

Report No.
ECHS19052

London Borough of Bromley

PART 1

Decision Maker: **Executive**
With pre-decision scrutiny from Adult Care and Health Policy Development and Scrutiny Committee on 25th June 2019

Date: **10 July 2019**

Decision Type: Urgent Executive Key

Title: **Gateway Report - Learning Disability Supported Accommodation Procurement Strategy**

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Ward: All

1. REASON FOR REPORT

- 1.1 The Council currently has 7 block contracts for supported living services for adults with a learning disability (LD). These contracts are held with 5 providers offering care and support provision at 26 accommodation schemes for 125 service users.
- 1.2 Two developments taking place in 2019 suggest the need for a revised procurement plan for LD supported accommodation.
- 1.3 Firstly, the Council's Transformation Board has launched a programme of activity designed to review the Council's offer as well as explore options for greater effectiveness and efficiency. This includes a work stream on services for people with learning disability in order to ensure the Council has a sustainable direction of travel for the provision of care and support including supported accommodation schemes.
- 1.4 Secondly, the Council and the CCG will be developing a Learning Disability Strategy during 2019, intended for approval in October 2019 following extensive consultation with service users, carers, families and stakeholders. The development of the strategy will include:
- A review of existing supported accommodation and exploration of Bromley's future needs
 - A review of the model of care and support provided within the supported accommodation offer

- Exploration of other types of support including the provision of extra care housing and support to people living in the community outside of specialist forms of accommodation
- 1.5 With this context, this report recommends that the timescale for procurement related to LD supported living accommodation is adjusted in order to reflect the direction of travel recommended by the Transformation Board and the LD Strategy.
- 1.6 This proposal requires a review of decisions made by the Executive in October 2018. Two of the Council's supported living contracts – with Sanctuary Home Care Ltd regarding Johnson Court (contract #218) and with Avenues regarding a range of schemes at 213 Widmore Road, Swingfield Court, Lancaster House, Goldsmiths Close and Amplio Road (contract #221) - were the subject of Executive discussion in October 2018. These contracts are due to expire in January 2020. Executive agreed to proceed with tendering for these two services. It is imperative that the Council is able to redesign the specification for these services in line with the recommendations and direction of travel of the ASC Transformation Board and LD Strategy. Due to this, Executive is recommended to approve rescheduling procurement for these two contracts and awarding two short contracts to the existing providers.
- 1.7 This would provide an opportunity to align most of Bromley's supported living contracts to end during 2021 ensuring that the commissioning and procurement of these contracts can be in line with the direction of travel established this year.

2. RECOMMENDATION(S)

2.1 Adult Care and Health PDS is asked to note and comment on the contents of the report.

2.2 Executive is recommended to:

- i) Agree not to proceed to procurement for the above contracts to allow them to be included in a wider commissioning exercise for Supported Living contracts.
- ii) Grant an exemption from procurement and award a new contract with Sanctuary Care (#218) for 15 months from 14th January 2020 to 24 April 2021.
- iii) Grant an exemption from procurement and award a new contract with Avenues (#221) for 15 months from 12th January 2020 to 24 April 2021.

Impact on Vulnerable Adults and Children

1. Summary of Impact:

Corporate Policy

1. Policy Status: Existing Policy.
 2. BBB Priority: Supporting Independence
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Financial

1. Cost of proposal: See Part Two of this Report
 2. Ongoing costs: Recurring cost. See Part two of this Report
 3. Budget head/performance centre: Learning Disabilities – Supported Living
 4. Total current budget for this head: £13,972k
 5. Source of funding: Council's General Fund (within existing budget envelope)
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Staff

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Statutory requirement
 2. Call-in: Call-in is applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 39 adults with a learning disability
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 The London Borough of Bromley is committed to providing local quality services for people with learning disabilities so that people can lead full and rewarding lives in the community. This includes ensuring that:
- People receive high quality care, support and treatment in the most appropriate setting
 - Services promote independence, where the least restrictive setting is sought and promoted
 - The housing and care needs of service users transitioning into adulthood can be met
- 3.2 “Supported living” is used to describe the arrangement whereby someone who has their own tenancy also has assistance from a “Care and Support” provider to help them live as independently and safely as possible. This could be help with:
- Managing bills and money
 - Shopping, cooking and healthy eating
 - Learning new skills for independence
 - Accessing employment, sports and social activities
 - Personal care and well-being
 - Managing medication
- 3.3 Supported living accommodation has been developed in Bromley in order to meet the specific needs of adults with learning and physical disabilities. Supported living is a key resource in meeting the existing and future needs of Bromley’s adult learning disability population and avoiding the need for people to move into residential care. The Council has a statutory duty to meet the needs of service users supported in the schemes as set out in Part 1 of the Care Act ‘General Responsibilities of Local Authorities’.
- 3.4 Supported Living services provide accommodation via a Registered Social Landlord with the client being a legal tenant. The Council retains sole nomination rights into these properties. On site care & support is provided via a contracted care provider. While clients will require a level of support in order to maintain their wellbeing, support needs vary greatly across the schemes and include challenging behaviour, psychotic behaviour, depression, autism, self-harm, visual impairment, epilepsy, diabetes, cancer, mobility issues (including full wheelchair users), significant mental health issues leading to social isolation, emotional and psychological support etc.
- 3.5 The properties are specially adapted to meet client needs including, where necessary, ceiling hoist, bath chair, grab rails and relevant fixtures and fittings to aid mobility, especially when carrying out personal care. Kitchens are fitted with lowered sink, emergency alarm and equipment to encourage clients to do cooking with supervision as necessary.
- 3.6 Demand for these services is forecast to grow. The continued provision of these services ensures that people are given the opportunity to continue living within the borough, close to family and other circles of support. Locally commissioned services also allows us to monitor the quality of provision, thereby helping to ensure that safeguarding concerns are prevented from arising or resolved in a timely manner. Contract monitoring meetings are held with the providers as well as a mixture of announced and unannounced visits by the Council’s Contract Compliance Team.

- 3.7 The contracts referred to in this report relate to the provision of care and support at the schemes. The hours relating to the provision of *core support* are fixed within the contracts but the individual 1:1 support hours are tailored to the assessed needs of each person living in the scheme as assessed by Care Managers in discussion with the provider and client following a Care Act Assessment. The individual support hours can vary dependent upon a person's changing needs. Service users also have the option to purchase their personal support hours from a different provider via a Direct Payment.

4. SUMMARY OF THE BUSINESS CASE

- 4.1. This report focuses on two of the contracts within the Council's portfolio of supported living services.
- 4.2 The contract with Sanctuary Homecare Ltd has been in place since 14 January 2013 and is due to end on 13 January 2020 with no further extension options. This contract provides provision for the care and support of 7 clients with a learning disability at Johnson Court.
- 4.3 Johnson Court was visited by the Council's monitoring officers in October 2018 and concluded that the service has a stable management and staff team who know the tenants well
- 4.4 The contract with Avenues has been in place since 12 January 2015 and is due to end on 11 January 2020 with no further extension options. This contract provides provision for the care and support of 32 clients with a learning disability at 213 Widmore Road, Swingfield Court, Lancaster House, Goldsmiths Close and Amplio Road.
- 4.5 All of the 5 Avenues schemes have been visited in the past 5 months by officers and Quality Checkers. Monitoring reports identify that the services are stable and delivering to the requirements stipulated in the Council's Quality Assurance Framework.
- 4.6 In October 2018 the Executive agreed to proceed to procurement for these two contracts. This report recommends an amended strategy for commissioning and procurement of these schemes in light of two key developments underway in 2019.

Key Development 1: Development of an Integrated Strategy for People with Learning Disability

- 4.7 The Council and the CCG have agreed this year to proceed with the development of a joint commissioning strategy for services for people with learning disability (all-ages). The development of the strategy will enable the Council to review levels of current and future needs and demand for services to inform future commissioning intentions.
- 4.8 Work has now commenced on the new strategy which will be available for member discussion in October 2019 following extensive consultation with service users, carers, families and stakeholders. An action plan including short, medium and long-term commitments will be also be made available following the development of the strategy.

4.9 The Council will be exploring a range of issues related to learning disabilities services:

- Local landscape and service accessibility
 - Working in collaboration with Public Health and the CGG to understand the current and future level of demand for services
 - Working collectively with provider organisations to ensure the delivery of high quality care that meet the increasing demand for service provision
 - Ensuring robust pathways for individuals to access the right service at the right time and in the right environment to meet their needs
 - Ensuring provision provides high quality provision (both in delivery and material) with a skilled workforce to safeguard individuals
 - Ensuring providers are best placed to meet the changing needs of individuals in terms of skills, knowledge and capabilities
- Service user experience
 - Exploring “strength based” approaches to practice and service provision to promote the development individual’s skills and reduce reliance on statutory services
 - Using Direct Payments to have more choice and control over personalised service provision
- Value for money
 - Ensuring the Council is achieving value for money to ensure we can continue to meet the increasing demand for services
 - Benchmark our services against comparator boroughs
 - Managing the increasing demand for complex services

4.10 In order to achieve this, the Council will review a number of key elements of provision including the support provided to residents (and informal carers) who are diagnosed with a learning disability and how our partners and providers can work with us to deliver these services. Outputs from the strategy will therefore include:

- A review of existing supported accommodation and exploration of Bromley’s future needs
- A review of the model of care and support provided within the supported accommodation offer
- Exploration of other types of support including the provision of extra care housing and support to people living in the community outside of specialist forms of accommodation

Key Development 2 - The Council’s Transformation Programme

4.11 The Transformation Programme was launched in 2019 to develop, coordinate and manage transformation activity across the Council and ensure that service improvements and savings are delivered in line with Medium Term Financial Plan. In the main this will focus on service redesign to ensure future service growth is contained within the overall resources available. Key objectives of the Transformation Programme are to:

- Facilitate and support the Council in effecting organisational transformation to help reduce the budget gap.
- Oversee the delivery of the mitigating options outlined in the service commissioning plans
- Oversee the proposals offered by work stream transformation boards and ensure that a consistent and coherent corporate approach is adopted
- Oversee the process of ensuring that impact assessments of proposals are undertaken and that engagement with the community is undertaken at the appropriate time

4.12 One of the seven work streams of the Programme will focus on Adult Social Care (ASC) including: a) Mental Health, b) Learning Disabilities, c) Older People. Within the ASC work stream, officers will review the current and future needs of people with learning disabilities including the range of support available to promote independence and future commissioning requirements. This will be conducted within a framework of strategic principles including:

- **Outcome-based:** Resources must be directed to and focused on the key priorities for the Council and its strategic objectives. Activities undertaken by the Council must be aligned to delivering local outcomes for individuals and communities.
- **Co-design and delivery of services with communities:** Services should be designed and delivered with and not for communities, identifying and recognising the knowledge, skills and experience which already exists and can be developed and deployed for local benefit.
- **Alternative delivery models:** The Programme must consider the best and most sustainable option for each service, reflecting local circumstances and market forces.
- **Early intervention and prevention:** Supporting people early and effectively to prevent longer-term needs is a key principle. All the evidence suggests that the capability to intervene early in partnership with other agencies drastically reduces long term demand for high cost services. Service transformation needs to address and implement effective mechanisms that reduce long-term dependency on Council services.
- **Sustainability:** The Council must live within its financial means both in the short term and the longer term. Service transformation and redesign must deliver new sustainable service models.
- **Invest to save opportunities:** Work streams must look to see whether savings could be achieved through 'invest to save' opportunities.
- **Technology and digital delivery models:** Wherever possible technology must be considered to either support better or replace traditional service delivery models. The expectation of residents and the need to reduce transactional costs must be a prime consideration when designing sustainable services.

5. SERVICE PROFILE/DATA ANALYSIS

5.1 Detailed analysis of children and young people in the education system in Bromley (2018) identified that of the 2187 Children & young people with EHC plans:

- 578 with Autism
- 8 with Profound and multiple Learning Difficulties

- 104 with Severe Learning Difficulties
- 216 with Social, Emotional and Mental Health

5.2 As can be seen the potential demands coming through from under 18 services is expected to be significant well into the future. Demand for learning disability services is increasing nationally and locally. A narrow estimate of the number of school children nationally (broadly, aged 5-16 years) with complex needs is 73,000, made up of:

- 10,900 children with profound and multiple learning difficulties
- 32,300 children with severe learning difficulties
- 27,500 children with autistic spectrum disorders in special schools
- 2,300 children with multi-sensory impairments.

5.3 The equivalent figure in 2004 was 49,300. This suggests that the number of school children with complex needs in schools in England may have risen by nearly 50 per cent in just over a decade. The actual number is higher, as children with other primary needs may have complex needs and because there are some important gaps in School Census data.

5.4 The potential demands coming through from under 18 services are expected to be significant well into the future. Continued delivery of these schemes will support the Council in meeting its statutory duties against a backdrop of both increasing numbers and an increase in the needs of clients entering adult services.

6. OPTIONS APPRAISAL

Option 1: Award two short term contracts to enable procurement to be undertaken in 2020 following the Transformaion Board review of supported living

6.1 In addition to the main drivers outlined earlier in this report, rescheduling the procurement for these two contracts provides an opportunity to align Bromley's supported living contracts so that they end during 2021 ensuring that the commissioning and procurement of all contracts can be in line with the direction of travel established this year.

6.2 It is expected that the procurement timeline will be as follows:

Pre-tender activity	Throughout 2019
Issue Invitation to Tender	January 2020
Tender Return Stage 1	February 2020
Tender Return Stage 2	June 2020
Marking and interviews	June/July 2020
PDS & Exec Reporting	September/October 2020
Contracts commence	April 2021

6.3 A report detailing the procurement strategy encompassing 5 Supported Living contracts will be presented to Executive in October 2019 for consideration and approval.

7 Option 2: Procuring the two supported living contracts in 2019 prior to the Transformation Board Review

- 7.1 This option would entail losing the opportunity to fundamentally review the commissioning of supported living in light of the LD Strategy and the ASC transformation programme.
- 7.2 Procurement for the two contracts would proceed in 2019, requiring the Executive to grant an exemption for six months to enable the contracts to commence from July 2020.

8 PREFERRED OPTION

- 8.1 Members are recommended to reschedule procurement of the two LD schemes as outlined in Option 1.
- 8.2 Sanctuary Care and Avenues have both confirmed their willingness to continue the contracts beyond January 2020.

9 MARKET CONSIDERATIONS

- 9.1 There is a strong and stable market for the provision of supported living services. Due to market consolidation over the recent years, most bidders are regional or national third sector organisations with whom the Council is familiar.
- 9.2 The proposed exemptions will enable market engagement in light of a reviewed commissioning approach as part of the LD Strategy and ASC transformation programme. Not only will this allow any market issues to be reflected in the tender but will facilitate relationships between SME/VCSE's and other providers to possibly explore joint tendering opportunities etc.

9. STAKEHOLDER ENGAGEMENT

- 9.1 Quality Checkers, the user led monitoring group, engage with service users within our supported living schemes as part of the regular monitoring regime. This ensures that the user's voice is heard throughout the life of the contract. Service users will further input into the development of outcomes being developed for Supported Living services.
- 9.2 This engagement will also support and inform the stakeholder engagement element of the learning disability strategy.
- 9.3 Engagement with family members/advocates of the service users will also occur to ensure that they are fully aware of the activity being undertaken and the timeline of decisions.

10. PROCUREMENT AND PROJECT TIMESCALES AND GOVERNANCE ARRANGEMENTS

- 10.1 Assessment of the market, including detailed analysis of cost composition obtained through recent tender exercises; show that the prices obtained by the Council for these contracts were extremely competitive when they were awarded 5 years ago.

- 10.2 Cost pressures on social care providers have increased significantly in this time period with a rise in CQC registration costs, the apprenticeship levy, increased pension contributions, National Minimum Wage increases, including continued uncertainty of the impact of HMRC and legal advice on the sleep in issue and overall cost of living increases.

Proposed Contract Period –

Contract (#218) with Sanctuary Care from 14th January 2020 to 24 April 2021.

Contract (#221) with Avenues from 12th January 2020 to 24 April 2021.

11. SUSTAINABILITY AND IMPACT ASSESSMENTS

- 11.1 As part of the future tender there is a requirement for providers to address how they would meet social, economic and environmental considerations through the delivery of the services. These areas can cover such activities as local recruitment policies, procuring goods and services from local businesses, fundraising activities on behalf of local and national charities.

12. POLICY CONSIDERATIONS

- 12.1 The Council's statutory duty under the Care Act 2014 is the consideration in relation to the procurement and delivery of these services.

- 12.2 The Care Act (2014) guidance states that:

- Local authorities should consider the contract arrangements they make with providers to deliver services, including the range of block contracts, framework agreements, spot contracting or 'any qualified provider' approaches, to ensure that the approaches chosen do not have negative impacts on the sustainability, sufficiency, quality, diversity and value for money of the market as a whole – the pool of providers able to deliver services of appropriate quality.

13. IT AND GDPR CONSIDERATIONS

- 13.1 In consultation with the Information Assurance Officer a Data Protection Impact Assessment will be carried out through all stages of any procurement.

14. PROCUREMENT RULES

- 14.1 This report seeks an exemption from tendering to award further contracts to Avenues and Sanctuary Care for a period of 15 months. The Contract with Avenues will commence on 13th January 2020 and the Contract with Sanctuary Care will commence on 15th January 2020.

- 14.2 Subject to compliance with Regulation 72 of the Public Contract Regulations 2015, the Council's requirements for authorising a further exemption from tendering is covered in Contract Procedure Rule 13.1. For a Contract covering the cumulative spend of these Contracts, the Approval of the Portfolio Holder must be obtained following agreement by the Director of Commissioning, Director of Corporate

Services, Director of Finance and Executive Director of Adult Social Care.

- 14.3 Following Approval, the extension must be applied via a suitable Change Control Notice, or similar, agreed with the Provider.
- 14.4 The actions identified in this report are provided for within the Council's Contract Procedure Rule, and the proposed actions can be completed in compliance with their content.

15. FINANCIAL CONSIDERATIONS

- 15.1 The budget for these contract is contained within the overall budget for Learning Disabilities Supported Living schemes, which totals £13.9m in 2019/20.

16. LEGAL CONSIDERATIONS

- 16.1 The Council have the legal power to secure supported living services for adults with Learning Disability through a contract in support of and to facilitate the Councils various functions under the Care Act 2014.
- 16.2 A contract for the purchase of these services is a public contract under the light touch category within the meaning of the Public Contracts Regulations 2015 (the Regulations). As the value of proposed extension for Sanctuary falls above the relevant threshold (£615,278) a full EU light touch procurement would be required as new contract .The value of the proposed extension for Avenues is below the threshold and would require the Council to carry out a procurement exercise which is in compliance with the EU Treaty Principles of Fairness non-discrimination and transparency. However because the proposal is to extend existing contracts the aggregate value of each proposed extension together with the value of the existing contract would each fall above the relevant threshold (£615,278) and a full EU light touch procurement would be required subject to Regulation 72 (see below) which makes for provision for modification of a contract during their term.
- 16.3 The report recommends variation by way of extensions to the existing contracts with Sanctuary Care and with Avenues. Under the general law parties to a contract may agree to vary and extend a contract .However insofar as the Council is concerned the variation must not amount to a material change within the meaning of the Regulations and law.
- 16.4 Regulation 72 sets out a number of circumstances and rules where a variation by way of an extension would be compliant with Regulations and would therefore not require a further procurement exercise. The report has explained the reason why the Council require these contract extensions which centre on the strategic decision to review service provision and delivery across the whole service area including the benefit of aligning procurement activity. These circumstances would seem to be sensible and satisfy a number of the circumstances set out in Regulation 72 (1) (c) and (e). Regulation 72 (1) (c) would permit modification where the need was brought about by circumstances which a diligent contracting authority could not have foreseen; does not alter the overall nature of the contract and would not increase by more than 50% of the value of the original contract . This ground would appear to

have met. Regulation 72 (1) (e) would permit modifications irrespective of their value where they are not substantial as defined. It is arguable that the proposed extensions are not substantial. As a modification under Regulation 72 (1) (c) would require publication of a notice officers may think it sensible to rely on the changes as not being material (Regulation 72 (8))

- 16.5 The Council’s Contract Procedure Rules (CPR 13.1) permit such a variation by way of an exemption and provides that authorisation for an exemption above £1M is with the Executive with the agreement of the Chief Officer, Director of Corporate Commissioning, Director of Corporate Services, Director of Finance and the Portfolio Holder and evidenced by this Member Gateway Report

Non-Applicable Sections:	[PERSONNEL CONSIDERATIONS]
Background Documents: (Access via Contact Officer)	