



Report of Deputy Director, Integrated Commissioning Adults and Health and Leeds NHS CCG

Report to the Director of Adults and Health

Date: 10 July 2019

Subject: To seek approval from the Director of Adults and Health to award a grant to the William Merritt Centre for Disabled Living (WMCDL) for the provision of a Shopmobility Scooter Hire Scheme.

Are specific electoral wards affected? If yes, 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 type="checkbox"/> Yes <input checked="" 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. Since the shopmobility scooter hire scheme closed suddenly in December 2018, attempts have been made to find another provider with no success until an approach was made to the WMCDL. Historically, it has always been difficult to find any provider willing to operate this scheme as it is not something ordinarily provided in this way.
2. The WMCDL are confident that they will be able to source the scooters from their suppliers at a favourable price as they have long established relationships with them.
3. The WMCDL will contact previous users of the scheme to let them know when the scheme will be operational again as we have a list of users and their contact details and we have their signed consent giving permission for Adults and Health to share these details.
4. The scheme will operate from Unit 82 in the Merrion Shopping Centre which is where it was sited before it closed.
5. The WMCDL will be awarded a grant of £66,000 per year for two years which will consist of revenue and capital costs needed to operate the shopmobility scooter hire scheme.

Recommendations

1. For the Director of Adults and Health to approve a grant to the William Merritt Centre for Disabled Living (WMCDL) for the provision of a Shopmobility Scooter Hire Scheme.
2. For the Director of Adults and Health to approve the grant award to WMCLD with a total value of £132,000 from the 12 July 2019 for two years.
3. That the Director of Adults and Health notes;

Aidan Smith, Head of Commissioning, is the officer responsible for the implementation of this decision.

1. Purpose of this report

- 1.1 To seek approval from Director of Adults and Health to award a grant to the William Merritt Centre for Disabled Living (WMCDL) for the provision of a Shopmobility Scooter Hire Scheme for two years. The annual value is £66,000.

2. Background information

- 2.1 Leeds Adults and Health currently leases Unit 82 in the Merrion centre from Town Centre Securities (TCS) and in turn this unit was sublet by a lease agreement between LCC and Inclusion Zone to provide the Shopmobility mobility scooter hire scheme. On the 14 December 2018 the Manager of Inclusion Zone emailed LCC that the Board of Trustees had taken the decision on the 13 December 2018 to close and to liquidate the service.
- 2.2 Inclusion Zone took over Shopmobility on the 3 May 2016 as the previous provider gave notice. It took a considerable amount of time for a new provider to be found and only one company came forward following extensive attempts to find a provider. They are based in Scarborough and provide the Shopmobility service there. Prior to this arrangement the service was provided by LCC.
- 2.3 As per the terms of the lease, the Council has served notice to TCS to terminate the lease utilising the available break clause and the agreement will end on 6 September 2019 as we have to give six months' notice.
- 2.4 The previous provider, sent a letter and consent form to all the previous users of the scheme as Adults and Health did not have access to their contact details. This will enable contact with the 121 members who have replied, if the scheme is back up and running.
- 2.5 TCS are currently marketing the Unit and already have had interest in it. The scheme would remain in its current location which is in the rear proportion with its own discrete entrance.

3. Main issues

- 3.1 Since the shopmobility scooter hire scheme closed in December 2018 attempts have been made to find another provider with no success until an approach was made to the WMCDL. Historically, it has always been difficult to find any provider willing to operate this scheme as it is not something ordinarily provided in this way, and the funding available is not sufficient as a standalone scheme.

- 3.2 The WMCDL are confident that they will be able to source the scooters from their suppliers at a favourable price as they have long established relationships with them.
- 3.3 The WMCDL will contact previous users of the scheme to let them know when the scheme will be operational again as we have a list of users and their contact details and we have their signed consent giving permission for Adults and Health to share these details.
- 3.4 The scheme will operate from Unit 82 in the Merrion Shopping Centre which is where it was sited before it closed.
- 3.5 The WMCDL will be awarded a grant of £66,000 per year for two years which will consist of revenue and capital costs needed to operate the shopmobility scooter hire scheme.
- 3.6 The funding from LCC to support this scheme will supplement funds received by the WMCDL which it obtains from other sources to deliver a wider offer of disabled advice and assessment for Children and Adults with disability equipment.
- 3.7 Extensive research and consultation was undertaken to find an alternative provider. WMCDL are the only provider able to deliver this scheme due to their wider income generation. Through existing networks and standing within Leeds, WMCDL will be best placed to utilise this grant income to develop the scheme and broaden the opportunities to provide advice and signposting for Leeds Citizens alongside shopmobility.
- 3.8 Following approval, work will take place to formalise arrangements and implement the scheme as quickly as possible to ensure the citizens of Leeds have access to shopmobility in the centre of Leeds. A fleet of new mobility scooters will be purchased by WMCDL under this grant agreement.
- 3.9 A grant funding approach for this scheme will enable WMCDL to mobilise and implement this scheme effectively, limiting transition friction. Utilising a simpler, more accessible grants award process is proposed as the best means to achieve this.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 Councillor Charlwood (Executive Member for Health, Wellbeing and Adults) has been consulted on a number of separate occasions as alternative options were explored, including that of WMCDL being awarded the grant to run this service.
- 4.1.2 A letter was sent out by the previous provider on behalf of Adults and Health, to all those that had registered for the scheme over the past two years. The letter asked for members to give their consent for their personal details to be passed onto a new provider and 120 people sent replies giving consent.
- 4.1.3 All existing scheme members will be informed of the new scheme once approved.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality, Diversity, Cohesion and Integration Screening Assessment has been completed for this report, see Appendix 1. This will be submitted alongside the report for Delegated Decision Panel.

4.3 Council policies and best council plan

- 4.3.1 The outcomes from Leeds Health and Wellbeing Plan relevant to the shopmobility scooter hire scheme are; People will live longer and have healthier lives, People will be actively involved in their health and their care and People's quality of life will be improved by access to quality services.

4.4 Climate Emergency

- 4.4.1 The scooters that will be available for hire are powered by electric batteries and will require charging overnight. Not only do the scooters promote active outdoor lifestyles but they also advance sustainability.

4.5 Legal implications, access to information, and call-in

- 4.5.1 This is a significant operational decision which is not subject to call-in as the annual cost of the service is less than £500k.
- 4.5.2 This report does not contain any exempt or confidential information under the Access to Information Rules.
- 4.5.3 In proceeding with long term grant agreements for shopmobility the Director of Adults & Health must take into account the following

- As the Council would be entering into grant arrangements with WMCDL who wish to operate shopmobility the Council will have no contractual control over enforcement of the terms. The only sanction available with grant payments is for the Council to claw-back grant monies unspent;
- There is a risk of challenge that a grant payment is not a grant. Legally there is some confusion about when a grant can and cannot be used as there is a fine line between a grant (which is not caught by the procurement rules) and a contract for services (which is caught by the procurement rules). The preamble to EU Procurement Directive 2014/24/EU makes it clear at paragraph (4) that “the mere financing, in particular through grants, of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not usually fall within the scope of the public procurement rules”.
- As such, unconditional grants are unlikely to meet the definition of a contract set out in the Public Contracts Regulations 2015 (PCR 2015). However, where grants are used with strict qualification criteria and an obligation to pay back money if certain targets are not reached, the position is less straightforward and it is possible that an arrangement referred to as a grant could actually meet the definition of a contract set out in the PCR 2015 and, if it does, the PCR 2015 may apply. It is therefore extremely important to ensure that, if providing grants, the process followed does not fall within the definition of a “public contract” as set out in PCR 2015 which states – “contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services”

- Grants may be in breach of state aid but it is unlikely that the grant payments proposed will fall foul of the state aid rules, as through extensive market consultation and research, finding a provider willing to operate this scheme has proved difficult, therefore grant funding is necessary and justified.
- 4.5.4 Funding from which any grant payment is made must be designated as “grant” money. If the Council wish to make a grant, the money must be in the “grant” block. If it is not, it can normally be moved from other blocks in the Council budget into the grant block.
- 4.5.5 Awarding the grant to the WMCDL 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 case law suggests that the Council should always consider whether contracts of this value could be of interest to contractors in other EU member states, and if it could, the opportunity should be subject to a degree of European wide advertising. It is up to the Council to decide what degree of advertising would be appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographical location of the place of performance.
- 4.5.6 The Director of Adults and Health has considered this and, due to the nature of the service being delivered and the requirement to be physically located in Leeds, is of the view that the scope and nature of the services is such that it would not be of interest to providers in other EU member states.
- 4.5.7 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.

4.6 Resources and Value for Money

- 4.6.1 The total value of the proposals contained within this report is £132,000 over 2 years, with an annual value of £66,000. This will be met from the Adults and Health budget.
- 4.6.2 The overall funding for this grant is held by Adults and Health. This budget will continue to be monitored annually.
- 4.6.3 The WMCDL will be able to generate income by charging an annual joining fee and a daily hire fee which is offset against the total cost of providing this scheme.

4.7 Risk management

- 4.7.1 If this decision is not approved Shopmobility will remain closed as there are no other alternatives as all options have been exhausted.
- 4.7.2 Quarterly monitoring reports will be required of the WMCDL with a focus on the number of users of the scheme needing to increase.

- 4.7.3 The proposed grant process of funding minimises the risk of mobilisation and transition friction, will allow the scheme to be delivered by a recognised provider within Leeds, and will expedite the time to implement this decision.
- 4.7.4 Risks relating to legal challenge over grant payments and an ombudsman investigation and how these will be managed are set out in sections 4.5.3 – 4.5.5, of this report.

5 Conclusions

- 5.1 If this decision is approved by the Director of Adults and Health, WMCDL will immediately be able to commence the process of setting up the scooter hire scheme which will involve negotiating the lease terms with TCS, purchasing the fleet of scooters and recruiting and training the staff that will operate the scheme.

6 Recommendations

- 6.1 For the Director of Adults and Health to approve a grant to the William Merritt Centre for Disabled Living (WMCDL) for the provision of a Shopmobility Scooter Hire Scheme.
- 6.2 For the Director of Adults and Health to approve the grant award to WMCLD with a total value of £132,000 from the 12 July 2019 for two years.
- 6.3 That the Director of Adults and Health notes;
Aidan Smith, Head of Commissioning is the officer responsible for the implementation of this decision.

7 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.