

# Cheshire East Council

## Cabinet

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<b>Date of Meeting:</b>	13 <sup>th</sup> March 2018
<b>Report of:</b>	Nichola Glover-Edge: Director of Commissioning
<b>Subject/Title:</b>	A Dynamic Purchasing System for care and support for People with a Learning Disability and or Mental Health
<b>Portfolio Holder:</b>	Cllr Janet Clowes: Adult Social Care and Integration Cllr Jos Saunders: Children and Families

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### 1. Report Summary

- 1.1 This report seeks approval to establish a Dynamic Purchasing System for the future procurement of care and support services for individuals eligible for Adult and Children's social care support, including those individuals in transition to adulthood who have a learning disability and or mental health.
- 1.2 The intention is to establish a Dynamic Purchasing System for the procurement of accommodation and support services including community support, supported living and residential care.
- 1.3 The new service specification and contract will contain a negotiation stage to ensure that we are achieving best value for money on all future packages of care and therefore ensuring compliance with procurement rules and financial regulations.
- 1.4 The proposed "go live date" would be 1<sup>st</sup> October 2018.
- 1.5 The report also identifies a future opportunity to work in partnership with Cheshire West and Chester Council and Wirral Council in regards to commissioning a single Dynamic Purchasing System (list of approved providers) across the Cheshire and Wirral footprint.

### 2. Recommendation

- 2.1 That Cabinet:
  - 2.1.1. Endorses the co-production of a Learning Disabilities and Mental Health Needs 'Dynamic Purchasing System' with statutory partners, neighbouring local authorities, Voluntary Community Faith Sector organisations, and other providers.

- 2.1.2 Approves the development of a Dynamic Purchasing System in order to procure and award contracts for Learning Disabilities and Mental Health services, for both Adults and Children's social care.
- 2.1.3 Delegate authority to award contracts to the Executive Director of People.

### **3. Reasons for Recommendation**

- 3.1 Given that currently there is no adequate strategy in place for the commissioning and procurement of care and support for adults with learning disabilities and/or mental health needs it is recommended that a Dynamic Purchasing System is approved to start to change the landscape of the market as soon as possible.
- 3.2 Existing arrangements carry significant risks and limitations due to a limited number of providers and the need to have providers that can safely manage individuals with very complex needs. A Dynamic Purchasing System will greatly improve Cheshire East Councils' options and ability to meet the requirements of the Care Act 2014 and meet the needs of local people via appropriate services.
- 3.3 There are no official frameworks or service specifications for Adult Mental Health Services. Therefore this is an area of the market which is largely underdeveloped. This has on many occasions required the Council and Clinical Commissioning Groups to pay higher costs to the local care market, or in some cases has resulted in the need to place people out of area at even greater expense.
- 3.4 Initial soft market testing and engagement has been successful and to date over forty companies have requested to meet with Cheshire East Council with a range of services on offer, and given that Cheshire East Council, like most council's faces a significant financial challenge there is a need to intervene in the market quickly to ensure that not only do we create a vibrant and sustainable market place but that we obtain more cost effective and value for money care and support services.
- 3.5 At present there is a jointly commissioned Learning Disability (LD) framework agreement between Cheshire West and Chester Council, West Cheshire Clinical Commissioning Group and South Cheshire and Vale Royal Clinical Commissioning Group, which is due to expire on the 31<sup>st</sup> March 2018. Due to the significant amount of work involved with the recommissioning process, Cheshire West and Chester are proposing to extend the existing framework model until 30<sup>th</sup> September 2018.
- 3.6 The current Cheshire West and Chester framework commissions 80 providers who provide a variety of services for people with Learning Disability, Mental Health and Autistic Spectrum Disorder, (albeit it is technically only a Learning Disability framework). Services that are currently commissioned include residential care, outreach services and supported living services. At present only 45-55% of the 80 providers are actually bidding for or undertaking work on a frequent and regular basis.

- 3.7 Initial discussions have taken place between Cheshire East Council and Cheshire West and Chester Council around working collaboratively on a joint framework. At this stage no formal agreement has been reached. We also plan to approach Wirral Council to have discussions about the joint framework.
- 3.8 It makes sense to undertake this work collaboratively, as opposed to having multiple frameworks in operation. Having a single framework of Providers across our footprints could provide better leverage when negotiating fees/rates with the market, and could offer better value for money, particularly if we look to commission some services at scale in the future (e.g. highly complex services). Commissioners from Cheshire East Council will continue to consult with neighbouring authorities as part of the co-production of the development of the Dynamic Purchasing System.

#### **4. Other Options Considered**

- 4.1 The demand for care services will be significant over the next few years and we need to sustain and stabilise the markets alongside managing the budget. Therefore doing nothing is not an option.

#### **5. Background/Chronology**

##### **Nature of the service**

- 5.1 Over recent years there has been limited market shaping or development around the market for individuals with a learning disability and or mental health needs and currently many services are still commissioned in a way which inhibits choice and flexibility, they are purchased for individuals outside of any formal commissioning framework, under 'spot purchasing' arrangements, and are often placements located outside of Borough.
- 5.2 The commissioning vision is for individuals to be confident and reassured that they received the right support, in the right place, at the right price to maximise their independence, aid their recovery and build their resilience to remain healthy and safe. There is more work to be done to ensure that local services offer real choice and flexibility to people with learning disabilities and or mental health needs and to enable commissioners to work with providers to tailor and develop services to meet individual need.
- 5.3 This procurement strategy provides an opportunity to explore a more personalised approach, and to improve choice and value for money. The Care Act 2014 introduces new duties on local authorities to facilitate a vibrant, diverse and sustainable market for high quality care and support in their area. The Care Act 2014 states that local authorities must shape the local market to offer people with care and support needs a range of provision, and commissioning and procurement practices must facilitate a diverse range of services to ensure service users have a real choice of personalised solutions.
- 5.4 The contracts, which we currently rely on for most of our local provision, offer limited flexibility and commit the local authority (and service users) to long

periods with incumbent providers, with service developments achieved through traditional contract monitoring. When contracts come to an end, re-procurement processes are lengthy, and involve wholesale changes which lead to a period of uncertainty for providers, the council and service users.

- 5.5 Cheshire East Council needs to consider more flexible approaches to commissioning and procurement that help create a market which is more responsive to individual needs and to evolving commissioning intentions in order to meet the needs of a population that has higher expectations and increasingly complex needs, with budgets that are reducing. This, alongside related projects to develop new local accommodation, support people to move to more appropriate and local services, and transform directly provided services, will help Cheshire East Council to reduce its reliance on out of area provision and help drive better quality, outcomes, personalisation and value.
- 5.6 A Dynamic Purchasing System is a fully electronic procurement instrument. The establishment of a Dynamic Purchasing System follows the restricted procedure. The first stage is the selection process. All providers who meet the minimum requirements of the selection criteria would be admitted to the Dynamic Purchasing System. In the second stage, all providers who have been admitted to the Dynamic Purchasing System will be invited to tender for each subsequent procurement. The specific (anonymised) support packages for one or more service users will be published to all providers admitted to the Dynamic Purchasing System to bid to provide the specific services for which they are registered.
- 5.7 A key benefit of a Dynamic Purchasing System is that there is no limit to the number of providers admitted to the Dynamic Purchasing System, and it remains open for new providers to join or re-apply. This enables the Dynamic Purchasing System to develop and evolve in order to respond to changing demand for and supply of services, whereas a framework closes to any new providers, which limits its flexibility in responding to emerging needs, any market failure and evolving commissioning intentions.

### **Estimated Value**

- 5.8 We currently have 859 individuals with a learning disability and the forecasted spend for 2017/18 is £35 million.
- 5.9 There are 679 individuals with a mental health need and the forecasted spend for 2017/18 is £9 million.
- 5.10 It is not expected that establishing a Dynamic Purchasing System will incur additional costs. Cheshire East Council already purchases The Chest as its e-procurement tool, and the Dynamic Purchasing System function is available within the existing package. Existing staffing resources in commissioning, assessment, brokerage and procurement would be sufficient to set up and manage the new system. Administering a Dynamic Purchasing System would involve a change in practice for some staff currently involved in brokering accommodation and support services.

- 5.11 Once a Dynamic Purchasing System is set up it will be used to purchase care and support for new service users and/or for existing service users as and when their current arrangements come to an end, either because their needs have changed or because the contract for their existing services are coming to an end.
- 5.12 The detail of the criteria for providers to apply to join the Dynamic Purchasing System and for awarding contracts in the second stage is to be determined and will be developed in consultation with local providers, service users and families. The overall intention is that the first stage will be used to select a provider based on their competence and capability including; suitability to pursue this professional activity; economic and financial standing; and technical and professional ability. The intention will be for an outcome-focussed approach to commissioning and purchasing through the Dynamic Purchasing System, rather than setting restrictive ceilings on hourly rates or unit costs, as the latter approach can inhibit innovation and personalisation.
- 5.13 Service users will all have personal budgets and agreed outcomes and providers will be bidding on the basis of their capacity to achieve those outcomes within the agreed personal budgets. Where there is more than one provider who meets the award criteria within budget, we would enable service users and family preference to determine the successful provider. This is in line with the direction of travel for adult social care and health to achieve value for money by a fair and transparent allocation of resources to individuals, giving them a strong voice in how their needs should be met and enabling providers to find innovative solutions to meet need within the available resources.
- 5.14 The overall strategy for people with learning disabilities is to support people to have good health and well-being, to live as independently as possible, to be fully included in our community, to have good access to universal services and to learn, progress and develop throughout their lives. The specification will reflect this and require successful providers to demonstrate an ability to work with people in a proactive way which encourages independence and reduces reliance on specialist services, as appropriate. This will include a requirement to work creatively within service user's allocated personal budgets.
- 5.15 The detail of service specifications, selection criteria and award criteria will be developed over the coming months in co-production with service users, family carers and providers.

## **6. Wards Affected and Local Ward Members**

- 6.1 All wards will be affected.

## **7. Implications of Recommendation**

### **7.1. Policy Implications**

- 7.1.1. No negative impacts are expected.

## **7.2. Legal Implications**

- 7.2.1. The Council has a duty to make arrangements for providing residential accommodation and care for persons who by reason of illness and disability are in need of care and attention which is not otherwise available to them (section 21 National Assistance Act 1948 (as amended). The Care Act 2014 also imposes duties and powers to meet the needs for care and support of eligible adults (sections 18 and 19).
- 7.2.2. The aggregate value of the Dynamic Purchasing System is such that these services must be procured in accordance with the Public Contracts Regulations 2015 and in compliance with the Council's Finance and Contract Procedure Rules. This will require a fully OJEU compliant procurement exercise. The Service is engaging with Legal Services and the Council's Corporate Procurement Team in this process.
- 7.2.3. The procurement is a change to the way services are currently provided and the Service are engaging with stakeholders including service users to co-produce the service specification. Under the Equality Act 2010, the Council is required to identify the impacts of any decisions, policies etc. on certain protected groups to ensure equality is promoted, and inequality minimised. For example, there must be an assessment made of the impacts on groups or individuals who are disabled – including mental health problems, who belong to ethnic or racial groups, on the grounds of age or sex discrimination etc. An Equality Impact Assessment can both assist in evidencing that these equality duties are being met and inform decision taking.

## **7.3. Financial Implications**

- 7.3.1. The recommendation of this report is to approve the procurement strategy for a dynamic purchasing system for learning disability and mental health, care and support services across both Children's and Adults Social Care. The Dynamic Purchasing System will be provided, managed and supported from existing Council resources (systems and staffing) and therefore will not result in a budget pressure for the Council.
- 7.3.2. The move to Dynamic Purchasing System (DPS) will ensure value for money. Any additional cost arising from Care Packages will have to be managed within existing and planned Care budget resources. However shaping the market through the introduction of the DPS should support both Adults and Children's Social Care in delivering its MTFS targets, whilst still meeting its statutory responsibilities.
- 7.3.3. The current forecasted spend for learning disability services for 2017/18 is £35 million.

- 7.3.4. The current forecasted spend for mental health for 2017/18 is £9 million.

#### **7.4. Equality Implications**

- 7.4.1. The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities – including mental health problems, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.
- 7.4.2. An Equality Impact Assessment has been completed. This proposal is not expected to discriminate or have negative impacts on people with protected characteristics. All those people affected will have learning disabilities or mental health needs and many will have additional needs, disabilities and/or other protected characteristics.
- 7.4.3. Procuring services through a Dynamic Purchasing System rather than existing practices will increase choice and control through enabling the use of a personal budget to purchase accommodation with support and will help ensure services are designed around individual needs and preferences, including needs and preferences which are related to protected characteristics.

#### **7.5. Rural Community Implications**

- 7.5.1. No negative impacts are expected.

#### **7.6. Human Resources Implications**

- 7.6.1. No negative impacts are expected.

#### **7.7. Health and Wellbeing Implications**

- 7.7.1. Improved access to personalised services has a positive impact on the mental health and wellbeing of the individual and their family/carers.

#### **7.8. Implications for Children and Young People**

- 7.8.1. The services are targeted at individuals eligible for Adult and Children's social care support, including those individuals in transition to adulthood who have a learning disability and or mental health.



- 7.8.2. The introduction of the DPS will support the SEND (special educational needs and disabilities) Service, in particular the preparing for Adulthood and transition agenda. A joined up approach to commissioning provision across Children's and Adults will ensure a smooth transition and improved outcomes for individual who require care and support services.

## **7.9. Overview and Scrutiny Implications**

7.9.1 None.

## **7.10. Other Implications (Please Specify)**

7.10.1. No other negative impacts are expected.

## **8. Risk Management**

- 8.1. The proposal for a Dynamic Purchasing System will ensure that we are able to manage the market and that there are adequate services in the independent sector to meet current and future needs of local residents.

## **9. Access to Information/Bibliography**

- 9.1. Joint Strategic Needs Assessment, Live Well Cheshire East Commissioning Plan (2017), Cheshire East Market Position Statement (2017).

## **10. Contact Information**

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