

Report of: Deputy Director Integrated Commissioning, Adults Leeds City Council & NHS Leeds Clinical Commissioning Group.

Report to Director of Adults and Health

Date: 20 January 2021

Subject: To seek an authority to procure a Personal Assistant (PA), Payroll and Managed Bank Account Service for individuals in receipt of a Direct Payment and/or Personal Health Budget and request to waive Contracts Procedure Rules 9.1 and 9.2 to enter into an interim contract with Leeds Centre of Integrated Living for 8 months valued at £519,893.

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open 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

1. Main issues

- Adults and Health and Children and Families Directorates have a contract with Leeds Centre for Integrated Living (LCIL) to provide customers who have a Direct Payment (DP) with the support they need to manage their direct payment effectively.
- LCIL also provide support services on behalf of Leeds CCG for Personal Health budgets (PHB).
- The procurement of this service commenced January 2020 and the publication of the Personal Assistant (PA), Payroll and Managed Bank Account Service tender documentation was initially scheduled for May 2020, however, due to the outbreak of COVID-19, many organisations who may have submitted an interest in the contract may have temporarily closed, refocussed or 'down sized' their provision due to lack of business, managing priorities or furloughed staff. It was agreed that

the re-procurement would be deferred until COVID-19 is on the decrease and more “normality” is restored for the market thus, businesses to operate once again.

- Authority to procure is required to enable a competitive procurement exercise to take place. It is anticipated the contract will be awarded in April/May 2021 and the new service will commence 1st December 2021, lasting a period of 2 years plus an extension of up to 36 months. The Council may extend the Contract (the extension of the initial contract period) up to a period of 36 months on any number of occasions to equal the overall maximum extension term of 36 months.
- Due to the deferment, approval needs to be sought to waive CPRs 9.1 and 9.2 to enter into an interim contract with LCIL from 1st April 2021 for a period of eight months. This is in order for LCIL to continue its service delivery whilst the procurement process takes place and enables the facilitation of a six month mobilisation period to cover the anticipated transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) if required.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

2.1 The Best Council Plan (2020-25) provides the strategic plan for overarching vision for Leeds, including outcomes for the proportion of people who use social care services who have control over their daily life.

- The proposal in this report directly contributes to the Best Council Plan’s overarching vision of tackling poverty and reducing inequalities
- The services make significant contributions to a range of the City Priority Plans, but particularly the Health and Wellbeing Plan and its priority to make Leeds the best City for Health and Wellbeing by 2030. This is achieved through supporting clients to make healthy lifestyle choices and to live safely.

3 Resource Implications

- The Procurement of the Personal Assistant (PA) Payroll and Managed Bank Account Service will be jointly commissioned by the Directorate of Adults and Health, who will lead the commissioning, Directorate of Children and Families and NHS Leeds Clinical Commissioning Group (CCG). The maximum value of the contract will be £410,000 per annum, which comprises funding from Adults and Health (£302,000); Children’s and Families (£73,000) and the NHS Clinical Commissioning Group (CCG) (£35,000).
- The contract value includes the separate budget for the existing payroll service provider which is paid through social care budgets, £65,000 (£50k Adults, £15k Children’s) for an individual to receive a Managed Bank Account. This figure is currently demand led however through this procurement and re-provision we will be asking the provider to absorb all Managed Bank Account requests through a single contract fee.
- The total maximum contract value of the contract over 2 years is £820,000. The Council may extend the Contract (the extension to the initial Contract period) up to a period of 36 months on any number of occasions to equal the overall maximum extension term of 36 months. The contract value of 2 years and an extension period of up to 36 months will be no greater than £2,050,000. Adults and Health and

Children and Families contribution to the budget for the new contract is available within existing resources.

- Adults and Health contribution to the value of the 8 month interim contract will be £419,227 and Children and families' contribution to the contract will be £100,666. The combined value of the interim contract will be £519,893.

4 Recommendations

The Director of Adults and Health is recommended to:

- Approve authority to proceed with a procurement process, as outlined in this report and in line with Contract Procedure Rules (CPRs) 3.1.8, to appoint a suitable provider/s to deliver the Personal Assistant (PA), Payroll and Managed Bank Account Service from 1st December 2021. The maximum contract value for two years is £820,000. The contract value for 2 years and an option to extend up to 36 months is £2,050,000.
- Approve the waiver of CPRs 9.1 and 9.2 to enter into an interim contract with Leeds Centre of Integrated Living (LCIL) from 1st April 2021 for a period of eight months to enable the facilitation of a six month mobilisation period under the current Direct Payment Support Service contract that is due to expire on 31st March 2021.

To note that:

- The Director of Adults and Health will use her delegated authority to take commissioning decisions which will be a direct consequence of this key decision, for example approval of the detailed specifications for procurement and subsequent contract award. This is subject to the decision being in line with the key principles and features as described in the report.

1. Purpose of this report

- 1.1 For the Director of Adults and Health to approve the procurement of a Personal Assistant (PA) and Management Bank Account (MBA) Payroll Service and;
- 1.2 To seek the waiver of CPRs 9.1 and 9.2 (high value procurements) using the authority set out in CPR 1.3, to enter into an interim contract for eight months commencing 1st April 2021 with Leeds Centre for Integrated Living for a Direct Payment Support Service.

2. Background information

- 2.1 Leeds City Council has a statutory duty to provide direct payments to social care clients who wish to receive their personal budgets in this way, The Children and Families Act also conferred the rights of those with an Educational Health and Care Plan to receive monies via a direct payment and similarly, the Clinical Commissioning Group (CCG) has the same duty in respect of providing Personal Health Budgets to people with long term conditions and continuing healthcare needs. The Care Act 2014 provides specific requirement for councils to provide or arrange a service to people with information and advice in order to make informed decisions about care and support.

- 2.2 The current annual contract value for LCIL is £779,840 of which Adults and Health contribute £628,840 and Children's and Families contribute £151,000.
- 2.3 The current Provider also negotiated a spot contract with both Directorates to facilitate a Managed Bank Account Service, with an average value of £65,000 per annum.
- 2.4 LCIL had been a directly provided Council service since 1998 providing independent living support to disabled people/customers in receipt of a direct payment (including disabled children and younger people) in Leeds. LCIL became a User Led Organisation (ULO) independent from the Council in 2011.
- 2.5 LCIL was awarded a direct three year contract plus two 12 month extensions on 4 April 2011 under the Public Contracts Regulations 2006 (these being Part B services). The initial three years of the contract ended on 31 March 2014 and two twelve month extension periods were utilised until the contract ended on 31 March 2016.
- 2.6 The contract was further extended in order to complete a full review of the direct payment process. The current contract was entered into following a request to vary the contract through the modification of contracts under regulation 72 (1b) (i) & (ii) of the Public Contracts Regulations 2015 that expires on 31st 2021.
- 2.7 The current service comprises of a universal information and advice service on all aspects of direct payments, a more intensive service to eligible customers who wish to use a Direct Payment (DP) to employ a Personal Assistant (PA) and a Payroll Service that administers the payment of PA wages.
- 2.8 Adults and Health completed a full review of the Direct Payment (DP) process. As part of the review process, members of LCIL staff who were managing the advice and information, Independent Living Team (ILT) were relocated to work more closely with social work teams. The focus of the review considered how Adults and Health, supported by the LCIL staff could improve its processes both in terms of the ways in which social work staff help people to set up a direct payment and how recipients are subsequently supported, through the externally provided service to manage their services, including helping people to recruit and employ their own personal assistants (PAs).
- 2.9 The outcome of the review helped to identify the changes that were required to encourage and support more people to have a DP to enable them to arrange and manage their own care. The learning from the review and information gained from a Stakeholders event was used to explore a number of service delivery models. In April 2019 the Directorate Leadership Team (DLT) considered two options of future delivery and decided to return the advice information and guidance element in-house with the TUPE transfer of members of the Independent Living Team (ILT) and the Payroll service to undergo a procurement exercise.
- 2.10 Future provision would continue to be delivered on behalf of Adults & Health, Children's services and will now include Leeds CCG as an integrated commissioning arrangement wherein the Local Authority (LA) will act as lead commissioner across health and social care.

3. Main issues: Authority to Procure:

- 3.1 The Procurement of a Personal Assistant (PA) Payroll and Managed Bank Account Service will be jointly commissioned by Adults and Health, Directorate of Children and Families and NHS Leeds Clinical Commissioning Group (CCG). The maximum value of the contract is £410,000 per annum, which comprises funding from Adults and Health (£302,000); Children's and Families (£73,000) and the NHS Clinical Commissioning Group (CCG) (£35,000).
- 3.2 An authority to procure a Personal Assistant (PA), Payroll and Managed Bank Account Service for individuals in receipt of a Direct Payment or Personal Health Budget is now required by the Director of Adults & Health. The contract duration intention will be 2 years with an option to extend up to a further 36 months.
- 3.3 LCC HR will facilitate the TUPE transfer of staff and a project team consisting of Commissioners and representatives from NHS CCG, Adults and Health and Children and Families are currently negotiating with LCC Organisational Work Development Team (OWD) to stimulate the market to increase the supply of Personal Assistants and develop a proactive PA training service that is responsive in meeting the changing needs of PAs and employers. The development of this provision will be reported upon in a future paper.
- 3.4 This new contract will provide:
- A comprehensive Payroll service for DP Employers employing PAs
 - A Basic Payroll Calculation (Payslip service)
 - Managed Bank Accounts
- 3.5 The service will support approximately 1200 individuals and families receiving a personalised direct payment and pay approximately 1800 PAs per month who provide their care. Approximately 500 individuals will have their direct payment managed via a managed bank account. The indicative procurement timeline is as follows;

January 2021	Approval of Authority to Procure
January 2021	Publication of Documents for Personal Assistant Payroll and Managed Bank Account
May 2021	Contract Award
June 2021	Commence contract mobilisation and TUPE Transfer if required
1st December 2021	New service commences

Waiver of Contracts Procedure Rules 9.1 and 9.2

- 3.6 Adults and Health and the Directorate of Children and Families currently has a contract with Leeds Centre Integrated Living (LCIL) for the provision of a Direct

Payment Support Service. The current contract expires on 31st March 2021. The current contract was entered into following a request to vary the contract through the modification of contracts under regulation 72 (1b) (i) & (ii) of the Public Contracts Regulations 2015 commencing 1st August 2020.

- 3.7 The rationale for varying the current contract was to enable the existing contract to continue under the existing terms and conditions until the award of a new contract was undertaken under full EU Procurement regulations. The contract was due to be awarded in September 2020, and the service to commence 1st April 2021, however, due to the COVID pandemic this was not possible and the continuation of the procurement was deferred. This deferment necessitates a waiver of CPRs to continue LCIL delivery whilst the procurement exercise takes place.
- 3.8 This report seeks to waive CPRs 9.1 and 9.2 to enter into an interim contract with the current provider LCIL, from 1st April 2021 for a period of eight months in order to facilitate a six month mobilisation period following the procurement exercise for a Personal Assistant (PA), Payroll and Managed Bank Account Service. It is proposed that the interim contract will be based upon the same specification, terms and conditions and pricing as the current contract with LCIL.
- 3.9 Adults and Health contribution to the 8 month contract will be £419,227 and Children and families' contribution will be £100,666. The combined value of the contract will be £519,893.

Consequences if the proposed action is not approved

- 3.10 If the recommendations for the procurement and waiver of CPRs 9.1 and 9.2 are not approved, the continuation of the commissioned service would be disrupted including the mobilisation period required to ensure the new service is set up correctly and staff (where applicable) are successfully transferred under the TUPE regulations. This would have a significant impact on people in receipt of a Direct Payment who employ a Personal Assistant to provide their own personal care and support rather than access the Councils commissioned services. In the majority of cases, the disruption of services would impact an individual's ability to be an effective employer as is stated in the Care Act 2014.
- 3.11 The possibility exists that if the recommendation to authorise the procurement and waiver of CPRs 9.1 and 9.2 are not approved, the service would continue to be delivered off-contract on an implied basis after 1st April 2021, including all the risks that come with such a scenario.

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- 3.12 The total value of the service meets the Key Decision threshold of £500,000. The current service is delivered within the Leeds Local Authority and the provider has extensive knowledge of the service and the people the service delivers to. The contract may be of interest to organisations based in other EU member states because of its contract value.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.2. An engagement event was held during April 2019 to consult and brief potential providers prior to the launch of a formal tender process. A total of thirteen nationwide providers registered an expression of interest and twenty nine representatives attended the event.
- 4.1.3 Significant consultation has been undertaken as part of the service review, over nine hundred Adults and Children/Families; and individuals with a personal health budgets were contacted. 195 responses were returned. These responses have informed and shaped the detailed specifications.
- 4.1.4 The Direct Payment Project Team involves officers from Adults and Health, Children and Families, and NHS Leeds Clinical commissioning group. The executive member was informed of the report in October 2020.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality Diversity Cohesion screening has been completed for this report and shows that all relevant aspects have been considered and there will be no negative impact on any particular groups as these proposals will continue existing service provision without change.
- 4.2.2 Furthermore, an ability to undertake a procurement will allow the Council to continue to strive to provide the best outcomes and service for individuals who have complex needs enhancing the opportunities to improve health outcomes and reduce health inequalities.
- 4.2.3 A full Equality Impact Assessment will be completed as part of the commencement of new provision and all equality and diversity risks will be monitored and reviewed through the joint project team and steering group.

4.3 Council policies and the Best Council Plan

- 4.3.1 The Direct Payment Support Service (DPSS) contributes and supports a number of strategies and plans that Leeds as a city is aiming to deliver:
- The Vision for Leeds (2015-2030) to be the best city in the UK, one that is compassionate with a strong economy that tackles poverty and reduces inequalities.
 - The Best Council Plan (2020-25) provides the strategic plan for overarching vision for Leeds, including outcomes for the proportion of people who use social care services who have control over their daily life
 - The Leeds Health and Wellbeing Strategy aims to improve the health of the poorest fastest, including the following priority areas: strong engaged and well connected communities; promote mental health and physical health equality; a stronger focus on prevention; the best care in the right place at the right time and support self-care with more people managing their own conditions.

4.3.2 Climate Emergency

4.3.3 In order to support the Council stated ambition of working towards a carbon neutral city by 2030, the impact on the climate should be considered across all officer work. Through ongoing contract management, the Provider will be encouraged to actively engage with the climate change agenda. Examples could include adhering to and working within the values of Council policy and guidance in relation to climate change, a reduction in carbon emissions through, for instance, decreasing private vehicle usage, using and/or investing in 'eco-friendly' resources.

4.3.4 Resources, procurement and value for money

4.3.5 This report has been discussed with the Director of Children's and Family Services and an agreement has been reached regarding their financial contribution to the contract.

4.3.6 The amount incurred for the Personal Assistant (PA) Managed Bank Account (MBA) Payroll Service over two years will be £820,000. The Council may extend the Contract (the extension to the initial Contract period) up to a period of 36 months on any number of occasions to equal the overall maximum extension term of 36 months. The total value of a 5 year contract will be £2,050,000; Adults and Health contribution per annum over will be £302,000; Children's and Families contribution will be £73,000 and Leeds CCG will be £35,000

4.3.7 Anticipated savings and efficiencies:

4.3.8 The Adults and Health Directorate currently contributes £628,840 per annum for Advice, Information, Support and Payroll Services and the Directorate of Children and Families contribute £151,000 per annum. The current Provider also negotiated a spot contract with both Directorates to facilitate a Managed Bank Account service, averaging £65,000 per annum. The total budget allocated for DPSS through the Council is £844,840 per annum. Including the CCG it is £924,903 per annum.

4.3.9 Financial modelling has been undertaken based on review findings, supplied service cost analysis form (SCAF) information, TUPE information and local and regional benchmarking.

4.3.10 The Service will be subject to a competitive procurement exercise commencing November 2020. Value for money and efficiency savings through this review work have been developed and embedded through all processes. The tender will also be subject to tender price negotiations and budget envelopes.

4.3.11 A competitive tender will allow the Council and the CCG to realise savings and also reinvigorate opportunities in the market place for a provision which has not undergone a competitive process. This will also serve to ensure we have tested the market to find the most suitable provider to help ensure that the service can keep pace with the growing number of personal budgets and provide joined up advice and support with Council provision.

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

4.4.1 This is a Key Decision which is subject to call-in as the maximum combined cost of the services detailed within this decision is greater than £500k. A notice was published on the List of Forthcoming Key Decisions in May 2020.

4.4.2 This report does not contain any exempt or confidential information under the Access to Information Rules.

4.4.3 Authority to Procure:

- 4.4.3.1 As the total contract value over the potential 5 year life of the contract will exceed the EU procurement threshold and whilst the service is not subject to the “full” regulations but to the “Light-Touch Rules Regime” under the regulations, there is still a requirement to advertise this opportunity in OJEU and run an EU wide procurement exercise. Therefore competition will be sought through a formal tendering process.
- 4.4.3.2 Advice has been sought from PACS throughout the duration of this contract, review and re-modelling process and will continue to be sought through the subsequent competitive procurement exercise.
- 4.4.3.3 Future decisions arising from this report, for example the decision to award the contract, will be treated as a consequence of this key decision and will therefore be a significant operational decision at most which will not be subject to call in.

4.4.4 Waiver of CPRs 9.1 and 9.2:

- 4.4.4.1 Awarding a new interim contract for 8 months direct to LCIL in this way without seeking competition could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that the Council 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 should be subject to a degree of 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 relative low 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. In giving the work to the named 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.
- 4.4.4.2 The Director of Adults and Health has considered this and, due to the specialist nature of the service required including the market opportunity to bid for the longer term contract under an EU procurement exercise, is of the view that the scope and nature of the service is such that it would not be of interest to providers in other EU member states.
- 4.4.4.3 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. 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.
- 4.4.4.4 Although there is no overriding legal obstacle preventing the waiver of CPRs 9.1 and 9.2 the above comments should be noted by the Director of Adults and Health in making the final decision as to the award of this contract being the best course of action for the Council and that in doing so it represents best value for the Council.

4.5 Risk management

- 4.5.1 The contract will continue to be performance managed by officers in Leeds City Council Adults and Health commissioning team. This includes regular reviewing of performance information and quarterly contract management meetings with the provider, at which any delivery issues are discussed. To date the service has delivered

in accordance with the service requirements and performance criteria outlined in the specification.

5 Conclusions

- 5.1** The request to seek a waiver of CPRs 9.1 and 9.2 to enter into an interim contract from 1st April 2021 for eight months will ensure continuity of service as well as allow fully integrated health and social care model to be developed, undertake procurement activity, and improve service delivery and outcomes for those in receipt of a Direct Payment or Personal Health Budget (PHB).

6 Recommendations

- 6.1** The Director of Adults and Health is recommended to:
- 6.2** Approve authority to proceed with a procurement process, as outlined in this report and in line with Contract Procedure Rules (CPRs) 3.1.8, to appoint a suitable provider/s to deliver a Personal Assistant (PA), Payroll and Managed Bank Account Service from 1st December 2021 at a total contract value of £2,050,000 for 2 years and an option to extend up to 36 months.
- 6.3** Approve the waiver of CPRs 9.1 and 9.2 to enter into an interim contract with Leeds Centre of Integrated Living from 1st April 2021 for a period of eight months to enable the facilitation of a six month mobilisation period under the direct payment support service current contract that is due to expire on 31st March 2021.
- 6.4** To note that the Director of Adults and Health will use her delegated authority to take commissioning decisions which will be a direct consequence of this key decision, for example approval of the detailed specifications for procurement and subsequent contract award. This is subject to the decision being in line with the key principles and features as described in the report.

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.

What is your reason for waiving CPRs?

There is a genuine, unforeseeable emergency meaning there is no time to go through a procurement process (e.g. to deal with the consequences of extreme weather).	No
To purchase supplies or services on particularly advantageous terms due to liquidation/administration.	No
Requirement to put a contract in place with a current provider whilst a review of the services/procurement is completed.	Yes
Ran out of time to undertake a new procurement exercise	No
Other (please provide summary here)	None