4 Advice, guidance, payroll and nominated accounts – This level of service provides the same as level 2 plus the DPSS opens an individual bank/building society or similar account that will be used to receive DP funds. Support is provided to DPR's who are unable to manage their DP funds themselves but need nominated account support to pay their PA(s). The average weekly fee is £13.96 (range of £13.65 to £14.00).

4.4. The Council previously awarded contracts to up to three providers per level of support; details of the four contracted providers are listed below:

**Table 1 Contracted Providers**

| Provider | DPSS Level 1 | DPSS Level 2 | DPSS Level 3 | DPSS Level 4 |
|----------|--------------|--------------|--------------|--------------|
|----------|--------------|--------------|--------------|--------------|

|                             |   |   |   |   |
|-----------------------------|---|---|---|---|
| <b>Accord - Age Matters</b> | √ | √ | √ | X |
| <b>IBS Support</b>          | √ | √ | X | X |
| <b>IBS Managed</b>          | X | X | √ | √ |
| <b>People Plus</b>          | √ | √ | X | X |
| <b>Ideal for All</b>        | √ | √ | √ | √ |

- 4.5. At the end of February 2021, People Plus terminated their contract in agreement with ASC following a 12 month review period where the provider concluded it could no longer demonstrate economic viability of its service provision. The 42 child and adult DP recipients sought alternative provision from the remaining providers without issue.
- 4.6. Table 2 below shows the breakdown of Direct Payment recipients (DPRs) per support level and costs per DPSS level as at January 2017 compared to January 2021. These figures are based on an average cost per client, with an assumption that all Personal Assistants (PAs) are auto-enrolled.

**Table 2 Change in volume and value of DPSS provision**

| <b>DPSS Level</b> | <b>No. of DPRs January 2017</b> | <b>Annual Value January 2017</b> | <b>No. of DPRs March 2021</b> | <b>Annual Value March 2021</b> |
|-------------------|---------------------------------|----------------------------------|-------------------------------|--------------------------------|
| 1                 | 118                             | £32,644                          | 81                            | £6,303                         |
| 2                 | 170                             | £99,273                          | 90                            | £48,415                        |
| 3                 | 139                             | £57,824                          | 267                           | £108,393                       |
| 4                 | 144                             | £112,177                         | 180                           | £130,688                       |
| <b>Total</b>      | <b>571</b>                      | <b>£301,918</b>                  | <b>618</b>                    | <b>£293,799</b>                |

|                     |                |  |                |
|---------------------|----------------|--|----------------|
| <b>Average Cost</b> | <b>£528.75</b> |  | <b>£475.40</b> |
|---------------------|----------------|--|----------------|

- 4.7. Table 2 shows that there has been an 8.2% (47) overall growth in the number of DPR's receiving a DPSS commensurate with a significant shift in utilisation of more intensive support (Levels 3&4). However, the lower unit costs provided within the current contract pricing has actually resulted in a lower average cost per recipient of £53.35, or a 10% cost saving per service user.
- 4.8. The growth trend reflects the overall ambition to deliver the personalisation agenda. However, initiatives which have added additional providers to our domiciliary care and supported living frameworks is enabling a conversation with 105 existing DPRs to consider receiving commissioned care whilst still ensuring the Council discharges its duty under the Care Act 2014.
- 4.9. Discussions will take place with the 105 DPRs over the next 12 months. It is anticipated there will be a reduction of circa 75 DPRs in this coming financial year. Such a reduction would more than offset the anticipated straight line growth projection of 47 new cases over the next five years. The reduction of 75 DPRs will see an anticipated financial saving of £25,000.
- 4.10. Commissioners across the four Black Country local authorities are working collaboratively to develop innovative models of care provision through what are termed Small Supports Organisations which specialise in providing

bespoke local services to local service users who have experience of mental health inpatient admissions and have highly complex and challenging needs. Using the Direct Payment arrangements, innovative funding models will be explored to support the development of these providers and the specialist care they deliver.

- 4.11. There is no consistent DPSS offer, service arrangements or fee structure within the Black Country, West Midlands or nationally.
- 4.12. There are varying DPSS arrangements across the region and as a result there is no opportunity to undertake a joint procurement exercise, however, this is something the four Black Country local authorities have committed to work together to develop in the future.
- 4.13. As part of the re-procurement process a comprehensive engagement exercise has commenced through a targeted questionnaire to DPRs, Personal Assistants, care agencies, and council staff involved in Direct Payments. In addition a facilitated workshop is being undertaken with the existing DPSS providers to ascertain feedback on the Council's approach and interactions in an effort to improve our operating procedures as well as the relevance of the contract. Opportunity will be taken to seek interest from other potential service providers.
- 4.14. It is recognised that any significant enhancement to the contract specification may lead to additional costs being identified and incorporated into the prices which are tendered for the new contract.
- 4.15. Based on previous experience, the Council is aware that if an existing provider is unsuccessful, there would be the need for a 90 day transition between new and outgoing providers to ensure a smooth transfer of business. The Council will not know until the outcome of the tender process, whether there will be a change of DPSS provider(s). If there is, then the Council will need to negotiate by agreement, the extension of each of the existing contracts affected for the period 6 October 2021 up to 5 October 2022..

### **Council Corporate Plan priorities**

- 4.16. Commissioning these services enables the Council to promote independence, choice and control for adults and children who live in the community and are eligible for a direct payment. This in turn may improve the quality of service provision leading to better outcomes to citizens.
- 4.17. This proposal also links and contributes to the Council's Corporate Priority:

People have increased independence, improved health and can positively contribute to their communities and this will be measured against the following outcomes:

- **Outcome 1:** People live a good quality life and feel that they belong.

- **Outcome 2:** People know what makes them healthy and they are encouraged to get support when they need it.

### **Risk management**

- 4.18. There is a risk that if the existing provider(s) choose not to bid for the work or are unsuccessful, DPRs, who have been assessed as requiring support, may have to choose an alternative DPSS provider, because DPRs will only be able to receive support from the Council's contracted provider.
- 4.19. Providers have indicated their desire to bid for the new contract but are conscious that a reduction in overall numbers may lead to at least one existing provider needing to re-appraise their intentions. In the absence of suitable alternative providers, this would reduce the choice available to DP recipients in certain Levels of support. No Level, however, would have less than 2 choices of provider.

## **Financial implications**

- 4.20. The current combined value of all the contracts is circa £330,000 per annum for ASC and Children's Services. With the savings being planned for 2021/22, the costs should reduce to circa £305,000 per annum reducing from an estimated £320,000 in the first year and so a cumulative total of circa £1.54 million over the five years. This is inclusive of the existing Children's Services budget for direct payments of £30,000.
- 4.21. There are no other plans to reduce expenditure on these services with expenditure likely to increase with the growth of personalisation. The total 2021/22 budget is £304,522, reflecting a budget reduction of £25,000 as a result of the work identified in 4.9 above.

## **Legal implications**

- 4.22. All new service contracts with the successful tenderers will be evidenced by a written contract, in a form approved by the Director of Governance and shall be made and executed in accordance with the Council's Contract Rules. The procurement will also be carried on in accordance with the requirement of the Public Contracts Regulations 2015.

## **Procurement Implications/Social Value**

- 4.23. The procurement process will be conducted via the Councils' e-procurement portal, in accordance with the Public Contracts Regulations 2015 (the Regulations), the Council's Contract Rules and Social Value Policy.
- 4.24. Steps will be taken to minimise procurement-related risk. However, there will always remain an inherent risk of legal challenge associated with any procurement undertaken by the Council.
- 4.25. Input has and will continue to be sought from Procurement and Legal Services, as required to ensure the conduct of a compliant procurement process and contract arrangements.
- 4.26. Social value will be evaluated as part of this procurement process in line with the Council's Social Value charter and policy.
- 4.27. An extension to the existing contract may be required to ensure that there is sufficient time for any transition of business between providers, as well as ensure that there is continuity of supply in the event of any unplanned delays in the commissioning of this service.
- 4.28. As the contract extension options which were originally available in the contract have now been used, in order to extend this contract further this contract must be modified in line with Regulation 72 of the Regulations. This regulation sets out the scenarios under which contracts which are subject to the Regulations can be modified.

- 4.29. Procurement advice has been sought as to whether or not this modification falls under the range of modifications which are permitted by Regulation 72. The main considerations under Regulations 72 (c), are in relation to whether or not the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen (i), whether or the modification alters the overall nature of the Contract (ii) and the value of any modification (iii)
- 4.30. Procurement has considered these factors and advice relating to these is summarised below:
- i) Could this need for a modification have been foreseen by a diligent contracting authority; – the reason that this modification would be required to ensure that services could continue until a new contract was awarded as this commissioning activity would have commenced earlier had it not been for the impact of the COVID pandemic, which is a situation which could not have been predicted.
  - ii) Value; – the maximum proposed modification is for £329,522, which is within the limit of 50% of the original contract value (£1.26m)
  - iii) Overall nature of the contract; – this modification is to extend the services for a period of up to 12 months, rather than to materially change the subject matter of the contract.
- 4.31. On this basis Procurement has advised that, if required, this contract modification would be compliant with Regulation 72 of the Regulations, and the Council's Contract Rules and are unlikely to expose the Council to any significant risk of challenge, particularly given that the extensions will run in tandem with the undertaking of the new procurement process.
- 4.32. Procurement will ensure that all notices which need to be published in order to carry out in line with the Regulations and guidance published by the Cabinet Office.

#### **Property implications**

- 4.33. No Council property assets are implicated by the proposals in the report.

#### **Health and wellbeing implications**

- 4.34. Continuing to provide a DPSS will enable the Council to promote independence, choice and control for adults and children who live in the community and are eligible and choose to receive a direct payment. This in turn may improve the quality of service provision, leading to better outcomes for individuals. It also links and contributes to the Council's corporate priority 'Lifelong health wealth and happiness'.

#### **Staffing implications**

- 4.35. There are no direct staffing implications for the Council; however TUPE may apply between outgoing and incoming providers in the event that the tender results in a change of service provider. The Council will facilitate the transition of services to ensure continuity of care including TUPE information which has been received from the existing provider as part of the procurement process to enable bidders to consider and respond accordingly.

### **Reducing Inequalities**

- 4.36. An equality impact assessment has been undertaken and is attached as **Appendix A** to this report; this will be reviewed throughout the re-tender process.

### **Consultation**

- 4.37. Existing providers were advised in October 2020 that the service would be going out to tender during 2021 to replace the existing framework which is due to end on 5 October 2021. Consultation commences in April with existing service users/carers, Personal Assistants and Care Agencies, Social Care staff and existing DPSS providers to provide feedback on the existing service and to identify areas for improvement.
- 4.38. Information gathered will be used to review and enhance the service specification. In particular consideration will be given to the overall pricing structure and affordability of providers to work within the anticipated financial envelope.
- 4.39. A communication plan has been developed to ensure clear and consistent messages are delivered to service users, carers, providers and staff as required during the re-procurement exercise.

## **5. Decide**

Cabinet is requested to consider the content of this report and to approve the recommendations outlined in section 3.

## **6. Respond**

Subject to Cabinet approval of the recommendations, Adults Social Care will work with corporate colleagues to:

- (a) to agree a contract modification with existing providers for a period of up to 12 months to allow for the retender of this service and a transitional period of up to 90 days between new and outgoing providers; should this be necessary;
- (b) Complete the retender of the service during the contract extension period.

## **7. Review**

Once commissioned and awarded, the DPSS contracts will be reviewed in line with our contract management and individual support plan review processes.

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Kerrie Allward

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12 April 2021



Councillor Rose Martin

**Portfolio holder**

12 April 2021