

Report of: Deputy Director of Adult Social Care

Report to: Director of Adult Social Services

Date: 3rd April 2014

Subject: Request to waive Contracts Procedure Rules 9.1 and 9.2, using the authority set out in CPR 1.3, to enter into a 2 year contract for dementia services provided by the Alzheimer's Society from 1st October 2014 – 30th September 2016.

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|--|---|--|
| Are specific electoral Wards affected? If relevant, name(s) of Ward(s): | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Summary of main issues

- 1 This report seeks approval to waive CPRs 9.1 and 9.2, using the authority set out in CPR 1.3, to enter into a new contract with the Alzheimer's Society to continue to deliver Day Opportunities and Outreach services for younger people with dementia from 1st October 2014 – 30th September 2016.
- 2 The current contract has been in place for 2 years since 1st October 2011 and some progress has been made in developing the services in line with the service specifications. However, further work is needed to ascertain the optimal service model. There are also a number of other complex issues that are outlined in the main issues section of this report that need to be resolved prior to a procurement exercise taking place.
- 3 Specific consultation is planned with all stakeholders for the Day opportunities and Outreach services to ensure that, post 2016, appropriate, personalised services that effectively meet the needs of younger people with dementia are commissioned.
- 4 In 2011, the support service for carers of people with dementia, also provided by the Alzheimer's society, was included in the procurement exercise. However, the decision has been made to separate the Carers service from the Day opportunities and outreach services. This is because there is a restructure underway of Carers services in Leeds. It therefore makes sense strategically, financially and under the category management philosophy to consider the Carers service for people with dementia within that process.
- 5 A market test is not recommended currently as it is felt the service is not in a position to go out to full tender at this moment in time. However the plan is to undertake a full procurement exercise, including a market test, prior to October 2016.

Recommendations

- 6 The Director of Adult Social Services is recommended to waive CPRs 9.1 and 9.2 to enter into a contract with Alzheimer's Leeds for the provision of: a day opportunities and an outreach service for younger people with dementia for 2 years from 1st October 2014 - 30th September 2016. The contract has an annual value of £180,500 with the addition of £112,000 transferred to ASC via a s256 agreement from NHS - provisions are available within the agreed budgets.
7. The Commissioning Officer will oversee implementation of the contract in conjunction with procurement unit and on-going review will be in accordance with appendix 1.

1. Purpose of this report

- 1.1 The purpose of the report is to seek approval from the Director of Adult Social Services to waive CPRs 9.1 and 9.2, using the authority set out in CPR 1.3, to enter into a contract with Alzheimer's Leeds, for a period of 12 months from 1st October 2014 - 30th September 2016 to continue provision of two services. These are the Day Opportunities service and the Outreach service for younger people with dementia.

2. Background information

- 2.1 The Alzheimer's Society has been delivering these services since 2009 as part of a formal contracting arrangement. Prior to this date they had been delivering these services via a grant arrangement since 1997. The outreach service is funded by NHS at £112,000 p.a. This is transferred to the Council through a section 256 (s256) agreement and is available for the proposed contract period. The level and quality of service delivered by the Alzheimer's Society is satisfactory and the provider is well thought of in terms of its dementia knowledge and expertise.
- 2.2 Prior to the award of the current contract a joint ASC and NHS project team was established to develop the necessary procurement documents, taking into account previous consultations, and future service requirements.
- 2.3 Outcome focussed service specifications were subsequently developed and an open procurement process commenced in 2010.
- 2.4 The outcome of the procurement was that there were only two submissions and the contract was again awarded to the Alzheimer's Society from 1st October 2011 - 30th September 2013 with an option to extend for a further 12 month period. This extension period was approved and ends on 30th September 2014

3.0 Main issues

- 3.1 The number of people under 65 with a dementia is relatively low - approximately 200 across the city. However, due to the nature of early onset dementia the impact can be different when compared to an older person. For example, there are more likely to be employment issues and a higher possibility of people having younger families. In addition, there are some distinct types of dementia that affect younger people which have different disease progressions and presentations. As such a discreet service for this user group is essential.
- 3.2 The current specifications for these two services included some fairly radical changes to the historic service model, namely to move away from traditional building based day services in line with the direction of travel of other ASC day services. In addition, it was hoped that

the outreach service could provide more of a time limited re-abling function. Whilst some progress towards these changes has taken place, which has improved service delivery, it is fair to say they have only been partially achieved. There are a number of reasons for this. Firstly, the throughput of people using the day service is very slow, this means that the majority of service users, and their carer's, have been receiving a particular service for a fairly long period of time and therefore large scale change is very difficult. Secondly, it has become increasingly apparent that alternative services for this particular user group are extremely limited. Finally, these services have been delivered in a particular way by the same provider at the same site for many years which again makes effecting change more challenging. As a result the service models need much further development.

- 3.3 More time is needed to effectively plan for the future and develop the optimal model for meeting the needs of younger people with dementia in Leeds. This will also include exploring the current capacity of each service and the related demand. For example, looking at whether less day service places should be offered to create more capacity in the outreach service and vice versa. In addition, we need to establish where this service "fits" in terms of the wider dementia pathway and ASC future plans.
- 3.4 Further consultation is planned with all stakeholders regarding the future of these two services taking into account all the issues highlighted in this section of the report.
- 3.5 The age limit for the Day Opportunities and the Outreach Services needs to be considered as currently access to the service is dependent on age which is in conflict with equality legislation. This requires careful consideration as to how people's needs are best met and who the target audience is.
- 3.6 The existing provider has a strong working relationship with the multidisciplinary mental health team within Leeds and York Partnership Foundation Trust (LYPFT) who are the main referrers. This is crucial to the service achieving its outcomes and therefore joint working needs to take place with this team throughout any future service development. LYPFT are also undergoing a remodelling of their services so it again makes sense for this contract to continue to enable ASC and the existing provider to work in partnership with them to ensure all services are aligned appropriately.
- 3.7 The service currently provides transport to all service users attending the day opportunities service. This is historical and the service provider has tried hard to encourage people to find other means of transportation. However, given that the service is citywide this poses problems for people. Also, due to the needs of the service users appropriately skilled staff/volunteers need to be present to assist during transportation. At the moment the transport service is provided by two volunteer drivers who work every day and are paid expenses. This is an inexpensive way of providing transport but is completely dependent on these two individuals which ultimately is not sustainable. Plans need to be in place for a realistic transportation system in the future which may have funding implications.
- 3.8 Access to the day opportunities service, which is solely funded by ASC, is currently direct which means that it supports people both above and below the ASC eligibility level. A decision needs to be made as to whether this arrangement needs to change as it could potentially cause issues around equity and charging as it stands.
- 3.9 The two services operate from a site in Armley and have done for many years. The building belongs to LCC but is leased to the Alzheimer's Society. From 30th September 2016 the lease on the building expires and so it will not be able to be used. This obviously has implications for the service in terms of location and facilities but on a positive note it provides a focal point to work towards when developing the future service model. A

further consideration however is that as part of the lease arrangements the Alzheimer's Society pay well below the market rent for this building. As a result if it is identified that a base/building is required post 2016 there may be funding implications as commercial rental costs would need to be considered by all prospective providers.

- 3.10 All the above issues need to be resolved or at the very least have a plan in place to ensure resolution prior to this service being in a position to go out to tender. It is therefore felt that the approval of this waiver would allow the necessary time to work on this. A plan is attached to this report giving a brief outline as to the actions that will take place between now and Sept 2016 should the waiver be approved. **See Appendix 1**

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 During the procurement exercise for the existing contracts there was substantial consultation with both service users and carers. This was used to inform the service model and service specifications and demonstrated the need for these services.
- 4.1.2 Service user views are sought as part of the on-going contract monitoring and service users and their carer's have told us how much they value the services.
- 4.1.3 Some consultation has already taken place in 2014 with relevant stakeholders in order to inform future service provision. This has included an options appraisal and workshop.
- 4.1.4 Further consultation is planned with relevant stakeholders with a focus on resolving the issues outlined in this report.
- 4.1.5 The final service model will be informed by the Leeds Dementia strategy, which was developed using substantial consultation with people with Dementia and their Carers.
- 4.1.6 ASC commissioners will engage with the existing provider and all other relevant parties throughout the future contract to ensure a unified approach to any service developments.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 An Equality Impact Assessment screening tool has been undertaken to support this waiver **See Appendix 2**. However, a further equality impact assessment will be undertaken as part of the development and re-commissioning of the services between now and 2016.
- 4.2.2 Appropriate policies and procedures are in place with the provider.
- 4.2.3 Throughout the current contract the provider has worked hard to make the service more accessible to harder to reach community groups and this will be a priority in future.

4.3 Council policies and City Priorities

- 4.3.1 The commissioning of these services is in line with current commissioning priorities.
- 4.3.2 The commissioning of these services embraces the vision outlined in the Leeds Dementia Strategy.

4.4 Resources and value for money

4.4.1 There will be some resource implications in terms of monitoring and reviewing this contract in order to ensure the service is meeting the necessary outcomes. These resources will be provided from within the commissioning team.

4.4.2 The funding for the services is held by Adult Social Care and has been approved by ASC Finance.

4.4.3 NHS funding is available for this period for the outreach service through the original s256 agreement with NHS Leeds which is now held by North CCG.

4.4.4 The annual contract values are given below and are provided for in the 2014/16 budget.

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| Outreach service for younger people with dementia | £112,000 |
| Day Opportunities for younger people with dementia | £180,500 |
| Total | £292,500 |

4.4.5 Cash efficiencies of 5% were made on the Day Opportunities service in both years 1 and 2 of the current contract and the service therefore currently offers value for money. However, this will hopefully be improved upon even further with the proposed remodelling of the services within the recommended contract period.

4.5 Legal Implications, Access to Information and Call In

4.5.1 Contract Procedure Rules 9.1 and 9.2 can be waived where appropriate where it is in accordance with the terms of CPRs and proves to deliver value for money.

4.5.2 This report is a key decision due to the total contract value being £292,500 and is therefore subject to call-in. The report does not contain any exempt or confidential information.

4.5.3 Awarding contracts directly to the Alzheimer's Society in this way could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that European case law suggests that contracts of this value should be subject to a degree of advertising if it is considered that it would be of interest to contractors operating in another Member State. It is up to the Council to decide what degree of advertising is appropriate. In giving the work to this provider without competition there is a potential risk of challenge from other providers who have not been given the chance to tender for this opportunity.

4.5.4 As these are Part B Services for the purposes of the Public Contracts Regulations 2006 ("Regulations"), and therefore not subject to the full procurement regime, the risk of challenge identified at paragraph 4.5.3 can be diminished somewhat by the publication of a voluntary transparency notice in OJEU immediately after the decision to award the contract to these providers has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made a claim for ineffectiveness cannot be brought. Further, publishing such a notice will also start time running for any other potential claim for breach of the Regulations, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach had occurred. A voluntary transparency notice will be published for this waiver request.

4.5.5 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.

4.5.6 Although there is no overriding legal obstacle preventing the waiver of CPR 9.1 and 9.2, the above comments should be noted. In making their final decision, the Director of Adult Social Services should be satisfied that the course of action chosen represents Best Value for the Council.

4.6 Risk Management

4.6.1 The previous procurement process was conducted in accordance with the Council's Contract Procedure Rules in order to ensure that a fair, open and transparent process was undertaken. This will also be the case with a future procurement.

4.6.2 The risks will be minimised by carrying out a Market Sounding Exercise and a further procurement exercise will be undertaken during the period of the new contract.

4.6.3 If the waiver is not approved there is a risk that the existing services will cease and service users will no longer be able to access this service. This would also place increased pressure on Carers. Similarly if it is not approved and a procurement process has to take place there is a risk that we could pass on complex problems to a new provider which could negatively impact on both the service and the Council's reputation.

5 Conclusions

5.1 By granting this waiver it will allow the necessary time to continue to develop the services for younger people with dementia and work with stakeholders to agree the most effective way forward. It will also prevent any difficulties caused by going to the market with services that have several unresolved issues.

6 Recommendations

6.1 The Director of Adult Social Services is recommended to waive CPRs 9.1 and 9.2, using the authority set out in CPR 1.3, to enter into a contract with Alzheimer's Leeds for the provision of: a day opportunities and an outreach service for younger people with dementia for 2 years from 1st October 2014 - 30th September 2016. The contract has an annual value of £180,500 with the addition of £112,000 transferred to ASC via a s256 agreement from NHS - provisions are available within the agreed budgets. The Commissioning Officer will oversee implementation of the contract.

7 Background documents:

7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.