



**Not for Publication:** Appendices 1,2,3,4,and 5 Exempt under Access to Information Procedure Rule 10.4 (5)

## Report of the Director of Adult Social Services

### Executive Board

**Date:** 22 June 2011

**Subject:** Neighbourhood Network update

#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

## EXECUTIVE SUMMARY

1. The report updates Members with regard to developments occurring since the original report to Executive Board in July 2010
2. The report, informed by specialist legal advice, sets out why the circumstances in relation to the tender submissions in relation to 5 areas in East Leeds are materially different to the remainder of the tender exercise which was successfully concluded and reported to Executive Board in July 2010.
3. The legal advice covers both the contractual and reputational risks that need to be considered in coming to a determination about the range of future options. This is detailed in exempt appendices 3 and 4.
4. Members of the Board are recommended to endorse
  - That no contract (advertised under the overall tendering of Neighbourhood Network services in 2009/10) be awarded for the provision of Neighbourhood Network services in relation to those 5 areas of East Leeds specified in this report,

namely Burmantofts, South Seacroft, Swarcliffe, Richmond Hill, and Crossgates and District.

5 Members of the Executive Board are recommended to approve

- The commencement of a renewed tendering exercise for the provision of Neighbourhood Network services in relation to those areas of East Leeds specified in this report.
- That the tendering exercise, if approved, be constructed in such a way as to take account of the lessons learnt in the original tender process, the analysis of the current position as set out in confidential Appendix 4 and arising from the specialist legal advice contained in confidential Appendix 3.

6 Members of the Executive Board are requested to note:

- That the services currently being delivered will continue through an extension of existing contracts pending the outcome of recommendation above.

## 1 Purpose of this report

- 1.1 To provide an account of the negotiations held to date in line with the resolutions of the Executive Board in July 2010.
- 1.2 To provide information on the outcome of those negotiations, including the legal challenge made to the Council in respect of the conduct of the evaluation of the respective Leeds Irish Health & Homes (LIH&H) and 5 East Leeds Scheme ('5 East Leeds schemes')<sup>1</sup> tender submissions.
- 1.3 To provide a recommendation with regard to a potential way forward based on legal advice obtained by the Council following the legal challenge referred to above and following the termination of negotiations between LIH&H and the 5 East Leeds Schemes.

## 2 Background information

- 2.1 Since 1992 NNS have been developed to provide preventive support services for older people across the city. They were created to improve the lives of older people in Leeds, their strength lying in the fact older people are actively engaged on many levels in the planning and running of the services provided, both as consumers and contributors of social capital.
- 2.2 To meet the "Ageing Society" agenda, the Council is seeking to provide universal access to all its services and this is the context in which the development of community based services should be seen. For NHS Leeds, with whom the NNS are jointly commissioned, the challenge lies in improving health outcomes and reducing health inequalities.
- 2.3 NNS are key to the longer term market development of services in support of the transformation agenda. Increased opportunities for the NNS to develop their role will lead to more community based services and the provision of further opportunities for older people to choose and purchase their own services. Partnership and collaborative working with other schemes and the statutory sector, together with a volunteer workforce, will be of added benefit to the development of these services.
- 2.4 In 2007 a city wide review programme of the NNS services was initiated, conducted jointly with NHS Leeds. This was to attempt to address the funding inequities that had developed across the city over the years and to put performance monitoring arrangements into place.
- 2.5 From the review, 2007-2009, Leeds City Council (LCC) and NHS Leeds entered into a comprehensive procurement exercise, the outcome of which would ensure that the NNS future over the next 8 years would be guaranteed. The procurement of the NNS

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Original Tender Area	The 5 East Leeds schemes
Area	Organisation
Area 3	Burmantofts Senior Action
Area 4	South Seacroft Friends and Neighbours
Area 13	Swarcliffe Good Neighbours Scheme
Area 15	Richmond Hill Elderly Aid
Area 34	Crossgates and District Good Neighbours Scheme

began in August 2009 and was completed in February 2010 when a Delegated Decision report was compiled detailing the findings of the tender evaluations. Due to concerns being expressed by some of the organisations a decision was taken to withdraw the report and independently review the commissioning and procurement exercise.

- 2.6 Following the review, the Executive Board of 21 July 2010 agreed that contracts should be awarded to 32 Neighbourhood Networks and further discussions take place with the 5 East Leeds schemes. The issues relating to these schemes are addressed from paragraph 3 in this report.
- 2.7 By December 2010, new contracts had been awarded to 32 organisations who were unaffected by the independent review recommendations covered later in this report. Since that time these organisations have worked successfully within the new arrangements meeting both enhanced performance and quality requirements. The performance requirements were agreed with each organisation and designed to take into account the different demographic data of each NNS area. This high level of involvement has led to the relevant NNS owning the process and reporting satisfaction with the overall outcome of the process.
- 2.8 Feedback since the award of contracts has been positive with Adult Social Care (ASC) staff being made aware of positive developments: Three of the Neighbourhood Networks, all significant local service providers – Armley Helping Hands, Hamara and Action for Gipton Elderly - have been working with an independent organisation – ‘The Stamford Forum’ as part of the Department of Health’s Building Community Capacity initiative to develop and broaden the use of social capital. This approach combines community empowerment with the personalisation agenda.
- 2.9 Holbeck Elderly Aid has been awarded nearly £500,000 from The Lottery Fund. This was reportedly achieved due to the duration of the funding received from LCC ASC. Another NNS now has plans to submit a funding application for capital investment to extend their existing building in order to increase provision. Several other NNS are seeking new premises as they have outgrown their existing premises and the new contracts give them stability to enter into five year lease agreements.

### **3 Main issues**

- 3.1 The Council invited an independent review of the Procurement and Commissioning of Neighbourhood Network Schemes in Leeds. Two independent expert reviewers who were external to the Council were appointed, whose combined experience brought an in-depth knowledge of social care, the voluntary sector and local authority commissioning and procurement processes. The reviewers were given access to all the relevant documents and to nominated officers of the Council and NHS Leeds who were actively involved in the process. This review commenced on 27 April 2010.
- 3.2 They also met appointed representatives from all five political parties and held an open “drop-in” session for elected members. The invitation was also extended to representatives of the Neighbourhood Networks, where they met 15 officers and trustees and visited a number of schemes.
- 3.3 The review was carried out in accordance with terms of reference set out by the City Council which required the review team to consider in particular:
  - Preparation for change
  - The choice of commissioning process

- The conduct of the commissioning process
  - Evaluation of the tender documents
  - Forward planning for the outcomes of the process
- 3.4 The Review highlighted a number of areas where lessons can be learned for future commissioning processes, both within Adult Social Care and the Council's Procurement unit. The learning will be incorporated into future commissioning activities within the Council.
- 3.5 The reviewers noted that the Neighbourhood Networks provide a vital range of support across the city and the demand on their services will increase as the population of older people increases.
- 3.6 It was acknowledged that the City Council values these services and this was emphasised by the decision to establish a long term funding arrangement. The procurement exercise has produced some very positive results: a clear agreement on the role of Neighbourhood Networks, a sound basis for contracts between the City Council, NHS Leeds and the Neighbourhood Networks with defined outcomes and a long term funding arrangement. This secures the current services and builds a foundation for Neighbourhood Networks to develop further.
- 3.7 The reviewers noted the complexity of the issues in the 5 East Leeds Schemes, where LIH&H was a new organisation bidding for existing services. The assumption, in the procurement process, that work could be handed over smoothly was questioned.
- 3.8 The reviewers recommended Adult Social Care to initiate discussions with Irish Health and Homes, the highest-scoring bidder, and the existing providers in areas 3, 4, 13, 15 and 34 to explore a possible partnership approach. Adult Social Care officers would initiate discussions with the relevant organisations to develop an appropriate partnership model. The discussions would include exploration of the relevant legal and constitutional considerations which would apply to the development of such arrangements.
- 3.9 In the view of the reviewers, there could be much to be gained in a partnership which allowed the existing providers to remain as independent organisations undertaking work in an agreement or contract with Irish Health and Homes.
- 3.10 The innovative approach would retain the local emphasis and enable those providers to continue to attract other resources and retain volunteers. Partnership with a larger organisation could bring efficiencies in terms of support services and increase the opportunities for developing shared services and social enterprises.
- 3.11 Furthermore, the reviewers stated that although the focus of this review was the procurement exercise, they could not fail to be impressed by the achievements of the Neighbourhood Networks and the vision of the City Council, across all parties and over many years, in supporting them.
- 3.12 The conclusion of the Review of the Neighbourhood Network commissioning process was that:
- i) overall, the process was sound and that there is no need for a new process to be undertaken or repeated.
  - ii) the Review concluded that there is sufficient information available from the process for a sound decision to be taken on the award of contracts for Neighbourhood Network services.

- iii) that Adult Social Care initiates discussions with Irish Health and Homes to explore a possible partnership approach.

3.13 Arising from the independent Reviewers' recommendations a report to the Executive Board was considered on July 21st 2010 seeking approval to award the new contracts, with the exception of LIHH where it was proposed negotiations take place on how they and the existing Providers could work collaboratively in the delivery of service.

3.14 Those negotiations commenced in October 2010 initially as collective discussions facilitated by Council officers latterly as individual negotiations between single schemes and LIH&H, again facilitated by Council Officers. The negotiation process was superseded in January 2011 after the formal withdrawal of the 5 East Leeds schemes from further discussion.

### **3.15 Main Issues, Negotiations**

3.16 At the start of the negotiations, a request was made that the detail of the discussions be kept confidential. The five East Leeds Schemes organised themselves as a consortium and initial discussions took place with representatives of all five. Subsequently agreement was reached that individual discussions would take place with each NNS, LIHH and Local Authority representatives.

3.17 In total 8 negotiating sessions were held between LIH&H and the 5 East Leeds schemes between the 25<sup>th</sup> October 2010 and the 21<sup>st</sup> January 2011

3.18 In addition to the formal negotiating forums, a number of informal meetings have been held with the various stakeholders and elected members in order to try to bring resolution to issues principally raised by the 5 East Leeds schemes namely:

- The legitimacy of the tender submission by LIH&H in relation to its collaborative nature
- Clarity with regard to the precise nature of the services which LIH&H would offer in the 5 localities
- Clarification of information and expected outcome in respect of the award of the contract.
- The need and process for any TUPE implications

3.19 Concerns expressed were not confined to the 5 East Leeds schemes, at various times representatives of the LIH&H organisation raised their concerns with regard to the commitment of the 5 East Leeds schemes to finding a solution.

3.20 In spite of early signs that a negotiated outcome could have been possible, there is now clearly no possibility of a negotiated settlement between the parties, the 5 East Leeds schemes having written to the Director of Adult Social Services formally withdrawing from the process. This occurred after a final meeting was held including the Executive Member for Adult Social Care and Health, the Director of Adult Social Services and all other stakeholders on the 4th February. At this meeting it had been hoped to be able to clarify what, if any, further measures are needed to bring a final resolution to the award of contracts in the 5 remaining Neighbourhood Network Areas.

3.21 Ultimately, and notwithstanding the outcome of the independent review of the process, the concerns of the 5 East Leeds schemes culminated in their securing legal representation to challenge the legitimacy of the LIH&H bid for the contracts. The

nature of this challenge is summarised at section 4.5 of this report and the original letter from the legal advisors to the 5 East Leeds Schemes is appended at confidential Appendix 1.

- 3.22 Further to the Council response to the Legal challenge posed by the 5 East Leeds schemes, on the 4<sup>th</sup> April, a meeting was held between Council officers, their legal advisors, officers of LIH&H, the Chair of their management committee and their legal advisor. That meeting discussed the ongoing viability of the LIH&H tender bid in relation to the implacable opposition of the 5 East Leeds schemes.
- 3.23 This position has been confirmed by the receipt of correspondence from the legal advisors to LIH&H appended at confidential Appendix 2.
- 3.24 The meeting was held at the request of LIH&H and their position was presented. In short representatives of LIH&H contended that a procurement process had been followed through to a conclusion where LIH&H had been evaluated as the 'successful bidder' in 5 areas of East Leeds, the procurement process had been validated by an independent review and that, in their view, there should be no impediment to the award of contracts to the LIH&H organisation.

### **3.25 Main Issues – Current Position**

- 3.26 The meeting of the 4<sup>th</sup> February with the 5 East Leeds schemes and later in that day with LIH&H and the subsequent meeting of the 4<sup>th</sup> April with LIH&H, served to confirm the significant distance that exists between the organisations and which underline the fact that there is no reasonable prospect of progress towards an agreed partnership model..
- 3.27 This fact now requires the Council to examine what possible ways forward might exist offering the best possibility of ensuring the arrangements in this part of the East of the city are brought into alignment with those operating in the rest of the City.
- 3.28 The prospects for future co-operation in the provision of neighbourhood network services in East Leeds between the 5 existing schemes and LIH&H are deemed to be negligible based both on the outcome of the negotiations conducted earlier this year and the stated position of the 5 existing schemes which is to continue to provide services identical to those provided now but funded from other sources should Council funding cease.

## **4.0 Implications for Council Policy and Governance**

- 4.1 As previously indicated, the approach to Neighbourhood Network schemes for older and disabled people adopted by The Council and it's NHS partners, is entirely consistent with the objectives of the emerging Health and Wellbeing priorities of the Council
- 4.2 The overall risk to the Council and the strategies for the management of those risks are dealt with comprehensively in the legal advice attached at confidential Appendix 3.
- 4.2.1 In summary, the outcome of the independent review for the arrangements in the particular part of East Leeds, endorsed by the Executive Board, proposed the construction of a partnership vehicle, with the agreement and consent of the three parties to what would become the formal arrangement (Leeds City Council, LIH&H and each of the 5 East Leeds schemes).

- 4.2.2 The independent review offered no suggested course of action to be followed should the proposed remedy not be agreed.
- 4.2.3 Given that is the case, three sets of risks are apparent, those associated with a proposal to award contracts to LIH&H, those associated with awarding contracts to the existing providers, and those associated with awarding no contracts and moving to re-tender.
- 4.2.4 The risks fall into two categories. The first, associated with the risk of legal challenge from either LIH&H or the 5 East Leeds schemes arising out of a decision to award contracts to the other. The second category is in relation to reputational risk faced by any other parties, including the Council, arising out of a decision to award contracts as described above.
- 4.2.5 An analysis of these risks and their potential mitigations is contained within the legal advice presented at confidential Appendix 3 and contained within the overall analysis of the present position presented at confidential Appendix 4.
- 4.3 Five confidential Appendices are attached which are exempt under Access to Information Procedure Rule 10.4 (5).
- 4.3.1 This report provides an overview and summary of developments that have taken place subsequent to the report which was presented to the Executive Board in July 2010. As previously described, the course recommended by the independent reviewers has been fully explored .
- 4.3.2 The negotiations to explore partnership working have broken down to the extent that all the parties to the negotiation have sought recourse to legal advice and support. There is the risk that legal proceedings could be initiated by those representing the interested parties irrespective of the particular recommendations contained in this report.
- 4.3.3 The potential for legal action to be initiated by any of the parties is set out in section 5.1 below, and in that context, the public interest in allowing access to the specific legal advice to and analysis of the present position by Council officers, is outweighed by the need for the Council to be able to respond appropriately to any potential future legal challenge.
- 4.4 The original tendering process was subject to an equality impact assessment, this report deals with specific issues arising out of the original tendering exercise.
- 4.4.1 A further screening process will be undertaken as a prelude to the re-tendering of these contracts subject to the agreement of the Executive Board to this recommendation.

## **5 Legal and Resource Implications**

### **5.1 Legal Implications:**

- 5.1.1 Throughout the negotiations a number of concerns have consistently been raised culminating in the 5 East Leeds schemes becoming represented by Squires, Simpson & Dempsey (Solicitors). On the 9<sup>th</sup> February the Council received a letter from this firm raising specific issue with the tender evaluation of the LIH&H bid, namely:
- A challenge with regard to the interpretation of what constituted a 'collaborative' bid under the terms of the tender



- A challenge with regard to the need or otherwise of LIH&H to submit separate tender bids for each of the specific areas bid for
- A challenge with regard to the number of times the LIH&H bid documentation was reproduced and why
- In summary that the Councils tender process was breached by LIH&H and that the 5 East Leeds schemes were prejudiced in consequence.

5.1.2 A response was prepared and sent by the Council's Chief Procurement Officer on the 21<sup>st</sup> March 2011. The response addressed the issues raised and concluded that the Councils legal team were satisfied that LIH&H did comply fully with the instruction contained in the invitation to tenderers, that as such there had been no breach of those instructions and therefore, the 5 East Leeds Schemes had not been prejudiced. The response is attached at confidential Appendix 5.

5.1.3 At the meeting on the 4<sup>th</sup> February, LIH&H representatives made it plain that their expectation was that they should be awarded the contracts and allowed to commence work under the terms of that contract in the 5 East Leeds schemes areas irrespective of the co-operation or otherwise of the existing schemes. The view taken by officers in relation to that position is set out at confidential Appendix 4.

5.1.4 In light of the issues raised by the Solicitors and set out at paragraph 4.5.1 and after consideration of the LIH&H position in relation to contract award, officers concluded that the ongoing and probable increasing likelihood of further legal challenge, from whichever party, required the Council to obtain specialist and independent legal advice specifically as to whether the Council,

- (a) has an obligation to award a contract(s) for neighbourhood network areas 3, 4, 13, 15 and 34 to Leeds Irish Health and Homes ("LIHH");
- (b) has an obligation to award the relevant contracts instead to Burmantofts Senior Action, the Crossgates and District Good Neighbours Scheme, Richmond Hill Elderly Action, South Seacroft Friends and Neighbours and the Swarcliffe Good Neighbours Scheme ("the 5 East Leeds Schemes); or
- (c) would be best advised to re-tender the contracts.

5.1.5 The advice obtained is contained at Confidential Appendix 3. The recommendations contained in section 5 of this report reflect legal advice and also reflect the overall assessment of the present situation as described in confidential Appendix 4.

## 5.2 Resource Implications

5.2.1 Clearly, attempts to resolve the issues that have arisen as a consequence of the tendering exercise as it has affected this specific part of East Leeds have been resource intensive in relation to the time of those representing the interested parties which has been dedicated to attempting to reach an agreed solution.

5.2.2 Going forward, resources will need to be dedicated to supporting a retendering exercise should the recommendation of this report be accepted. However, the value of the contract(s) remains unchanged to that previously reported to the Executive Board.

## 6. Consultation

6.1 The original tendering process was subject to extensive consultation, this report deals with specific issues arising out of the original tendering exercise. Significant engagement with all the parties concerned with the outcome of the independent review and subsequent resolutions of the July 2010 Executive Board has also taken place.

## **7. Recommendations**

7.1 Members of the Executive Board are recommended to endorse:

- That no contract (advertised under the overall tendering of Neighbourhood Network services in 2009/10) be awarded for the provision of Neighbourhood Network services in relation to those 5 areas of East Leeds specified in this report, namely Burmantofts, South Seacroft, Swarcliffe, Richmond Hill and Crossgates and District.

7.2 Members of the Executive Board are recommended to approve:

- The commencement of a renewed tendering exercise for the provision of Neighbourhood Network services in relation to those areas of East Leeds specified in this report.
- That the tendering exercise, if approved, be constructed in such a way as to take account of the lessons learnt in the original tender process, the analysis of the current position as set out in confidential Appendix 4 and arising from the specialist legal advice contained in Confidential Appendix 3.

7.3 Members of the Executive Board are requested to note:

- That the services currently being delivered will continue through an extension of existing contracts pending the outcome of recommendations at 7.2

## **8 Background documents**

Independent review of the procurement and tender process

July 2010 Executive Board Report

Equality Impact Assessment undertaken as part of the original tendering process.