

Report of Commissioning Manager

Report to Director of Children & Families

Date: 5th March 2020

Subject: Decision to enter into a contract for the Family Drug and Alcohol Court (FDAC) service.



Are specific electoral wards affected? If yes, name(s) of ward(s):	<input 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

- Leeds City Council (LCC) currently contract with Barca-Leeds to deliver the Family Drug and Alcohol Court (FDAC) service which ends on 31st March 2020 and is valued at £80k per annum. There is no option to extend.
- Arrangements were being put in place to secure funding at the current level however the local authority has recently been successful in securing additional funding, including from the Department for Education (DfE), to expand the service.
- The Leeds FDAC service has to date been funded as a small core service to continue the work of FDAC, where many other areas were disbanded due to a lack of funding. The DfE funding allows for six months set up and 18 months of delivery and there is strong commitment to continuing FDAC in Leeds based on the learning to date and the learning gained during the period of the enhanced delivery.
- DfE have passed this funding to the LA as a grant in order to meet certain requirements and to expand the size and remit of the FDAC process. It would not be possible to meet these requirements with a different provider who would not

have the integration with Forward Leeds offer (location, practitioners, clinic space) and the experience of delivering FDAC alongside the court process in Leeds.

- It is the intention to procure a contract for FDAC to commence on the 6th April 2020 using the negotiated procedure without the publication of a notice, entering into negotiations with Barca-Leeds. This is in accordance with the Public Contracts Regulations 2015 (Regulation 32 (2) (b) on the grounds that we consider, due to the technicalities surrounding the integrated pathways of the service, that only Barca-Leeds can meet the Council's requirements. The contract will be for the period 6th April 2020 to 5th April 2022 with the option to extend up to 24 months. The option will be subject to review and budget availability

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

- The FDAC service best contributes towards outcomes related to a Child-friendly City, predominantly 'Supporting families to give children the best start in life', and it also makes positive contributions towards better outcomes in the health and wellbeing of families and communities.

3. Resource Implications

- The value of the contract is £960,010 for two years. Should the extension option be taken up in full and there is further funding available from the DfE, the potential maximum value could be £1,920,020. However, the extension will be subject to review and budget availability.
- The budget for the contract consists of £160,000 from LCC's base budget, which sits within Integrated Safeguarding; £591,616 from the DfE; £68,395 from the Strengthening Families Protecting Children budget; and £140,000 from NHS Leeds Clinical Commissioning Group for mental health support.
- A significant percentage of the total savings generated through the FDAC model, estimated at almost 80%, are generated through a reduction in placements costs due to more children being returned to parents.

Recommendations

The Director of Children and Families is recommended to:

- a) Grant authority to procure the Family Drug and Alcohol service (FDAC) utilising the negotiated procedure without publication of a notice with Barca-Leeds for the provision of the service from 6th April 2020.
- b) Approve the award of a contract to Barca-Leeds for delivery of the FDAC service for the period 6th April 2020 to 5th April 2022 with the option to extend up to 24 months at a value of £960,010 for two years.
- c) Grant approval to waive CPR 15.2 to change the tender evaluation quality threshold for the FDAC service procurement exercise to be based on 100% quality.

1. Purpose of this report

- 1.1 The purpose of this report is to seek approval from the Director of Children & Families to grant authority to procure the Family Drug and Alcohol Court (FDAC) Service utilising the negotiated procedure without publication of a notice and to award a contract to Barca–Leeds for this provision from 6th April 2020.

2. Background information

- 2.1 FDAC started in 2008 in London. It is an alternative, problem-solving approach to care proceedings in cases where parental substance misuse is a key trigger for the local authority bringing proceedings. It aims to support parents to overcome their entrenched problems while the case is being determined in proceedings.
- 2.2 FDAC's main features are judicial continuity, fortnightly judge-led review hearings without lawyers present, and a specialist multidisciplinary team that advises the court and provides intensive support to parents as well as close monitoring of their progress.
- 2.3 Building on a very successful regional pilot in 2013/14, the five West Yorkshire local authorities with the support of the FDAC National Unit received an Innovations Fund grant of £550k to pilot the implementation of FDAC across the region. For Leeds Bradford and Calderdale the pilot started in November 2015, for Wakefield in February 2016 and for Kirklees, March 2016.
- 2.4 The Innovations Fund grant received expired at the end of 2016/17 and the service has been funded through the council base budget since then. Approval is required for the FDAC service is to continue post March 2020.

3. Main issues

- 3.1 The current contract between LCC and Barca-Leeds for the FDAC service which ends on 31st March 2020 is valued at £80k per annum.
- 3.2 Arrangements were being put in place to secure funding at the current level however the local authority has recently been successful in securing additional funding, including from the DfE, to expand the service.
- 3.3 The Leeds FDAC service has to date been funded as a small core service to continue the work of FDAC, where many other areas were disbanded due to a lack of funding. The DfE funding allows for 6 months set up and 18 months of delivery and there is strong commitment to continuing FDAC in Leeds based on the learning to date and the learning gained during the period of the enhanced delivery.
- 3.4 It is proposed a contract be awarded to Barca-Leeds for the period 6th April 2020 to 5th April 2022 with option to extend up to 24 months, the extension will be subject to review and budget availability.

3.5 FDAC Model

- 3.5.1 The service in West Yorkshire aims to target parents who have experienced repeat removals and those first time parents where it is the plan to remove the baby at

birth. In this way FDAC can be seen as a preventive approach to break cycles. However the teams have worked with families outside these criteria. West Yorkshire has also been keen to recognise and address that domestic violence often occurs in cases where there is substance misuse

3.5.2 The FDAC service has the following objectives:

- To increase the proportion of children that can be successfully reunited with their parents compared to traditional service delivery.
- To ensure that parents are able to access and maintain treatment for their substance misuse
- To support parents in achieving complete abstinence from street drugs and/or alcohol.
- To enable parents to be successful in addressing related wider health and wellbeing outcomes: improved mental health, reduced exposure to domestic violence, safer and secure housing, improved family planning, reduced parental criminal activity and violence, engagement in work, training or community activity,
- To provide support to parents so they are less likely to follow a pattern of having successive children removed in recurring care proceeding, making safer choices
- To help children achieve positive outcomes - health and development of child, attendance and attainment at school.

3.6 Strategic Priorities

3.6.1 FDAC is closely aligned to a large number of important national and regional strategy, policy and priorities in criminal justice, children's services, health and economic development.

3.6.2 Nationally the Home Office and Department of Justice has supported the development of FDAC, for example in funding for the National FDAC Unit and the independent evaluation of the programme. In addition, the Department of Justice remains intent on broader development of problem solving approaches to the courts as part of its commitment to judicial reform.

3.6.3 FDAC is a priority initiative across children's services in England, with strong backing from government and the judiciary. FDAC supports the national drive to find new approaches to work with children and families that help solves problems better, keep families together safely and reduces costs for the public purse.

3.6.4 The FDAC approach has won significant funding from the Department for Education's (DfE) national Innovation Fund, praise from the Chief Social Worker and ministers and a very strong endorsement from the Sir James Munby, President of the Family Court.

3.6.5 FDAC also has links to the emerging NHS priorities and plans as set out in the West Yorkshire and Harrogate 'Sustainability and Transformation Plan'. FDAC links to the plan's priorities for investing in preventative services, particularly around high risk population such as those with substance misuse problems.

3.6.6 FDAC has links to economic strategies in the Leeds City Region. The Strategic Economic Plan for the Leeds City Region has a key ambition to 'Connect vulnerable groups and residents living in deprived communities to economic opportunity', and within this, those with drug and alcohol problems are a targeted group, with the

Local Enterprise Partnership noting the impact of drinking and drugs on families, and the relatively high rate and numbers of Opiate and Cocaine Users (OCUs) in Leeds, Bradford and Wakefield.

3.7 FDAC Outcomes

- 3.7.1 The outputs of the FDAC model fully support and align with the current Strengthening Families work that is ongoing until 2023.
- 3.7.2 The FDAC service has the potential to lead to improved outcomes in a number of areas which includes children and young people being returned to parents where safe and appropriate, increased engagement with substance misuse support by parents, even where the outcome is not a positive recommendation regarding children remaining with parents, and quicker and less disputed legal proceedings due to more restorative support during proceedings.

Contract with Barca-Leeds

- 3.7.3 The FDAC service is fundamental in supporting our core city ambition to support children to live in safe family environments. The Family Drug and Alcohol Court is effectively a three way partnership between provider, LA and the judiciary with Barca-Leeds providing the specialist support to parents regarding substance misuse and other support needs in an integrated way alongside the court process. Barca-Leeds are uniquely placed to provide this support service as the consortia partner within the Leeds Substance Misuse service, Forward Leeds, with responsibility for the family, (young people's and Early Intervention Structured elements of the service).
- 3.7.4 Families within the FDAC service are likely to be in treatment or known to Forward Leeds and require ongoing support from Forward Leeds after the involvement of FDAC, therefore an integrated approach between the two is vital.
- 3.7.5 Barca's position as Forward Leeds partner and provider of FDAC service enables pre-established pathways and information flows which are critical to the success of the FDAC service within the time critical period during the court process. The court process is time limited requiring immediate support from the FDAC service to align with timescales within the court process therefore integrated pathways and transfer of information between FDAC and Forward Leeds is integral to the support of FDAC.
- 3.7.6 Barca-Leeds have been involved in FDAC since its inception (and represent Leeds FDAC team on a national level) and have developed and innovated the service as a partnership over a period of time utilising innovations funding, LCC funding and funding they have secured themselves. Further DfE funding has been secured to expand the size of the service and to trial opportunities for a problem solving court that looks at other support needs alongside substance misuse. Barca-Leeds are uniquely placed to deliver this given their experience in the development of FDAC and their role as a Forward Leeds consortia provider.(The FDAC Team are integrated as part of Forward Leeds with clinic space and co-located arrangements which significantly benefit service users including access to specialist, detox and active recovery practitioners. The FDAC team can seek advice e.g harm reduction and Forward Leeds staff e.g care proceedings which in turn improves outcomes for families). The FDAC Team provide case briefings within FL, have trained adult practitioners and case share information on progress and risk on a twice weekly basis, often more.
- 3.7.7 Based on the above we would not be able to meet the DfE requirements with another provider in place or with a change of provider especially given the

integration with the Forward Leeds, court process and social care system. DfE have passed this funding to the LA as a grant in order to meet certain requirements and to expand the size and remit of the FDAC process and it would not be possible to meet these requirements with a different provider who would not have the integration with Forward Leeds offer (location, practitioners, clinic space) and the experience of delivering FDAC alongside the court process in Leeds

Consequences if the proposed action is not approved

3.8 As explained in paragraphs 3.7.3 to 3.7.7, we would not be able to meet the DfE requirements with another provider in place or with a change of provider especially given the integration with the Forward Leeds, court process and social care system. DfE have passed this funding to the LA as a grant in order to meet certain requirements and to expand the size and remit of the FDAC process and it would not be possible to meet these requirements with a different provider who would not have the integration with Forward Leeds offer (location, practitioners, clinic space) and the experience of delivering FDAC alongside the court process in Leeds.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 Consultation with the Police and Crime Commissioner, health colleagues within the Clinical Commissioning Group and the current provider, Barca-Leeds has taken place.
- 4.1.2 The relevant Chief Officer and the Lead Member for Children & Families have been briefed. The current provider Barca-Leeds has been informed of our intention and has indicated they would be willing to enter into a new contract for twenty-four months at the value detailed in this report.
- 4.1.3 Finance colleagues have confirmed the budget is available.
- 4.1.4 Procurement and Commercial team have been consulted in relation to the procurement route identified and support will continue to be provided through the duration of this procurement.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality Impact Assessment Screening document has been undertaken and there is no impact in respect of equality and diversity as the new contract will continue on the basis of the existing provision.
- 4.2.2 Equality, diversity, cohesion and integration will continue to be considered throughout the progression towards a wider problem solving court.

4.3 Council policies and the Best Council Plan

- 4.3.1 The outcomes this service will be commissioned against are those within the Leeds Children and Young People's Plan 2018 – 2023. This contract will contribute to a

number of the outcomes and priorities within the plan including the outcome to ensure all young people are safe from harm and the priority to help children live in safe and supportive families and safely. It also makes a significant contribution to the key obsession to safely and appropriately reduce the number of Children Looked After.

Climate Emergency

4.3.2 The service specification requires the service to meet all Legislation, Guidance and Good Industry Practice in environmental management and the objectives of the Authority's sustainability policies. Officers from Children and Families will work with the service through the established contract management process to ensure the service is proactively seeking to minimise its carbon footprint and thereby support the Council in achieving its ambition to be carbon neutral by 2030.

4.4 Resources, procurement and value for money

4.4.1 The value of the contract is £960,010 for two years. Should the extension option be taken up in full and there is further funding available from the DfE, the potential maximum value could be £1,920,020. However, the extension will be subject to review and budget availability.

4.4.2 The budget for the contract consists of £160,000 from LCC's base budget, which sits within Integrated Safeguarding; £591,616 from the DfE; £68,395 from the Strengthening Families Protecting Children budget where there is ring-fenced funding for FDAC for 2020-21 and 2021-22; and £140,000 from Leeds CCG for mental health support where the CCG has committed to £70,000 per annum for four years from 2020-21 in a Section 256 funding agreement.

4.4.3 A significant percentage of the total savings generated through the FDAC model, estimated at almost 80%, are generated through a reduction in placements costs due to more children being returned to parents. Savings are however generated in other areas as well including reduced testing costs, savings to court costs, reductions in substance misuse treatment costs and savings to the criminal justice system generated through reductions in substance misuse related crime.

4.4.4 Performance, quality and impact will be closely monitored throughout the life of the contract to ensure value for money is achieved and essential learning is captured.

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

4.5.1 The decision requested is a key decision and therefore is subject to call in and was placed on the List of forthcoming Key Decisions on 6th February 2020.

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

4.5.3 As we are using the negotiated procedure without the publication of a notice, it must be noted that there is the potential risk of challenge that there are no real technical reasons justifying the use of the negotiated procedure without publication of a notice in accordance with the Public Contracts Regulations 2015, and that the Council is simply seeking to circumvent the application of the procurement rules. However, due to the reasons set out in Section 3 of this report this risk is perceived to be low.

- 4.5.4 In addition, a Voluntary Transparency Notice (VTN) is being developed for publication on the Official Journal of the European Union (OJEU) in accordance with the Public Contracts Regulations 2015, and waiting 10 days to see if any challenges are made. If no challenges are made the chances of a claim for ineffectiveness being brought are significantly reduced, and would only be successful if the Council had used the negotiated procedure without publication of a notice incorrectly. Further, publishing such a notice will also start time running for any other potential claim for breach of the Public Contracts Regulations 2015, 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.
- 4.5.5 It should be noted that voluntary transparency notices themselves can be challenged. The recent case of Italian Interior Ministry v Fastweb SpA (Case C-19/13) highlights the limited protection that the voluntary transparency notice route can offer to contracting authorities wishing to make direct awards without following an OJEU process. A grey area remains around whether the protection of a voluntary transparency notice will be available where the contracting authority genuinely, but mistakenly, considers it was entitled to award the contract without notice. It shows that the safe harbour will only be 'safe' to the extent that the justification for the direct award is in itself sound and ready to stand up to the increased scrutiny that the publication of the voluntary transparency notice may well invite.
- 4.5.6 Subsequent 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 decisions which will not be subject to call in.

4.6 Risk management

- 4.6.1 If this decision is not approved and a contract is not awarded to Barca-Leeds for delivery of this expanded FDAC service, LCC would not be able to deliver the outcomes required by the DfE, which would put this grant funding at risk.
- 4.6.2 The DfE grant funding is for 18 months, plus six months for implementation. If there is no further funding available from the DfE post 2021/22, the value of the contract would have to be significantly reduced should any extensions be taken up. This would reduce capacity considerably. As part of ongoing contract management, exit planning will start straight away with a view to capturing outcomes to support any invest to save business case as per paragraph 4.4.3.
- 4.6.3 A risk register will be put in place and reviewed regularly throughout the life of the contract to ensure effective planning for the future of the service and continuity of service for families currently within the FDAC process should a decision be taken to close or significantly reduce capacity of the contract.

5. Conclusions

- 5.1 This decision will enable the council to deliver the outcomes and key requirements of the DfE funding for the FDAC provision. The FDAC service is fundamental in supporting our core city ambition to support children to live in safe family environments.
- 5.2 Barca-Leeds are uniquely placed to provide this support service as the consortia partner within the Leeds Substance Misuse service, Forward Leeds, with

responsibility for the family, (young people's and Early Intervention Structured elements of the service). It is considered that Barca-Leeds are the only provider able to deliver the Council requirement of the integration with Forward Leeds offer (location, practitioners, clinic space) and the experience of delivering FDAC alongside the court process in Leeds.

6. Recommendations

- 6.1 The Director of Children and Families is recommended to:
 - 6.1.1 Grant authority to procure the Family Drug and Alcohol service (FDAC) utilising the negotiated procedure without publication of a notice with Barca-Leeds for the provision of the service from 6th April 2020
 - 6.1.2 Approve the award of a contract to Barca-Leeds for delivery of the FDAC service for the period 6th April 2020 to 5th April 2022 with the option to extend up to 24 months at a value of £960,010 for two years.
 - 6.1.3 Grant approval to waive CPR 15.2 to change the tender evaluation quality threshold for the FDAC Service procurement exercise to be based on 100% quality.

7. Background documents¹

- 7.1 None.

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