

Decision Maker: EXECUTIVE

**WITH PRE-DECISION SCRUTINY FROM ADULT CARE &
HEALTH POLICY DEVELOPMENT AND SCRUTINY
COMMITTEE**

Date: 31 March 2021

Decision Type: Urgent Executive Key

Title: LEARNING DISABILITY COMPLEX NEEDS DAY SERVICE

Contact Officer: Colin Lusted, Head of Complex & Long Term Commissioning
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Chief Officer: Kim Carey Interim Director of Adult Services

Ward: All Wards

1. Reason for report

- 1.1 The Council has a contract in place with the Southside Partnership (also known as Certitude) to provide learning disability supported living and community-based day and respite services. Executive approval was obtained in November 2019 to extend the contract for a period of up to 2 years from 1 October 2020 to 30 September 2022. The Council was unable to reach mutual terms to extend the contract as originally intended and subsequent negotiation has resulted in a 6-month extension of the contract to 31 March 2021.
- 1.2 At the PDS meeting on 24 November 2020 members scrutinised a report that set out the procurement proposals in relation to these services, the report was subsequently agreed by the Leader. Future learning disability day provision is being divided so that people with lower needs will receive their services from community based locations that are spot purchased or funded via direct payments, people with complex needs will receive a building based service. This report is focussed upon the building based complex needs day service which has been subject to a full tender process.
- 1.3 The tender process for complex needs day services closed on 4 February 2021 but did not attract any compliant bids; this report provides Members with details of the negotiated process that is now being followed and the interim arrangements that are required. The report seeks Member agreement to a contract variation and extension of the current block contract with Southside Partnership to enable service provision whilst the negotiation and contract award processes are progressed and the new contract is mobilised.

- 1.4 In accordance with the Council's financial and contractual requirements, Executive are requested to agree the variation and extension of the block contract with Southside Partnership. The contract extension will commence on 1 April 2021 for a period of up to 5 months and a value as detailed in the Part 2 report to enable the provision of complex day services as the lockdown is eased and whilst the negotiation / mobilisation process of a new contract is completed. The block contract extension will end as soon as contract implementation with a new provider can be achieved. The cumulative spend in relation to the block contract since 1 October 2015 is detailed in the Part 2 report along with the total contract expenditure.
- 1.5 The report should be read in conjunction with the Part Two report 'Learning Disability Complex Needs Day Service'.
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2. RECOMMENDATION(S)

- 2.1 Adult Care and Health PDS is asked to note and comment on the contents of the report.
- 2.2 The Executive is recommended to:
- i) Approve the variation and extension of the existing block contract with Southside Partnership to provide building based complex needs day services, the extension to commence on 1 April 2021 for a period of up to 5 months to 31 August 2021 at a cost detailed within the Part 2 report; this will increase the total expenditure on the Southside Partnership block contract since 1 October 2015 to the amount detailed in the Part 2 report.

Impact on Vulnerable Adults and Children

1. Summary of Impact: To ensure the continued provision of statutory services to adults with learning disabilities living in Bromley.
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Corporate Policy

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

1. Cost of proposal: Estimated Cost: Please see the Part 2 report
 2. Ongoing costs: Non-Recurring Cost: Please see the Part 2 report
 3. Budget head/performance centre: Learning Disabilities
 4. Total current budget for this head: £1.8m (2021/22 budget)
 5. Source of funding: Existing Revenue Budget
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Personnel

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

1. Legal Requirement: Statutory Requirement
 2. Call-in: Request for call-in to be waived due to urgency.
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Procurement

1. Summary of Procurement Implications:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 50 - 60
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 The Council has a contract in place with the Southside Partnership to provide learning disability supported living and community-based day and respite services. Executive approval was obtained in November 2019 to extend the contract for a period of up to 2 years from 1 October 2020 to 30 September 2022. The Council was unable to reach mutual terms to extend the contract as originally intended and subsequent negotiation has resulted in a 6-month extension of the contract to 31 March 2021.
- 3.2 At the PDS meeting on 24 November 2020 members scrutinised and approved a Leader report that set out the procurement proposals in relation to these services. Future learning disability day provision is being divided so that people with lower needs will receive their services from community based locations that are spot purchased or funded via direct payments. This report is focussed upon the Astley day centre based complex needs service which has been subject to a full tender process. The tender process closed on 4 February 2021 but did not attract any compliant bids. In accordance with the Council's Contract Procedure Rules and following Chief Officer agreement, commissioners are progressing a negotiated award process that is detailed below.
- 3.3 The full tender process was potentially going to result in a short period of service interruption as detailed in the November 2020 Leader report but the requirement for a negotiated process has lengthened timescales and necessitated more robust interim arrangements for a period of up to 5 months whilst the new contract is negotiated and put in place.

4.1 SERVICE PROFILE/DATA ANALYSIS

- 4.1.1 The Council normally provides day services for approximately 180 people with a learning disability. The services are provided to people aged from 18 to over 80 with needs ranging from moderate to those with profound and multiple disabilities. The current budget for day services provided via the block contract is approximately £1.8m pa.
- 4.1.2 Bromley's learning disability day services have been closed since the pandemic began in March 2020. In line with the lifting of national lockdown arrangements, it is anticipated that services will start up again in the coming months and plans are in train to support this.
- 4.1.3 Learning disability day services are being divided, people with less complex needs will receive services via direct payment / spot purchase arrangements within the community and those with complex needs will receive building based provision that is contracted from a single provider on a longer term basis.
- 4.1.4 Mobilisation of services for those with less complex needs (approx. 120 service users) is progressing well with service commencement (subject to the pandemic and associated requirements) expected to gradually increase from 1 April 2021.
- 4.1.5 Up to 60 people are expected to use the complex needs building based provision, with the number of attendees gradually increasing after 1 April 2021 as lockdown eases. With the Council now progressing a new contract via a negotiated procedure, there is expected to be a gap of up to 5 months where interim arrangements will be required.

4.2 NEGOTIATED CONTRACT AWARD

- 4.2.1 As explained at 3.2 above, the tender for complex needs day services did not secure any compliant bids. Providers have advised that they did not submit bids because of the financial risks that could result from staff transferring to them under TUPE who are in receipt of the Local Government Pension Scheme (LGPS). The Council's policy is not to indemnify providers for unforeseen LGPS costs and whilst providers are asked to price the risk into their bid, they were reluctant to do so due to the financial uncertainties relating to the LGPS fund. It is thought that a negotiated approach will allow a more open dialogue with providers and this will help enable a satisfactory outcome; this was the

experience from the recent negotiated respite contract award process. Preliminary discussions with four potential providers give a positive indication that this negotiated route will succeed where the previous tendered route did not.

4.2.2 The timeline for the negotiated award is as follows:

	Activity	Timeframe
1.	Initial contact with providers and confirmation of interest	22/2/21 – 5/3/21
2.	Collation of information – Price / staffing / vision / mobilisation	8/3/21 – 26/3/21
3.	Review of information by LBB and determination of strongest submission using the CIPFA analysis model	29/3/21 – 2/4/21
4.	Continued negotiation to finalise terms with provider	5/4/21 – 16/4/21
5.	Drafting of contract award report for PDS and Executive	19/4/21 – 21/5/21
6.	ACH PDS	29/6/21
7.	Executive (Request for call-in to be waived)	30/6/21
8.	Contract mobilisation	1/7/21 – 6/8/21
9.	Contract commencement	9/8/21

4.2.3 A dialogue is in progress with four providers who have a track record of providing services to people with learning disabilities and are of sufficient size to be able to mobilise the contract within Bromley to short timescales. The providers will be asked to set out their pricing (including the amount in relation to LGPS risk), their vision for the service and their approach to mobilisation. Commissioners will evaluate the submissions using the CIPFA process that is used to evaluate tenders. There will be open dialogue with the providers throughout the process to ensure clarity and help generate mutually acceptable solutions to issues, particularly in relation to issues around the TUPE transfer and LGPS. Providers will be required to demonstrate their financial standing to deliver the contract, their compliance in relation to GDPR and safeguarding and that they will contract to meet the Council's requirements in relation to performance and quality.

4.3 INTERIM CONTRACT VARIATION AND EXTENSION

4.3.1 As detailed at 3.3 above, it will be necessary to provide interim complex, building based day services for a period of up to 5 months. There are 3 possible options in relation to this:

- i) Spot procure outreach services for the 5-month period
- ii) Spot procure building based day provision for the 5-month period from neighbouring boroughs. Scoping indicates this would predominantly be within Bexley.
- iii) Enter into a short term contract variation / extension with Southside Partnership to provide a complex needs day service within the Astley day centre until the new contract commences.

4.3.2 Option i) is not recommended as these arrangements have been in place during the pandemic and feedback from carers is that they have not found them sufficient. Carers have advised that the reopening of building based day provision, as circumstances relating to the pandemic and people's personal situations allow, is of high importance.

4.3.3 Option ii) is not recommended as there will be limited capacity to accept Bromley's service users as the lockdown eases over the 5 month period and the journey times to out of Borough day service provision will be difficult for some service users to cope with over this length of time.

4.3.4 Option iii) is recommended as Southside Partnership have the resources and local knowledge to provide complex needs day services within the Astley day centre as the pandemic allows. Southside Partnership will be able to increase provision in alignment with Public Health guidance and as restrictions are eased. This option is expected to be well received by carers of service users. A meeting has taken place with Southside Partnership, who have confirmed they are willing to vary and extend the current block contract for a maximum period of 5 months based upon current terms and

conditions (no additional liabilities) at the cost detailed in the Part 2 report. Funding is available to meet the cost of the extension from the existing block contract budget in relation to day services.

5. STAKEHOLDER ENGAGEMENT

- 5.1 Commissioners continue to engage with carers of people with learning disabilities and the proposals above reflect the feedback from carers in relation to the recommencement of day service provision.
- 5.2 The proposals detailed above remain in alignment with the vision and priorities set out within the learning disability strategy.

6. PROCUREMENT AND PROJECT TIMESCALES AND GOVERNANCE ARRANGEMENTS

- 6.1 **Estimated Contract Value** – Please refer to the Part 2 report.
- 6.2 **Other Associated Costs** – None identified
- 6.3 **Proposed Contract Period** – A maximum of 5 months
- 6.4 The existing service specification will be revised for the provision of complex building based day services; this will recognise the need for flexibility during the transition from lockdown and the interim nature of the contract extension. The service specification will specify compliance with guidance issued by the government and Public Health whilst taking into account the personal circumstances of service users and their carers.

7. SUSTAINABILITY AND IMPACT ASSESSMENTS

- 7.1 Commissioners continue to engage with all stakeholders in accordance with the arrangements set out in the November 2020 report Learning Disability Community Provision Gateway Report (ACH20-079).

8. POLICY CONSIDERATIONS

- 8.1 The proposals set out in this paper are aligned with the Council's statutory duty under the Care Act 2014.
- 8.2 The services being proposed are in alignment with the Council's Building a Better Bromley policy 'Supporting Independence'.

9. IT AND GDPR CONSIDERATIONS

- 9.1 In consultation with the Information Assurance Officer a Data Protection Impact Assessment will be carried out through all stages of any procurement. The contracts will also require full compliance with GDPR legislation.

10. PROCUREMENT RULES

- 10.1 This report seeks authority to vary and extend the Council's existing Contract with the Southside Partnership to provide a building based complex needs day service, for a period of up to 5 months from 1st April 2021 to 31st August 2021. The reasons for the extension are set out in 3.2 and 3.3 above. The estimated cost of the proposed extension is set out in the Part 2 Report.
- 10.2 The Contract was originally procured as an above-threshold contract following a competitive dialogue process. The extension and variation stated above can be completed in compliance with Regulation 72 of the Public Contract Regulations 2015 (the 'Regulations'), which allows change to a contract 'without re-advertisement in OJEU where the proposed change, irrespective of monetary value, is provided for

in the initial procurement documents in a clear, precise and unequivocal option clause which specifies the conditions of use and scope and nature of the change’.

- 10.3 The extension requested is covered under CPRs 23.7 and 13.1. The Council’s specific requirements for authorising this, taking into account the value and nature of the extension set out elsewhere in this report, require the Approval of Executive, following Agreement by the Chief Officer, Assistant Director Governance & Contracts, the Director of Corporate Services, the Director of Finance and the Portfolio Holder. In accordance with CPR2.1.2, Officer must take all necessary professional advice.
- 10.4 Following Approval, the variation and extension must be applied via a suitable Change Control Notice, or similar, as specified in the contract.
- 10.5 The actions identified in this report are provided for within the Council’s Contract Procedure Rules, and the proposed actions can be completed in compliance with their content.

11. FINANCIAL CONSIDERATIONS

- 11.1 Financial implications are contained within the Part 2 report.

12. PERSONNEL CONSIDERATIONS

- 12.1 There are no personnel implications arising from this report, for any employees of the London Borough of Bromley.

13. LEGAL CONSIDERATIONS

- 13.1 The proposed contract variation described in this report appears to be compliant with regulation 72 of the Public Contracts Regulations 2015. That regulation allows a public contract to be varied without requiring a further procurement in certain circumstances. One of the circumstances (that is relevant here) is if the variation has ‘been provided for in the initial procurement documents’. In these circumstances, the monetary value of the variation is not relevant.
- 13.2 In this case, the published terms and conditions already permitted an extension up to 30 September 2022. The proposal described in this report is to vary the current extension period (to end 31st March 2021) to end on 31st August 2021. This is comfortably within the maximum extension period already indicated in the terms and conditions.
- 13.3 The standard terms and conditions require any amendment to be agreed in writing.

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	Learning Disability Community Provision Gateway Report ACH20-079