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Meeting	Cabinet Resources Committee
Date	20 June 2012
Subject	<b>Re-commissioning preventative provision for people with learning disabilities to support personalisation of social care and health</b>
Report of	Cabinet Member for Adults
Summary	The report recommends re-commissioning preventative support for people with learning disabilities to achieve compliance with personalisation objectives

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Officer Contributors	James Taylor, Deputy Head of Strategic Commissioning Eryl Davies , Head of Strategic Commissioning and Supply Management
Status (public or exempt)	Public
Wards affected	All
Enclosures	none
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

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## **1. RECOMMENDATIONS**

- 1.1 The requirements of paragraph 6.4-5 of the Contract Procedure Rules are waived;**
- 1.2 Authority to given to commission Dimensions to provide preventative support for people with learning disabilities for a period expiring 31.3.2014.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Cabinet Resources Committee, 22 July 2008 (Decision item 11) - approved changes to voluntary sector commissioning arrangements.
- 2.2 Cabinet Resources Committee, 8 December 2009 (Decision item 7) - approved the strategic document 'Looking after Yourself – a prevention framework for Barnet' as the basis for the commissioning of preventative services by Adult Social Services.
- 2.3 Cabinet Resources Committee, 13 January 2011 (Decision item 11) - approved a waiver of paragraph 5.6.2 of the Contract Procedure Rules to allow the entry into interim funding agreements for prevention services commissioned by the Council's Adult Social Services subject to a maximum duration of two years.
- 2.4 Cabinet Resources Committee, 21 April 2011 (Decision item 7) - approved procurement of a contract for day opportunities services for adults with mental ill-health and a contract for respite and support services for carers of adults with disabilities, ill-health or frailty.
- 2.5 Cabinet Resources Committee, 28 July 2011 (Decision Item X) – approved a waiver of paragraph 5.6.2 of the Contract Procedure Rules to commission Barnet Centre for Independent Living to provide information, advice and advocacy services for a maximum period of two years

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 Better services with less money – The proposed services will help to promote independence for Barnet residents with learning disabilities. The services will focus support around the customer to achieve a better customer experience and better value for money through commissioning services differently and through service transformation. The procurement will contribute to managing resources and assets effectively and sustainably across the public sector.
- 3.2 Sharing opportunities and sharing responsibilities – The proposed services together with other re-commissioned provision for social care and prevention services will support implementation of the self directed

care for Adult Social Care and Health developing a market place which is able to respond to people self-directing their support through a personal budget. The contract model will in particular allow for increasing use of personal budgets to reduce providers' dependency on Council funding.

#### **4. RISK MANAGEMENT ISSUES**

- 4.1 The proposed re-commissioning is intended to address the risks that existing services are incompatible with the Council's objectives to maximise use of personal budgets and self-directed care and support. Current prevention services are funded on a block basis unrelated to personal budgets or FACS eligibility. Although providers currently offer a range of activities which have been developed in response to user feedback, choice and control are not explicit in terms of purchasing decisions since users cannot at present choose to spend the funding elsewhere. Re-modelling is essential to ensure that service users are able to exercise the Right to Control.
- 4.2 The recommended re-commissioning is intended to manage significant risks resulting from the reduction in the budget for voluntary sector prevention services. Current services mainly provide long-term support to small numbers of service users. Re-commissioning is necessary to put greater emphasis on enablement support to minimise dependency and on providing flexible short-term key working and drop-in support that would enable resources to go further by benefiting more people.
- 4.3 Changes to the support currently commissioned for people with learning disabilities will need to be managed sensitively, anticipating and resolving the concerns of service users and their families and preventing any unintended consequences. Change in this area of service delivery often results in challenge and has the potential to cause distress for some service users and their families. The risk of adverse publicity for the Council as a result of opposition to change would be mitigated by remodelling the services incrementally in partnership with service users and existing providers.
- 4.4 The proposed re-commissioning would defer competitive procurement until 2013/14 to mitigate the risks involved in a concurrent change of the service model and of the service providers. The intervening period would allow sufficient time for existing providers to pilot the service and for the Council to review performance, refine or reshape the service specification and complete a competitive procurement in order to let a new contract on expiry of the contract.
- 4.5 There is a risk that entering into a contract without competition could result in challenge(s) being brought against the Council. The risk is difficult to quantify but is considered low in view of the specialist nature of the relevant services. The risk of Barnet Mencap challenging the contract award to Dimensions has been mitigated through the

agreement in principle between the two providers that Barnet Mencap would operate a sub-contract.

- 4.6 The risk and issues raised by the service users and their families on the proposed changes to the service model arise from high anxiety about the changes which have been addressed by ongoing close working with the providers to ensure there is continuity and support to the current service users. In addition communications have been presented at the Partnership Board, Parliament and Self advocacy groups.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 The Equality Act 2010 came into force on 5 April 2011. Pursuant to section 149 of the Act, the Council has a public sector obligation to have due regard to eliminating unlawful discrimination, advancing equality and fostering good relations in the contexts of age, disability, gender reassignment, pregnancy and maternity, religion or belief and sexual orientation.
- 5.2 The proposed services are intended to have a very positive equalities impact. An initial equality impact assessment of the pilot service model and implementation arrangements has been completed and indicates a positive effect overall. The assessment will be updated in the light of the outcomes achieved during the first year of operation.
- 5.3 The Council's Equalities policy will inform evaluation of providers' proposals. The contract for the new services will include explicit requirements fully covering the Council's duties under equalities legislation.
- 5.4 The contracts will require providers to have a high standard of equitable behaviours. This includes compliance with Equal Opportunities Legislation, operating an equal opportunities policy, observing Codes of Practice issued by the Commission for Equality and Human Rights, and giving appropriate consideration to each customer's race, nationality, cultural or ethnic background, marital status, age, gender, religion, sexual orientation and disabilities.

## **6. USE OF RESOURCES IMPLICATIONS (Financial, Procurement, Performance & Value for Money, Staffing, IT, Procurement, Sustainability)**

- 6.1 Services currently provided by voluntary organisations are funded from the Adult Social Care and Health base budget.
- 6.2 Proposals to reduce relevant budget provision in 2011/12 have been agreed, comprising in respect of voluntary sector prevention services,

£350k in 2011/12 and £550k in 2012/13 and in respect of housing related support services; £492k in both 2011/12 and 2012/13, and £362k in 2013/14;.

- 6.3 The proposed maximum annual budget for re-commissioned support for people with learning disabilities is £363,847 after application of budgetary reductions. This amount includes £243,994 provision from the budget for housing related support services and £119,853 from the budget for other prevention services.
- 6.4 The Council's Contract Procedure Rules provide that contracts of the values indicated at paragraph 6.2 above should be awarded following a tendering process or other approved route. In considering the recommendations to waive this requirement the Committee must be satisfied that the waiver would fall within one or more of the four criteria specified in Paragraph 5.8 of the Contract Procedure Rules.
  - 6.4.1 the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or
  - 6.4.2 the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
  - 6.4.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or
  - 6.4.4 there are other circumstances which are genuinely exceptional
- 6.5 The services to be provided under the recommended contract represent specialist models of provision that have not yet been fully tested. The Council is therefore not yet in a position to proceed to competitive procurement but it must nevertheless ensure continuity of provision for disabled people when existing interim contracts expire. These circumstances are consistent with the criteria at 6.3.1 and 6.3.4.

## **6.6 Market development**

- 6.6.1 The Adult Social Care and Health Directorate, having concluded a review of all voluntary sector provisions and contracts in 09/10, has been gradually reconfiguring current provision to deliver savings, at the same time, strengthen consistency with Barnet's objectives to promote personalisation, enable people who use services to self direct their support and reduce dependency on council funded services.
- 6.6.2 The Council has worked in partnership with the providers to listen to the concerns and issues raised and together address in

a practical manner the reality of the changes. This contract award represents a significant change to the way services will be delivered for this care group creating new and different sets of expectations for users and providers. This sends a clear message to the care market that transitions can and should be managed sensitively in this area and at the same time prepares the ground for competitive procurement and personal budgets.

## **7. LEGAL ISSUES**

- 7.1 The services proposed for procurement will fall under Annexe B of Schedule 3 to The Public Contracts Regulations 2006 (as amended). This means that the procurement will not be subject to the full EU tendering rules.
- 7.2 The principles of fairness, non-discrimination and transparency will apply to the contracts. Meeting these principles requires, as a minimum, that the Council places an advertisement on its website, advertising its intention to award the contracts and giving interested parties the opportunity to compete for the contracts.
- 7.3 The support services to be procured under the proposed contract with Dimensions and to be tendered in 2013/4 are broadly similar to those being provided under existing contracts. It is likely the TUPE would apply in these circumstances, and the proposed contract with Dimensions would therefore include appropriate obligations in respect of their compliance with TUPE responsibilities. Existing contracts expire naturally on 31.3.2013 but may be ended earlier on three months notice..

## **8. CONSTITUTIONAL POWERS**

- 8.1 The Constitution, Part 3, Section 3.6 sets out the functions of the Committee
- 8.2 Section 5.8 of the Contract Procedure Rules enables a Cabinet Committee to waive the requirements of the Contract Procedure Rules if satisfied that the waiver is justified because:
  - 8.2.1 the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or

- 8.2.2 the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
  - 8.2.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or
  - 8.2.4 there are other circumstances which are genuinely exceptional
- 8.3 This report seeks waivers of the Contract Procedure Rules for the procurement of the provision of preventative support services for people with learning disabilities on the basis of 8.2.1 and 8.2.3 above because of the risks associated with the introduction of the new service model.
- 8.4 The Constitution, Part 2, Article 13 requires that a decision taker may only make a key decision in accordance with the requirements of the Access to Information Procedure Rules and the Executive Procedure Rules set out in Part 4 of this Constitution, and specifies that a "key decision" means an executive decision which, is likely:-
  - 8.4.1 to involve expenditure or savings in excess of £500,000 as well as otherwise being, significant having regard to the Council's budget for the service or function to which the decision relates; or
  - 8.4.2 to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the borough.
- 8.5 The proposed award of a contract to Dimensions for a period of two years is not considered to be a "key decision". The aggregated contract value for the proposed two-year period is expected to be £727,694 but this value is not significant taking into account the Council's overall budget for the provision of social care and support. Nor is the decision significant in terms of its expected effect on communities since it is concerned with the selection of the provider and not with the nature of the services to be provided

## **9. BACKGROUND INFORMATION**

- 9.1 This report concerns arrangements to re-commission support provided by the voluntary sector for people with learning disabilities. Current provision is commissioned from two organisations, Barnet Mencap and Dimensions, as listed at Appendix 1.
- 9.2 Re-commissioning this provision is part of the wider programme to remodel the range of preventative support delivered by voluntary sector contractors. The Committee has already approved arrangements during 2011/12 for re-commissioning the majority of provision as noted

in Paragraphs 2.4 and 2.5. The re-commissioning programme is informed by the following key aims:

- 9.2.1 to remodel the support that is provided in order to bring it into line with Barnet's strategic objectives for social care and support
- 9.2.2 to put in place processes to achieve compliance with the Council's contract procedure rules
- 9.2.3 to deliver efficiencies in procurement and contract management by minimising the number of contracts
- 9.2.4 to achieve required budget savings,

### **New Service Design**

9.3 The Council considers that the current service model requires replacement by an enablement approach that facilitates self-help and reduces risks of avoidable dependency. Existing services provide long-term general support for small numbers of individuals, with consequently very low turnover and only occasional vacancies. At the same time, the Council is aware of significant numbers of people who would benefit from support to achieve specific outcomes but who are unable to access the help they need..

9.4 A draft specification for the re-modelled provision has been prepared in consultation with existing and potential service users and providers and defines three types of future provision to replace current services:

9.4.1 A hub service offering specialist problem-solving and guidance for people contacting to report a practical difficulty in day-to-day living. This service will be available to any Barnet resident with a learning disability living independently in the community. Linked to this service, will be a risk management process to identify and respond to Safeguarding issues where appropriate in conjunction with the Council's social services

9.4.2 Specific time-limited programmes to support current Council-led projects. Two programmes are planned for 2012/13:

- resettlement of people moving from residential care into new supported housing schemes due to open during the year
- a travel training programme to enable people to use public transport as an alternative to Council-provided transport. These programmes will be available only to people referred by the Council's social services

9.4.3 An employment enablement service, providing individuals with structured sessions to acquire qualifications and soft skills through training, volunteering and supported employment, in order to provide access to paid work. This service would be commissioned on a 'payment by results' basis with funding entirely determined by the numbers of people obtaining employment.



- 9.5 The new service model has been designed to achieve measurable benefits within defined shorter-term periods and would support larger numbers of service users with specific focus on safeguarding and on identifying and resolving risks and dependencies.
- 9.6 The current contracts and the service design are inconsistent with the Council's objectives to provide service users with choice over the support they receive. The funding for the services is not represented in personal budgets allocated to service users, and the service design does not enable service users to fully exercise choice. Re-commissioning the provision is important to ensure that it serves personalisation objectives and promotes the Right to Control regulations which provide for service users to choose how to use the funding available for their support

### **Procurement Strategy**

- 9.7 The proposed procurement approach is informed by the following considerations:
- 9.7.1 Previous proposals to alter the service model have been strongly opposed by service users and their carers and families and have not therefore been pursued. Most have been supported by the current providers for several years, in some cases for ten years or more.
- 9.7.2 Simultaneously changing both the service model and the contractor is likely to lead to adverse publicity for the Council, with a significant risk of reputational damage. A two-stage approach offers the best prospect of mitigation
- 9.7.3 The proposed service models are untested. The proposed two-year contract period offers a realistic timetable for staged implementation followed by comprehensive review and completion of competitive procurement during the second year

### **Implementation**

- 9.8 The recommended contract with Dimension would be subject to a detailed specification and performance framework setting out the Council's requirements. The provider's performance would be appraised against the following measures of success:
- The services are chosen by a majority of people looking for support.
  - The services enable achievement of Barnet's performance targets on the number of people taking up individual budgets and self-directing their support.
  - The services achieve high satisfaction ratings on the effectiveness of their support to both personal budget holders and self-funders.

- The services are able to evidence that they have prevented needs from escalating and reduced requirements for statutory interventions.

9.9 The following key milestones are applicable to implementation of the recommended contracts, for testing the pilot service models and for subsequent completion of competitive procurement processes.

June 2012	Interim contract award
July - Aug 2012	Service initiation, subject to contract.
Jan - Mar 2013	Review of the contractors' performance and requirements for amendment of service models.
Apr - Jun 2013	Market testing and finalisation of steady state service specifications.
Jul - Dec 2013	Invitation of competitive tenders and selection of new contractors.
Jan - Mar 2014	Service mobilisation and transition planning.
April 2014	Commencement of new contracts.

## **10. LIST OF BACKGROUND PAPERS**

10.1 None.

Legal: SK  
Finance: MC/JH

## Appendix 1      Prevention Services affected by the procurement proposals

Provider	Service	2010/11 Baseline Contract Value	2011/12 Contract Value	2012/13 Contract Value	2012/3 Contract Value	Proposed Contract Value 2012/3 & 2013/4	Cumulative % Reduction since 2010/11
Existing - Housing Related Support Programme							
Dimensions	Floating support	186,872	181266	168,184	159,775		14.5
Barnet Mencap	Floating support	98,501	95546	88,650	84,218		14.5
		£285,373	£276812	£256,835	£243,994		14.5
Existing - Voluntary Sector Prevention Programme							
Dimensions	Learn to Earn	50,625	44,044	33,746	33,746		33.3
Barnet Mencap	COPS	56,128	48,831	37,414	37,414		33.3
Barnet Mencap	Project 67	73,045	63,549	48,691	£48,691		33.3
		£179,798	£156,424	£119,853	£119,853		33.3
Total - all Programmes		£465,171	£433,236	£376,68	£363,847		
Proposed - Integrated Prevention Programme							
Dimensions	Learning Disability Support					£363,847	