

Report of Director of Adult Social Services

Report to Executive Board

Date: 11 February 2015

Subject: Approval to proceed with proposal to develop a Social Enterprise in the form of a staff led mutual to deliver the Learning Disability Community Support Service

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 checked="" type="checkbox"/> Yes	<input 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: 10.4.3 & 10.4.5 Appendix number: <ul style="list-style-type: none"> • Appendix A (10.4.3) • Appendix F (10.4.5) 	<input checked="" type="checkbox"/> Yes	

Summary of main issues

1. The 'Better Lives' vision for the delivery of social care and support is the Council's commitment to ensuring that Leeds positions itself nationally as the best city for people with care needs, including those with a learning disability. Nationally, the number of people with learning disabilities continues to rise, which results in an increasing demand for care and support. The increased demand coincides with a time when Council budgets continue to be severely constrained, hence the need to look creatively at ways of delivering services that continue to give citizens best-quality support, provide staff with good pay and working conditions and deliver best value to local authorities.
2. Adult Social Care has already demonstrated this creativity in the reconfiguration of daytime opportunities for people with learning disabilities, which have replaced large, segregated day centres with community bases in localities, which offer a wider than ever variety of daytime activities in partnership with other directorates within the Council and other public and independent providers. Similarly, the Council's old hostel-type accommodation for people with learning disabilities has been replaced with new flats and apartments located within communities. The new-built accommodation gives greater independence for 'residents' who are now 'tenants' with the ability to make their own decisions on how they live their lives, with as much or as little support as they need. Known as the 'Independent Living Project', this has been achieved through PFI funding and in partnership with an independent developer and provider.

3. These modernising developments now set the scene for the proposals contained within this report, for an innovative new delivery model for support services for people with learning disabilities.
4. The proposals in this report concern the creation of a social enterprise from the Learning Disability Community Support Service, the Council's in-house provider of care services which supports over 1000 adults with learning disabilities utilising a staff team of over 700. Despite undertaking major transformational change in recent years and being a highly regarded service it has seen its market share in Leeds fall from around 40% to 20% as demographic growth has been met by other sectors.
5. At their meeting on the 14th February 2014, Executive Board Members received a report in relation to the development of a social enterprise in the form of a public service mutual for the Learning Disability Community Support Service. In welcoming that report, Members noted the progress which had been made and agreed a number of actions which were dependent on receiving a positive staff response to the proposal.
6. Further significant progress has been made since the February 2014 meeting which includes undertaking a staff survey to gauge support for the proposal, ongoing engagement with staff, service users and many other stakeholders, including Trades Unions; setting up a project delivery team and strategic governance board to oversee the development; preparing a detailed service delivery specification and associated contractual documentation, preparing detailed specifications for the delivery of support services to the Social Enterprise, and reviewing and updating the Social Enterprise business plan.
7. In the February Executive Board report it was stated that the social enterprise would be a Community Interest Company, limited by guarantee. There have been changes in legislation since that time and it is now considered that the preferred model (considered in further detail in paragraph 3.6 of this report) is a Community Benefit Society with a wholly owned trading subsidiary established as a company limited by shares (reference to the capitalised term 'Social Enterprise' in this report refers to this preferred model). This arrangement will combine all the original aims of setting up a social enterprise including employee ownership, whilst at the same time providing a more efficient operating model. Also since February, all staff have been involved in deciding upon a name for the new Community Benefit Society which has resulted in the name 'Aspire Community Benefit Society' being the preferred choice.
8. It is considered that sufficient progress has been made to confirm that there is a sound business case to proceed to recommend the awarding of a 5 year contract (with the option to extend the contract at the discretion of the Council by one 12 month period), which in the first year has a value of £21.454M and represents the current cost of delivering the service. Although the immediate savings are marginal in the first year, the Council will realise cashable efficiencies of £2.1M over the whole contract period when compared with similar assumptions being made to keep the service in house. It should also be noted that the Social Enterprise will buy support services and pay rent back to the Council in excess of £3.5M which gives a net contract value of £18M.
9. Members of Executive Board are asked to approve all further work which needs to be completed before the contract can be awarded and to authorise the (Interim) Director of Adult Social Services to approve the award of the contract and the detail of any necessary ancillary documentation to complete the transfer of business and contract for services.

Recommendations

The Executive Board is requested to note:

1. The significant progress made to date (including obtaining staff support), in relation to the creation of a Social Enterprise for the Learning Disability Community Support Service.
2. The creation of Aspire Community Benefit Society Limited as a separate legal entity as the Social Enterprise
3. The revised social enterprise organisational structure and contractual arrangements as detailed in section 3.6 of this report
4. The requirement to complete all outstanding work required to:
 - finalise all necessary supporting agreements required for the enterprise to function including those relating to the transfer of the business including staff and non-buildings based assets, provision of support services by the Council and those relating to the occupation / use of property by the Social Enterprise,
 - award a contract for the delivery of services to the newly formed Community Benefit Society or its subsidiary as detailed in paragraph 3.6,
 - complete formal consultation with staff and trade unions in relation to the TUPE transfer of all staff defined as 'in scope' for this service.
5. Approve the participation by the Council in Aspire via the nomination of 3 elected Members, as approved by Member Management Committee, to join the board of directors of Aspire, and (if so nominated by the Aspire board), the board of directors of Aspire Services (Leeds) Ltd.
6. Subject to the satisfactory completion of the tasks identified above note that the (Interim) Director of Adult Social Services will:
 - i) approve the award of the contract for services to the newly formed Social Enterprise,
 - ii) approve the detail of any necessary documentation to complete the transfer of business and contract for services to the Social Enterprise, subject to the value of the contract in the first year not exceeding £21.454M per annum which in turn is less than the cost of provision had the service remained within the Council, and subject to the advice given by the City solicitor to the (Interim) Director of Adult Social Services in relation to state aid rules detailed at para 3.13.1 of this report.
 - iii) In relation to pensions, to agree that the Council will act as a guarantor to the Social Enterprise's admitted body status to the West Yorkshire pension fund as detailed in sections 3.5.7 to 3.5.9 of this report.
7. Approval for the Director of City Development to enter into negotiations with the Social Enterprise to agree the necessary leases/licences (co-terminus with the Services Agreement) to document the occupation of premises to be utilised for the provision of the service and to agree details of rent/service charges to be paid

8. Note the key next steps as follows:

- February/March 2015 - Finalise and award contract
- February - May 2015 - Mobilisation
- 1 June 2015 - Full service commencement

9. Note that the Interim Director, Adult Social Care is the lead officer.

1 Purpose of this report

1.1 This report seeks formal approval from Members to complete all outstanding work including specifications and supporting documentation to enable:

- The creation of a Social Enterprise in the form of a staff-led public service mutual, from the Council's current in house Learning Disability Community Support Service
- The transfer of business to that Social Enterprise
- The awarding of a contract for services for a 5 year period subject to the value of the contract in the first year not exceeding £21.454m per annum

2 Background information

2.1 National trends

2.1.1 The 'Better Lives' programme details the Council's commitment to making Leeds the best city in the UK for people with social care needs, giving residents the best possible support for maintaining their health and wellbeing. The 'Better Lives' vision refers to greater integration of services, and improved range of daytime activities for people with eligible needs and the development of a new kind of enterprise in the Leeds care market, which will provide a variety of services geared to responding to people needing all levels of support and care, including those with learning disabilities.

2.1.2 Thanks to medical advances, people with learning disabilities are living longer, with the number of elderly adults with learning disabilities increasing as a national trend. The demand for support for adults with learning disabilities has thus increased rapidly, especially in the areas of:

- Specialist services, particularly for customers with challenging behaviour,
- Step-down care, following crisis interventions,
- High-level outreach services to help customers remain in their family homes.

2.1.3 The number of adults in Leeds whose learning disabilities are severe and complex is increasing, again in line with national trends. A large number of adults with learning disabilities live with carers (usually their parents) who are elderly; many are living with parents who are in their 80s or 90s. This continues to place significant pressure on both respite and crisis services. In line with national trends, there is also evidence that younger parents are now seeking more independent living options for their children with learning disabilities, either when they transfer from children's services or in early adulthood, which results in increased demand for supported living, respite and crisis services.

2.1.4 The Council has a duty to assess and arrange support for those with eligible needs. From a financial perspective, providing for those needs has resulted in a year-on-year growth in commissioning spend from the learning disability pooled budget and also continuing health care spending. This increase in spend to face the challenge of meeting the growing demand for care services for people with learning disabilities comes at a time when Councils across the country are required to operate within a reducing financial envelope.

2.2 The Learning Disability Community Support Service

- 2.2.1 The Leeds Learning Disability Community Support Service is the Council's in-house provider of care and support for adults with learning disabilities. The service meets the needs of some of the most vulnerable citizens in the city whose requirements range from advice and support for managing their own affairs, to those with complex multiple needs who require hands-on personal care with all aspects of their lives, including assistance with eating, bathing and postural management.
- 2.2.2 The purpose of the service is to deliver the very best care services and outcomes to both customers and their families to ensure that they can benefit from all that the city has to offer. These services are provided through three main functions: Supported Living services (support for people in their own homes), Respite Care Services (short breaks for family carers) and Fulfilling Lives services (day time support). Information in relation to the breakdown of numbers of customers and staff currently in post was provided in the February Executive Board report.
- 2.2.3 The Learning Disability Community Support Service has come a long way over the last five years and has undergone a significant transformation through the Independent Living Project and Day Services Modernisation. These programmes are delivering the types of services that will meet the needs and aspirations of some of the city's most vulnerable citizens both now and in future years. The service now has a solid base and a model of delivery that people want, being delivered by staff at a consistently high standard, with high levels of customer regard and carer satisfaction. Increasingly the service is more integrated, with customers and staff becoming more involved in the communities in which they live and work. This is achieved through involvement in tenant schemes, being co-located in sports centres and other community bases and bringing life back to community cafes in some of the city's parks and countryside.
- 2.2.4 The service has embraced and embedded customer involvement with, for example, almost a quarter of all customers putting themselves forward for last year's Customer Council elections. The Customer Council is now in its fifth year of operation and provides a direct link between end users and senior management, so that customers are able to influence key aspects of service delivery.
- 2.2.5 Similarly the service has developed a range of mechanisms through which staff are involved in helping to influence the shape of the service, which has seen a significant improvement in staff satisfaction in recent years. The service has developed strong partnership arrangements with voluntary sector partners in the city and has taken a lead in the delivery of the Safe Places and Changing Places initiatives.
- 2.2.6 In addition to this transformation, the service has delivered efficiencies in the form of cashable savings from the controllable budget of 14% over the last four years. Despite these efficiencies, the service still finds itself uncompetitive in comparison with the independent sector when new work is commissioned. As a result, the service has seen a reduction in its market share from just under 40% to just over 20% in recent years as demographic growth has been met by other sectors at rates which are more competitive than the in house provision.
- 2.2.7 From a commissioning perspective, the demographic trends have seen a pressure on the learning disability pooled budget between health and social care of almost £4m in each of the last 10 years. There is little indication that this demographic trend will change.

- 2.2.8 The development of a Social Enterprise offers a timely opportunity to realise the Council's ambition to become smaller and more influential. It provides the Council with a positive opportunity to adopt a different method of market retraction from that which has taken place in other areas of its provider services. This approach will put the service in a much stronger position to meet the needs of some of the most vulnerable citizens in the city by providing long term continuity of care whilst securing jobs and prospects for staff.
- 2.2.9 The proposal to provide the Learning Disability Community Support Service through a Social Enterprise model will lead to the TUPE transfer of around 700 staff from the Council. The business case for the Social Enterprise confirms the intention that the organisation will be an exemplar employer and will pay at least the Living Wage to all new employees.
- 2.2.10 Executive Board were informed in the report of the 14th February that it was the intention of the Social Enterprise to employ any new employees on the main contract post transfer on LCC terms and conditions of service. This report highlights the financial and other risks and implications of this approach and the implications of an alternative approach that the Social Enterprise employs such new employees on the Living Wage. There are possible scenarios on the main contract where the difference between those staff on the LCC scale and new workers will be as little as 41p an hour in respect of the basic hourly rate, and that over the first 5 years of the contract this is likely to affect as few as 85 people out of a total workforce of 700+. More specific legal advice in relation to this matter can be found in the confidential Appendix F.
- 2.2.11 An Integrated Business Plan has been developed and a report was submitted to Executive Board in February 2014 detailing the proposal to develop a Social Enterprise for the Learning Disability Community Support Service.
- 2.2.12 Executive Board was supportive of the proposal and authorised further work to be undertaken, subject to staff indicating a positive endorsement of the proposal following formal consultation. A significant amount of further work has been undertaken since the meeting in February 2014 and this is detailed in the next section of this report.
- 2.2.13 The February Executive Board report explained that the contract will need 'to provide an appropriate balance between ensuring that the Social Enterprise becomes a sustainable provider; customer needs and statutory requirements are sustained or improved in accordance with the ongoing needs and outcomes of the Council; and flexibility for the Council to meet increasing budget pressures during the period of contract.'
- 2.2.14 It also set out that a key objective of forming the Social Enterprise is to provide a vehicle for the service to obtain new work in competition, at a rate which is advantageous to the Council and therefore to the pooled budget which funds new packages of care and support for people with learning disabilities. In relation to its ability to win new work, the report confirmed two factors of relevance; firstly that the Social Enterprise will be able to achieve general efficiencies including reduced overhead costs, and secondly it will be able to quote for new work packages at a competitive rate.

3 Main issues

- 3.1 This section updates Members of Executive Board as to the progress which has been made in relation to the creation of a Social Enterprise including preparation of contractual, service specification and other transfer documents, required in order to both launch the Social Enterprise itself and to award a contract for services.
- 3.2 Staff Support for the Social Enterprise
- 3.2.1 In line with the recommendation from the February Executive Board, formal consultation was undertaken with staff regarding the proposal to establish a staff-led mutual in the form of a Social Enterprise. This consultation took place between March and May 2014: a member of the senior management team attended every team meeting throughout the period in order to provide information and answer questions raised by staff. In addition, 6 larger scale engagement events were held, with built in opportunity for members of Trade Unions to meet with convenors after each of the sessions. Every member of staff was invited to attend one of these events and back-fill arrangements were authorised to ensure attendance was possible.
- 3.2.2 Following these sessions a survey of staff was undertaken posing the question “Do you support the proposal to deliver our service (the Learning Disability Community Support Service) as a Social Enterprise?” All 726 staff were delivered personally a survey paper with the closing date for returns being Thursday, 15th May. Of these 533 were returned (73.4% response rate): 418 responses were ‘yes’ (78.4%) and 115 responses were ‘no’ (21.6%) indicating substantial staff support for the proposal.
- 3.2.3 Despite an initial plan to undertake a single exercise with Trades Unions to establish staff opinion, both UNISON and GMB ultimately decided to conduct separate ballots of their own members. They considered that in view of the collective bargaining agreement, views of staff should only be taken by way of ballots of members of the respective Trades. Each Trade Union posed a different question the one described above and instead asked their members whether they would prefer to stay in the Council. The UNISON ballot had a 43% response rate, of whom 55% indicated a wish to stay in the Council. The Council has not been made aware of the response rate in the GMB ballot but has been informed that 63% of GMB members who did vote, voted to stay in the Council. The Trade Unions’ position continues to be that they are opposed to any form of externalisation and that they have a mandate for this position from the ballot of their members.
- 3.2.4 The Council is committed to collective bargaining on pay and conditions and the jointly agreed ‘Framework for Employee Relations’ sets out the approach within Leeds.
- 3.3 Strategic Governance Board for this project
- 3.3.1 A Strategic Governance Board (chaired by the Executive Member for Adult Social Care) has been established which includes the project sponsor, senior officer representation across the Council and representation from Trade Unions. The board has received various reports in relation to the progress being made and has offered guidance in relation to a range of high level issues ensuring that the business case is viable and that there is a suitable balance of risk between the Council and the Social Enterprise.

3.4 Specification of services to be delivered

3.4.1 The Social Enterprise delivers four distinct services that are:

- Fulfilling Lives day services
- Supported living services
- Respite Care Service
- The Crisis Service (emergency respite)

3.4.2 Specifications for all four services have been drafted and form schedules to the contract terms and conditions. The service specifications detail the quality standards that the Social Enterprise will be required to achieve in terms of service delivery. The Social Enterprise will be monitored through Adult Social Care's standard contract management and quality assurance processes for all externally provided learning disability services. The existing Quality Standards Assessment (QSA) tool that has been developed and rolled out to all externally provided supported living services will be used to monitor the Social Enterprise to ensure it is in line with the rest of the sector.

3.4.3 Feedback gathered from the current service users has been used to shape the service specifications. In addition a third sector organisation is in the process of gathering independent feedback from a sample of service users currently accessing the Learning Disability Community Support Service. This information will feed into the ongoing contract management arrangements for the Social Enterprise.

3.4.4 The services to be provided are in line with the current and predicted future needs for people with learning disabilities in the city as outlined in Adult Social Care's Market Position Statement (MPS). The MPS is published by Adult Social Care to outline current and future demand as well as strategic direction for the sector.

3.4.5 The service specifications reflect the services that are currently being delivered so all service users who receive support from the Learning Disability Community Support Service will continue to receive the same service at the same level and quality. The service specifications also build in the social value that will be delivered by the new Social Enterprise, for example, raising the profile of people with learning disabilities in the city through activities such as Learning Disability week, creating safer places for people with a learning disability in Leeds through the Safe Place Schemes and supporting people to be active members in their community.

3.5 Proposed contractual arrangements

3.5.1 Work continues to develop a number of contracts to support the provision of learning disability support services by the Social Enterprise, arrangements for transfer of staff and assets to the Social Enterprise, and the proposals for the Council to provide ongoing corporate services to the Social Enterprise including HR, BSC, IT, and finance.

3.5.2 The following paragraphs provide more detail about the contract structure and proposed contract terms.

3.6 Contract Structure

- In order to ensure that future growth can be managed in a way that is sustainable and affordable, whilst ring-fencing risk and protecting the main body of the Community Benefit Society, Aspire will develop a group structure by having a wholly-owned subsidiary to undertake elements of its trading.
- Aspire Community Benefit Society Limited will be the principal social enterprise vehicle delivering the care services and registered with CQC. It will be set up as a Community Benefit Society under the Cooperatives and Community Benefit Societies Act 2014.
- Aspire will have a wholly-owned subsidiary –Aspire Services (Leeds) Limited as part of this group structure. This will be a company limited by shares with sole shareholder Aspire Community Benefit Society Limited. This subsidiary will enter into a Services contract with Leeds City Council for a period of 5 years, with all appropriate contractual terms flowing through to the Community Benefit Society. The Council's standard terms and conditions have been used as a basis for the services contract, with project specific amendments.
- As well as offering future flexibilities to Aspire in terms of growth, the group structure provides enhanced value for money to the Council, and thereby ensuring it receives the most value from the Leeds Pound, since a group structure would have fiscal benefits and a reduced overall cost profile when compared to a single entity, which translates into a reduced contract price.

3.7 Key Commercial Terms

- The contract will be for a five year fixed period with no break clause
- The Council will have an option to extend the contract at its sole discretion by one 12 month period
- It will be based on the City Council's standard terms and conditions (including standard remedies in the event of under-performance) with some contract specific amendments
- There will be periodic reviews of the services to identify any service improvements which can be made.
- The cost of the services to the Council are calculated on a unit cost basis across each of the four services, enabling flexibility over the contract period in particular to take account of increased take-up of individual service funds, and reductions in costs of the Social Enterprise over the contract period. Limited and specified cost risk will be retained by the Council in relation to certain pay and pensions costs (see below), which will be subject of an annual review.
- There will be regular monitoring of performance against specified quality standards
- There will be an escalation process to resolve any disputes about service delivery
- The contract price will be based on an agreement for the Social Enterprise to buy back support services from the Council over the life of the contract at a rate representing the proper cost of such services to the Council

- The provision of support services will be subject to ongoing performance monitoring and a formal review after 2 years which would offer both parties an opportunity to consider and exercise break clauses in the agreement, with an appropriate period of notice to enable a managed exit from the affected service(s)
- 3.7.1 An annual review will take place to assess the impact of nationally agreed pay settlements, and will include a process enabling the price to be adjusted, subject to the parties discussing how the impact of such costs can be minimised. The annual review will be a mechanism for identifying the actual value of these costs in a transparent way. This will also apply to the increase in National Insurance contributions from 2016 onwards. This process mitigates unnecessary risk pricing within the contract on the main cost area which is pay.
- 3.7.2 A Business Transfer Agreement will provide for transfer of the staff and non-buildings based assets to the Social Enterprise. The general principle underpinning this agreement is that the Council will be responsible for costs, outgoings and risk up to the date of transfer and the Social Enterprise thereafter. This agreement will include certain specific warranties offered by the Council in relation to the business transferred.
- 3.7.3 A number of property leases and licences are being put in place to enable the service to operate from existing locations post transfer. These documents will contain details of the terms of occupation, the roles and responsibilities of both parties in relation to property maintenance and facilities management. In addition, they will also cover the costs which the Social Enterprise will be required to pay in order to occupy and deliver services from such property which will be set at a market rate. A full schedule of such properties is attached at Appendix E. Subject to Members agreeing the proposals in this report, then the intention is that the Director of City Development will approve the individual terms of the lease/licence agreements including the rent and service charge for each property listed in Appendix E under their sub delegation scheme.
- 3.7.4 An admission agreement will be entered into with the West Yorkshire Pension Fund to continue and preserve the pension rights of staff in the Local Government Pension Scheme. This will be an 'open' agreement which means that staff who join the Social Enterprise and are engaged in the provision of services to the Council will also be able to join the pension scheme. It is proposed that a level of funds are transferred within the pension fund to the new employer such as to equal the actuarially assessed level of liabilities, so that the new employers scheme is 100% funded, with no historic deficit transferred. In terms of the future pensions costs, an actuarial assessment has recently been undertaken which proposes an employer's contribution rate of 16.9% for the newly formed Social Enterprise. These costs have been incorporated in the updated business plan of the Social Enterprise. It is proposed that in the event of a change in the assessed contribution rate for the Social Enterprise at the next fund valuation, the Council will take the benefit of any reduction, or alternatively the risk of an increase.
- 3.7.5 For the admission of the Social Enterprise to the pension fund, there must be put in place either a guarantee from the Council or a bond taken out. The recently actuarial assessment also considered the level of bond to cover risks associated with certain risks of pensions costs not being met in the event of early termination and insolvency of the Social Enterprise (such as increased costs due to staff taking their pensions early on redundancy, market fluctuations, and unpaid contributions). The potential amounts which could be covered ranges from £1.7m rising through the contract period just to cover early pension payments, to over £7m for all risks. The cost of

such bonds has over recent years increased substantially in the market and are now prohibitive (fees are 10-15% of the amounts covered as opposed to 2-3% previously), and as such they do not offer value for money. Moreover, if such a bond was to be taken out, then it is inevitable that the Council would be called upon to fund it in this instance through an increased contract payment.

3.7.6 It is therefore proposed that a bond is not required, but that the Council should guarantee the admission of the Social Enterprise into the West Yorkshire Pension Fund. Providing a guarantee does expose the Council to some degree of risk in that Council would be liable to meet any unpaid pension contributions and any unfunded pension costs. It also exposes the Council to the Social Enterprise taking decisions as to pension matters over which the Council has no control which may result in additional costs. However, it should be appreciated that the nature of such a guarantee is that of a default, in that it would only be called upon in the event of the Social Enterprise not meeting its pension obligations. There are some contractual safeguards which will be contained within in the contract documentation, and robust contract management arrangements will enable the ongoing financial standing of the organisation to be kept under review.

3.8 Provision of Support services to the Social Enterprise

3.8.1 Since the February Executive Board, work has been ongoing in relation to the preparation of service level agreements for each support service activity which will be required by the Social Enterprise, the most obvious ones being ICT, HR, Finance and BSC.

3.8.2 SLAs have been drawn up which describe the services which the Council will provide to the Social Enterprise over the period of the contract. Each document contains agreed performance measures and specifies the roles and responsibilities of each party to achieve a successful partnership.

3.8.3 The Social Enterprise will pay an inclusive annual charge (representing a notional market rate for such services in the market) for the delivery of these SLAs over the five year period of the contract.

3.8.4 Whilst service delivery will be monitored on an ongoing basis, the SLAs will be subject to formal review during the second year of operation at which point break clauses can be discussed and exercised. The agreements will contain escalation provisions where there is dissatisfaction from either party in relation to service delivery.

3.9 Social Enterprise Business Plan

3.9.1 The service has obtained independent support from the Cabinet Office Mutuals Support Programme. Part one of this support has focussed on testing and updating the existing 5 year Integrated Business Plan. This has involved further updating of the financial model and the assumptions which underpin it and testing the preferred legal and governance models. The business case continues to be a viable proposition and has been updated to reflect the following set of assumptions:

- Future years staff costs have been calculated based on assumed pay increases that are likely to be awarded to Council staff.
- The cost of support services provided by the Council to the Social Enterprise have been included at an estimated £1.6M and budgeted for whole contract period with appropriate review periods built into the contract

- The cost of Aspire paying market rent for the properties it will occupy has been built into the contract at an estimated £1.9M
- These two sums above will be received as revenue back to the Council and therefore give a net contract value of £18M compared to the gross contract value of £21.5M
- The business plan includes provision for a number of items which are additional costs due to the Social Enterprise being a separate entity from the Council.
- These costs include:
 - a) increased superannuation contributions resulting from the most recent actuarial assessment
 - b) the initial infrastructure costs associated with running a new organisation.
- These additional costs are incorporated into the operating costs within the financial plan contained in confidential Appendix A and are not funded by the service contract with LCC but are ameliorated over the 5 years through a combination of both obtaining new business and through planned efficiencies
- The legal vehicle of a Community Benefit Society provides a suitably appropriate structure to enable community investment to be used to raise capital for future expansion, if appropriate.

3.9.2 Part two of the Cabinet Office support is being used to focus on the implementation arrangements (legal, financial, governance, TUPE transfer of staff, pensions, buy-back of services, branding and marketing) to enable the service to transition into a successful and sustainable entity operating the contract by 1 June 2015.

3.10 Form of Social Enterprise

3.10.1 The proposed legal structure for the Social Enterprise is a Community Benefit Society which is regulated by the Mutuels division of the Financial Conduct Authority (FCA) and as such it must conduct its business for the benefit of the community. It will be wholly owned by employees of the Social Enterprise who will be equal members of the company, with an overriding principle of one member one vote. Its assets and funds will be subject to an asset lock to ensure that they can only be applied for community benefit.

3.10.2 There will be an issue of nominal £1 shares to the members, but these will not carry any rights to share in profits or any share of the underlying assets.

3.10.3 The proposed legal form of a Community Benefit Society together with a wholly owned trading subsidiary company is a change from the February Executive Board report at which point a Community Interest Company had been proposed. The proposed change has been made taking into account legal advice in the light of the consolidation of the Industrial and Provident Societies Acts and other statutes into one Act, the Co-operative and Community Benefits Societies Act (CCBS) 2014. Whilst the Community Benefit Society maintains all the key features of a Community Interest Company, it also provides flexibilities to acquire charitable status, which a Community Interest Company does not combined with a tax efficient structure.

3.10.4 Board members of both the Community Benefit Society and the wholly owned subsidiary will be unpaid and any surpluses made by the subsidiary will flow to the Community Benefit Society (as the sole shareholder) thereby ensuring that any and all surpluses are retained within the group for the primary purpose of delivering services to adults with learning disabilities.

3.11 Name of Social Enterprise

3.11.1 During the summer, staff and customers across the service put forward over 200 possible suggested names for the new Social Enterprise. This longlist of suggestions was then shortlisted by a staff focus group before being opened up to a vote upon by the entire staff team. The name Aspire has been chosen as a clear winner through a vote in which over two thirds of staff took part. Further work has been completed to ensure that the name is unique from registration, trademark and domain name perspectives.

3.12 Governance of the Social Enterprise

3.12.1 The Social Enterprise will require a board of directors and it is proposed that this will be composed as follows :

- A non-executive Chair
- Six members of the company (3 of whom are Union Stewards)
- Three people who use services
- Three independent non-executive specialists from the community
- Three nominations from the Council

3.12.2 The Chief Executive of the Social Enterprise will report to, but will not be a voting member of the board.

3.12.3 There is a diagrammatic model at Appendix C which illustrates the proposed governance structure.

3.12.4 The trading subsidiary Aspire Services (Leeds) Limited will have a board of directors comprising 3 directors appointed by the Social Enterprise and 1 independent chair.

3.12.5 The Social Enterprise has confirmed its commitment to positive employee relations and collective bargaining. The Social Enterprise has proposed a joint negotiation and consultative committee and a health and safety committee very similar to what is currently in place in the Council. Management of the Social Enterprise will also continue to engage with staff in the same positive ways that they do currently.

3.12.6 A provisional sum has been set aside in the financial model to buy back convenor time from the Facilities Agreement.

3.13 State Aid

3.13.1 State aid occurs when public resources are used in a way that confers a selective advantage on an organisation in a way which distorts or has the potential to distort competition between EU Member States. For example, if the Council provided an organisation with premises at lower than market rent and that company was active in a European market then that could be State aid.

3.13.2 In determining if aid is State aid, it is not necessary to establish that aid has a real effect on trade between Member States and that competition is actually being distorted; if there is a European market for the services which the recipient of the aid provides, it is presumed that assisting the recipient will distort competition.

3.13.3 Similarly, the size of the recipient and its share of any market are irrelevant – if the aid which it is receiving is selective and will strengthen its position in the market, then

the aid will be State aid; there is no threshold or percentage below which it might be considered that trade between Member States is not affected.

- 3.13.4 Based on previous procurement exercises which the Council has carried out in relation to the provision of care services, there is no evidence that there is a European market for the provision of such services; no expressions of interest have ever been received from any companies based in any other Member States. In so far as there is no European market for the provision of care services, then the Council providing Aspire with assistance will not be State aid.
- 3.13.5 In so far as there might be a European market (and given that the Council does not have full knowledge as to the provision of care services across the UK or throughout Europe, this cannot be totally ruled out) the European Commission has ruled that State aid can be given in certain circumstances, subject to certain conditions being met, but if aid is given outside those rules then it will be unlawful and the recipient of the aid may be ordered to repay it. In addition, the giver of the aid can be surcharged and can also be sued for damages by a disadvantaged competitor of the recipient.
- 3.13.6 Of the current exemptions, given the nature of the arrangements between the Council and Aspire, the only one that would appear to be of any help is the 'de minimis' exemption. This allows any organisation to receive up to 200,000 euro's worth of aid (approximately £160,000 at current exchange rates) from all sources over a three year rolling period. It should be noted though that Aspire have already received £45,486 of 'de minimis' aid within the last six months so the amount of assistance which the Council can provide Aspire with under this exemption for the next three years is limited to approximately £115,000 in total.
- 3.13.7 However, there is a general rule that if aid which would otherwise be State aid is given on a commercial basis then that aid cannot be State aid. In the case of Aspire, whilst it is recognised that the Council may be providing them with assistance, there will be an estimated cost saving to the Council of £2.1m over the life of the arrangements. In addition, given the TUPE requirements to which the Council is subject, and that another provider would effectively have to take over the service as a going concern, it is unlikely that any other provider would be able to provide the same services at a lesser price.
- 3.13.8 It is therefore considered that in so far as there might be a European market for the provision of care services and the assistance that the Council is providing to Aspire cannot be accommodated within the 'de minimis' exemption, then the arrangements between the Council and Aspire are sufficiently commercial that State aid will not arise.

3.14 Organisational impact

- 3.14.1 On the assumption that Member approval is received in relation entering into this contract then it will be necessary to continue with and complete consultation with staff in respect of the TUPE (Transfer of Undertakings Protection of Employment) transfer from the Council to the Social Enterprise. This formal consultation will build on the various engagement activities with staff and trade unions including written communication which has been taking place for some time.
- 3.14.2 As was reported in the previous Executive Board report, the intention is to transfer current staff on the terms and conditions which are applicable at the time of the transfer. Staff on temporary contracts will be made permanent prior to

commencement of the contract. A project plan in relation to TUPE consultation has been developed.

- 3.14.3 In relation to the Social Enterprise work is ongoing in relation to the preparation of HR policies and procedures which the organisation will adopt. These policies and procedures are based on existing Council policies and procedures and the intention is to mirror them wherever possible. Clearly the Social Enterprise will be a different organisation in relation to structure and size and therefore some adaptations to Council policies will be required.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 There has been extensive engagement with staff and trade unions since January 2013 in relation to this proposal the details of which were reported in the last Executive Board report. This engagement and consultation has continued as follows:

- A detailed FAQ has been regularly updated and made available for all staff, and every member of staff has been offered the opportunity for an individual, face to face, discussion with a senior manager;
- Monthly 'Future Matters' meetings at which representatives from each of the 20 individual services attend and where the Social Enterprise proposal is a standing item;
- Senior managers attend staff meetings, which take place in each of the 20 services, and are able to respond quickly and personally to issues raised by front line staff;
- The subject of the potential Social Enterprise is a standing item on the monthly business meeting between management and unions and has also featured on both Directorate JCC and Corporate JCC meetings on a number of occasions;
- Further large scale engagement sessions were undertaken in May of last year which again attracted over 250 staff and provided an opportunity for Trade Union convenors to meet with their members;
- Union convenors from GMB and Unison are members of the Strategic Governance Board and their contributions have helped influence the proposals.

4.1.2 The proposal to establish a Social Enterprise will not lead to any change for customers and carers as services will continue to be delivered by the same members of staff in the same buildings. The learning disability community support service is a highly regarded service and there has been ongoing engagement with customers and family carers regarding these proposals and to reassure them that their quality of service will be maintained.

4.1.3 There has been regular engagement with customers of the service in relation to these proposals as for example the customer Council meetings and the learning disability partnership board. Customers have been assured of the intention to provide continuity of service which is the main issue raised by them.

4.1.4 All family carers have been informed of the proposal and offered the opportunity of a one-to-one meeting or telephone call to discuss any questions or concerns. Only a

small number of people have taken up the offer and all were reassured that the service their relative receives will not be changed as a consequence of the proposal. The service has hosted a series of 15 drop-in sessions for family carers across the city throughout October 2014 in order that family carers are given an opportunity to talk to senior managers first-hand about this proposal and a range of initiatives that the service is delivering. Additionally, the Head of Service has met with the Carers Reference group and the Learning Disability Partnership Board in order to answer questions and provide reassurance about the continuity of care that will be delivered to the relatives of those carers who use the service.

- 4.1.5 There has been extensive positive engagement with colleagues across all sectors in the field of learning disability services in the city including Leeds and York Partnership Foundation Trust, Tenfold, the Provider Forum, Healthwatch Leeds, Carers Leeds and a number of meetings with individual service providers.
- 4.1.6 The executive member for adult social care is the Chair of the strategic governance board and as such been fully consulted on the proposals and is supportive of them.
- 4.1.7 The Health & Wellbeing scrutiny board gave consideration to this proposal at their meeting on the 28 March 2014 when a wide range of matters were raised and discussed, such as the impact on service users and carers and consideration of the “key drivers” for the proposals. The minutes of the board meeting state that overall, the Scrutiny Board was re-assured by the details provided in response to the issues raised and discussed at the meeting. A cross party working group was convened to review the original proposals and were supportive of the direction of travel.
- 4.1.8 On the assumption that Members give approval to proceed with this proposal, then as mentioned elsewhere in this report, work will continue on the formal consultation with staff and Trade Unions in relation to the TUPE transfer of those staff in scope.

5 Equality and Diversity / Cohesion and Integration

- 5.1 The Executive Board report in February contained details of the Equality Screening and the Equality, Diversity, Cohesion and Integration Impact Assessment which had been completed at that time to ensure that equality considerations had been fully considered. A range of positive impacts were identified in terms of:
- There will be continuity of quality service provision from the customers’ and carers’ perspectives in that staff and the use of buildings will continue;
 - Achieving sustainable economic growth will enable the creation of new job opportunities, paying a Living Wage and providing opportunities to create apprenticeships in the care sector.
 - There will be increased job security and career development opportunities for the current workforce and it is expected that, in a staff-led mutual, greater commitment will lead to a lower turnover of staff and increase attendance.
- 5.2 The Equality Impact Assessment notes that the various services which will be provided by the Social Enterprise are delivered to vulnerable people with a learning disability including some of the most vulnerable people in Leeds. Continuity of service provision is critical to such people and therefore the impact assessment has identified the importance of ensuring robust business continuity arrangements which are currently in place are maintained by the Social Enterprise and that further

measures are put in place to counter any new risks which may arise as a result of the organisation leaving the Council

- 5.3 The Equality, Diversity, Cohesion and Integration Impact Assessment has been and will be subject to regular review with the latest version available at Appendix B.

6 Council Policies and City Priorities

- 6.1 Like many local authorities, Leeds City Council continues to face a major transformation challenge with regard to Adult Social Care in relation to what it can sustainably fund as demand continues to increase at the same time as overall funding is reduced. Linked to this challenge is the continued Council wide direction of travel, again in order to make best use of limited resources, in terms of moving from a large direct provider of services to one where there is a much greater emphasis on commissioning services and developing community capacity.

- 6.2 The creation of a Social Enterprise is a response to both of these challenges and will also contribute to a number of Council's strategic objectives i.e. 'Better Lives through Enterprise', 'Promoting sustainable and inclusive economic growth' and 'Civic Enterprise' as proposed by the recent Commission on the Future of Local Government.

- 6.3 The proposal for the creation of a Social Enterprise for learning disability services will contribute to the delivery of the City and Council's priorities in the following areas:

- Civic enterprise: a new leadership style for local government where Councils become more enterprising, businesses and other partners become more civic and citizens become more engaged;
- Better lives through enterprise: a revised role for Adult Social Care, as it moves from being a direct provider of services to being a co-ordinator of the provision;
- Ensuring quality services that are viable and sustainable;
- Socially responsible employers in the marketplace, stimulating jobs and good growth locally.

- 6.4 In addition, the detailed service specification has been drawn up to promote the delivery of Leeds City Council's Learning Disability strategy and the priorities of customers:

- More opportunities to be available for learning disabled people in mainstream services e.g. leisure, education and employment;
- More choice and easier access to housing;
- A skilled workforce able to meet a diverse range of need in the community and at home;
- Innovative ways of meeting the needs of individuals within shared support environments;
- Specialist services to support individuals with very complex needs in Leeds and prevent them from being sent out of area away from their communities.

7 Resources and value for money

- 7.1 The business case for the development of a Social Enterprise was covered in the previous Executive Board report in February of this year. It was stated that the proposal whilst not delivering immediate financial savings, would provide a vehicle for the service to obtain new work in competition, and in turn providing improved value for money for the Council and therefore to the pooled budget in relation to the funding of new packages of care and support for people with learning disabilities. It was also stated that the Social Enterprise will be able to win new work in competition at a lower rate by employing new staff on salaries which will still be higher than the market average and commensurate with the Living Wage.
- 7.2 Although the immediate savings are marginal in the first year, the Council will realise cashable efficiencies of £2.1M over the whole contract period when compared with similar assumptions being made to keep the service in house. Upon Members' approval to proceed, then the Council will put in place a five year contract for the delivery of services to people with learning disabilities with the value of the contract being £21.454m in the first year representing the cost of provision had the service remained in house. As explained earlier in this report the contract is based on the Council's standard terms and conditions and as such will contain detailed performance standards to ensure ongoing quality of service which will be subject to regular review.
- 7.3 As explained in the section on proposed contractual arrangements, the contract will contain an annual review mechanism where the actual cost of known financial risks can be agreed. These costs are essentially increases in pay applicable to the TUPEd workforce and which would have been incurred if the service had remained in house.
- 7.4 Built into the contractual arrangements will be an agreement for the Social Enterprise to purchase support services from the Council at a market rate over the period of the contract with a formal review taking place after 2 years, together with minimum notice periods for changes to service level. The approach being followed is to ensure an arrangement which will provide benefit to both the Council in terms of minimising financial risk in relation to any future changes in the level of the provision of support services, and for the Social Enterprise in relation to access to professional and business support services at a market rate which enables it to compete for both new work and also sustain delivery of the main contract work in future years.
- 7.5 In general the contract documentation is being drawn up to reflect that current liabilities (to the date of transfer) will remain with the Council, and during the contract period there is an allocation of risk which reflects that this is a services contract between the parties on commercial terms.
- 7.6 In preparing the Social Enterprise business plan, financial provision has been made for additional costs related to the fact that it is a new and separate organisation from the Council. These costs are identified in the confidential Appendix A and have been subject to ongoing review in order that they are kept to a minimum. The provision contained in the business plan is therefore considered both reasonable and affordable over the lifetime of the contract.
- 7.7 The proposed legal status of the Social Enterprise is a Community Benefit Society, with an 'asset lock' written into its rules to ensure that private profit cannot be distributed by way of dividends, and that any surpluses are used for the benefit of the community.

8 Legal Implications, Access to Information and Call In

- 8.1 As a report to Executive Board, this is subject to call in. The report contains appendices which are exempt from publication as follows :
- Appendix A– Financial Summary (Profit & Loss & Cashflow Statements) (10.4.3)
 - Appendix F Legal Advice on TUPE transfer and principles of good practice (10.4.5)
- 8.2 It is proposed that the above are treated as being exempt from publication in that they contain either commercially sensitive financial information and information about business affairs, and (in relation to Appendix F) information relating to consultations or negotiations in connection with labour relations matters arising between the Council and its employees. It is suggested that the publication of this information would or would be likely to prejudice the commercial interests of the Social Enterprise, and of the Council. It is acknowledged that there is always a strong public interest in transparency and accountability in relation to contracts entered into by the Council, and also that there is a strong public interest in the public understanding the new arrangements for the Learning Disability Community Support Service. However, there is also a strong public interest in the new Social Enterprise being placed on a “level playing field” with potential competitors. In addition, the new Social Enterprise and its subsidiary will be subject to statutory requirements for the publication of certain financial and business information in the same way as all other Community Benefit Societies, and private companies. It is therefore recommended that in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 8.3 The City Solicitor has advised that the Council has the power “to do anything that individuals generally may do” under Section 1 of the Localism Act 2011, and this power is sufficient to cover setting up, and participating in the Social Enterprise, and also entering into a contract with the Social Enterprise for the delivery of services, and an agreement to transfer the business to the Social Enterprise, together with all other supporting agreements and arrangements.
- 8.4 In relation to the above it is not proposed to delegate statutory functions to the Social Enterprise rather the relevant social care functions will remain with the authority, and the Social Enterprise will be acting as a contractor.
- 8.5 In relation to contract award, the Council must comply with procurement law when considering how any contract for the services is awarded and does have the power to issue a contract to the Social Enterprise.
- 8.6 The procurement implications of this proposed contract award have been considered by the Chief Officer (PPPU and Procurement) and it should be noted that the services proposed to be subject of the Social Enterprise model are Part B services under the current EU procurement regulations. As such, whilst the value of the services is above the relevant EU Services threshold (£172,514), the full requirements of the regulations in relation to the publication of a notice in OJEU etc., do not apply. However, European case law suggests that contracts of this value must be subject to a degree of advertising if providing these services would be of interest to contractors operating in another Member State.
- 8.7 Over the past 3 years, ASC has made contract awards in excess of £100m for Adult Social Care related services. The process undertaken in relation to those awards

including publication of voluntary transparency notices (see paragraph 8.9 below) provides evidence that there has been no interest in tendering for such work by contractors in other European member states. The Interim Director of Adult Social Care has considered this and, considering also the nature of the services being delivered and the requirement to be physically located in the City of Leeds, is of the view that the services involved in this contract would not be of interest to contractors based in other EU member states.

- 8.8 Forthcoming changes will mean that the distinction between Part A and Part B Services will be abolished when the new EU draft Directive becomes law in the UK. There is no definite date when this will happen in the UK although this is expected to happen no later than April 2015. There is a proposal in the Directive to exempt contracts of up to 3 years where competition is ring-fenced to Social Enterprises, subject to certain conditions being met.
- 8.9 The Chief Procurement Officer has advised that given the current case-law in relation to advertisement of Part B services, uncertainty over both the timing of the new Directive becoming law and the detail of any exemption conditions, there is a risk associated with the course of action proposed. However, due to the nature of the contract the risk appears low and can be mitigated in advance of contract award by publication of a voluntary transparency notice in OJEU immediately after a decision to award the contract 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. In addition, 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.
- 8.10 Executive Board is asked to note that the Director of Adult Social Services will need to waive Contracts Procedure Rules rule 9.2 to enable the award of a contract without competition to the Social Enterprise. The information contained in this report sets out (and the final report to the Director will set out) the risk, financial, social, and service reasons for such waiver.

9 Risk Management and Allocations

- 9.1 The creation of a Social Enterprise, the associated contract award and transfer of business is a complex exercise and carries with it a number of areas of risk. Key risks in relation to procurement have been discussed in the previous section.
- 9.2 The previous Executive Board report confirmed that a detailed risk log together with mitigating actions had been prepared and a summary of this was available as a background document. The earlier report also stated that a number of risk areas had been identified and mitigation plans for both the Council and the emerging Social Enterprise have been addressed with the support of a range of officers across the Council including Finance, HR, Risk Management Unit, Procurement Unit and Taxation Team. The full risk log has been subject to regular review and update since that time.
- 9.3 A key risk area, given the proposed transfer of services from the Council to the Social Enterprise, relates to the inability of the latter to deliver the services as specified in the contract. In relation to business continuity planning, the service currently has well developed plans which are subject to regular review and these can transfer and be applied to the new organisation for immediate use.

- 9.4 From a financial perspective there is a related risk that the Social Enterprise may not be able to fulfil its obligations under the contract due to a deteriorating financial position i.e. if significant unplanned costs arise for which the Social Enterprise is deemed liable. The five year business plan for the Social Enterprise summarised in confidential Appendix A identifies a relatively small deficit in the first year of the contract period which is largely explained by the initial set up costs and the fact that winning new business and delivering efficiencies will take time.
- 9.5 A number of actions are in place to mitigate against this, including the detailed financial planning and support currently taking place, the financial review undertaken by the independent support from the Cabinet Office Mutuals Support Programme, and the various check and challenge activities provided by corporate support colleagues, including a detailed financial risk allocations matrix., The cashflow statement shows that there will be sufficient working capital throughout the contract period. If the Social Enterprise could not fulfil its obligations under the contract, the Council would need to secure alternative provision, either by reverting to in-house provision or by procuring services externally, and in either case additional costs would be incurred. However the independent financial advisers to the Social Enterprise consider the business plan to be financially viable and the Interim Director of Adult Social Services considers the level of financial risks to be acceptable. In addition to the above the Social Enterprise will be putting in place sufficient insurance to cover itself against e.g. public liability claims.
- 9.6 The Interim Director of Adult Social Services has reviewed the growth assumptions within the model and considers these to be prudent and based on the demographic demand trends for learning disability services from the pooled budget. These assumptions include the conversion of temporary 1:1 arrangements into the creation of new posts in the Social Enterprise in year one and the development of one new service in each of years two and three. These two services are of the kind for which there is under supply in the market and which would otherwise lead to high cost out of area placements.
- 9.7 In addition to the key risks that have been addressed within the main body of the report, an updated summary risk table which details the high level risks for both the Council and an emerging Social Enterprise is available at Appendix D.

10 Conclusions

- 10.1 In February 2014 Executive Board approved undertaking further work in relation to the proposal to deliver the Learning Disability Community Support Service as a Social Enterprise subject to there being staff support for the proposal.
- 10.2 This report has demonstrated that a great deal of progress has been made since that date in relation to the development of a Social Enterprise including:
- Undertaking a survey of staff currently working in the Learning Disability Support Service to establish the level of support for the proposal;
 - Establishing a Strategic Governance Board to oversee the development of the proposal;
 - Continued engagement with a wide range of stakeholders, including staff, Trades Unions, people who use services, family carers and other providers across the city;

- Securing Cabinet Office funding from the Mutuals Support Programme to test the Integrated Business Plan and update the robust 5 year Final Business Plan;
- Preparing detailed specifications for the delivery of the required services and the associated contractual documentation incorporating performance standards;
- Clear and transparent agreements which detail the services which the Council will provide to the Social Enterprise over the period of the contract and the associated costs of those services;
- Identification, recording and analysis of a full range of risks (financial and other) along with actions to mitigate as appropriate.

10.3 In summary, this report provides assurance to Members that when taking into account the progress that been made, there continues to be a sound business case to both proceed with the creation of a Social Enterprise and for the awarding of a 5 year contract for the delivery of services to people with learning disabilities. In respect of the latter, the report acknowledges that there is still some further work to do and therefore requests that upon completion of this work that Members delegate the awarding of the actual contract to the Director of Adult Social Services.

11 Recommendations

The Executive Board is requested to note:

1. The significant progress made to date (including obtaining staff support), in relation to the creation of a Social Enterprise for the Learning Disability Community Support Service.
2. The creation of Aspire Community Benefit Society Limited as a separate legal entity as the Social Enterprise
3. The revised social enterprise organisational structure and contractual arrangements as detailed in section 3.6 of this report
4. The requirement to complete all outstanding work required to:
 - finalise all necessary supporting agreements required for the enterprise to function including those relating to the transfer of the business including staff and non-buildings based assets, provision of support services by the Council and those relating to the occupation / use of property by the Social Enterprise,
 - award a contract for the delivery of services to the newly formed Community Benefit Society or its subsidiary as detailed in paragraph 3.6,
 - complete formal consultation with staff and trade unions in relation to the TUPE transfer of all staff defined as 'in scope' for this service.
5. Approve the participation by the Council in Aspire via the nomination of 3 elected Members, as approved by Member Management Committee, to join the board of directors of Aspire, and (if so nominated by the Aspire board), the board of directors of Aspire Services (Leeds) Ltd.

6. Subject to the satisfactory completion of the tasks identified above note that the (Interim) Director of Adult Social Services will:
- i) approve the award of the contract for services to the newly formed Social Enterprise,
 - ii) approve the detail of any necessary documentation to complete the transfer of business and contract for services to the Social Enterprise, subject to the value of the contract in the first year not exceeding £21.454M per annum which in turn is less than the cost of provision had the service remained within the Council, and subject to the advice given by the City solicitor to the (Interim) Director of Adult Social Services in relation to state aid rules detailed at para 3.13.1 of this report.
 - iii) In relation to pensions, to agree that the Council will act as a guarantor to the Social Enterprise's admitted body status to the West Yorkshire pension fund as detailed in sections 3.5.7 to 3.5.9 of this report.
7. Approval for the Director of City Development to enter into negotiations with the Social Enterprise to agree the necessary leases/licences (co-terminus with the Services Agreement) to document the occupation of premises to be utilised for the provision of the service and to agree details of rent/service charges to be paid
8. Note the key next steps as follows:
- February/March 2015 - Finalise and award contract
 - February - May 2015 - Mobilisation
 - 1 June 2015 - Full service commencement
9. Note that the Interim Director, Adult Social Care is the lead officer.

12 Background documents¹

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.