

CABINET

14 DECEMBER 2021

GATEWAY 1 PROCUREMENT COMMENCEMENT: RECOMMISSIONING SUPPORTED LIVING SERVICES IN MEDWAY

Portfolio Holder: Councillor David Brake, Portfolio Holder for Adults' Services

Report from: James Williams, Director of Public Health

Author: Liam Bonthron, Senior Commissioning Officer – Adults' Partnership Commissioning

Summary

This report seeks permission to commence the procurement of Supported Living Services in Medway. This Gateway 1 report has been approved by the Procurement Board on 17 November 2021.

1. Budget and Policy Framework
 - 1.1 The local authority is under a statutory duty to provide care and support to eligible adults with identified needs. Under the provisions of the Care Act 2014, Part 1, section 9, local authorities are required to assess “whether the adult does have needs for care and support, and if the adult does, what those needs are.” A needs assessment must include an assessment of the outcomes that the adult wishes to achieve in day-to-day life, and whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes. Where needs have been identified and are considered to be eligible in line with the criteria set out at Part 1, section 13 of the Care Act 2014, including that the adult is requesting support from the local authority to meet those needs, the Council has a duty to consider how it may meet those needs. ¹
2. Background
 - 2.1 Total Contract Value (estimated): £60.460m
Duration: 4 years
 - 2.2 The Department of Health and Social Care (DHSC) sets out policy on the provision of learning disability services, and the National Institute for Clinical Excellence (NICE) sets out guidance for the provision and

¹ <https://www.legislation.gov.uk/ukpga/2014/23/section/9/enacted>

commissioning of learning disability services. The most up to date guidance, “Learning disabilities and behaviour that challenges: service design and delivery”, was published on 28 March 2018. The guidance recommends that services should be commissioned in the community for people with a learning disability that are able to cater for people with lower-level needs up to intensive, complex or fluctuating needs, and that, wherever possible this provision should be provided as an alternative to residential care placements for children and young people. The guidance recommends that services are designed and delivered in a way that aims to maximise people’s choice and control, promote person centred care, help people take an active part in all aspects of life that they choose, to help people as soon as problems emerge and not just when crisis has been reached, and to promote continuity of relationships. ²

2.3 The DHSC has also set out the Transforming Care programme in 2012. The programme was refreshed in 2015, with a national plan ‘Building the Right Support’ published in 2015. This set out a continued commitment to reducing the number of people with learning disabilities who are cared for in inpatient units in mental health hospitals and set a target of reducing the number of beds for people with a learning disability in mental health hospitals by 35% to 50%. This highlights a further future need for more services to be provided in the community to meet the needs of these people with learning disabilities who need support, who will be leaving hospital, or for intervention so that they do not require admission. ³

2.4 The Medway Joint Adult Learning Disability Strategy 2019-24, which was co-designed with a range of stakeholders including people with learning disabilities and their families and carers, sets out the vision for reducing inequalities and improving outcomes for people with learning disabilities in Medway. The Strategy directly highlights existing inequalities and details how people with learning disabilities will be supported to live the life they choose; with the support they need in their local community.

2.5 The strategy states that positive outcomes should be achieved through delivery of ten key priorities, effective management, strengthened commissioning and continued partnership with stakeholders in co-designing delivery plans. It is noted that this strategy is currently under review due to changes in the workforce, a restructuring of local Clinical Commissioning Groups (CCGs), and the impact of the Covid pandemic).

2.6 All services will be commissioned in accordance with Medway Council’s strategic priorities and Council Plan. ⁴

2.6.1 Medway Council’s adult social care priorities include:

- Prevention: Working to promote wellbeing and independence before people reach crisis point
- Participation and partnerships: to involve service users, carers and key organisations

² <https://www.nice.org.uk/guidance/ng93/chapter/Recommendations>

³ <https://www.england.nhs.uk/wp-content/uploads/2015/10/ld-nat-imp-plan-oct15.pdf>

⁴ <https://www.medway.gov.uk/info/200138/your-council/342/the-council-plan/1>

- Personalisation: helping people to maximise independence, choice and control over their lives
- Integration: to give an individual a clear plan that is supported by all agencies working together
- Innovation: making the best of the opportunities that new technology can provide
- Safeguarding: making sure people are protected from abuse, neglect or exploitation and that their views inform any action taken.

2.6.2 Services will also be commissioned following the guidance in the 'Statutory guidance for Local Authorities and NHS organisations to support implementation of the Adult Autism Strategy' and implementing the strategy laid out in 'The national strategy for autistic children, young people and adults: 2021 to 2026'.

3. Service Background Information

- 3.1 The Care Act statutory guidance states that 'high quality, personalised Care and Support can only be achieved where there is a vibrant, responsive market of services available'.
- 3.2 Medway Council currently operates a Dynamic Purchasing System (DPS) through which Supported Living services for residents with a learning disability, physical disability, or mental health condition are purchased. This contract commenced in June 2015.
- 3.3 A DPS is a two-stage contract whereby providers are pre-approved (stage 1) and will bid for opportunities/packages via a tender/mini competition (stage 2) as they become available.
- 3.4 Supported Living is a concept that was developed in the 1990s as an alternative to institutional care. The main principles are that people with a need for care and support own or rent their home and have control over the support they receive, who they live with (if anyone), and how they live their lives. There is no formal definition of Supported Living.
- 3.5 In Medway, Supported Living services provide support to individuals with an assessed need. The support is provided in the individual's home, which could be owned by the cared for, or more likely they will be living in rented accommodation with a short-term tenancy agreement. Supported living clients are typically 18-64 and living with a learning disability, autism, physical disability, mental health condition, or substance misuse. At the lower end Supported Living can look very similar to Housing Support – 2 or 3 hours of support per week, whereas complex individuals could be receiving 24 hours care per day with 2:1 or 3:1 care throughout the day.
- 3.6 The care element of a supported living package is usually funded from Adult Social Care budgets, the accommodation element from housing benefit, and food and other personal items are paid for by the individual – the care provider will support the client with their personal finances and managing their budget.

3.7 The REACH standards are a set of voluntary standards recommended by the Care Quality Commission (CQC) 'Registering the Right Support 2017' that introduce the fundamental principles of Support for Living. They remain the only nationally recognised standards underpinning 'supported living'. The nine standards are:

- I choose who I live with
- I choose where I live
- I have my own home (with a tenancy or ownership)
- I choose who supports me and how I am supported
- I choose my friends and relationships
- I get help to make changes in my life
- I choose how to be healthy and safe
- I choose how I am part of the community
- I have the same rights and responsibilities as other citizens⁵

3.8 The DPS originally comprised of 15 providers. The DPS was set up with rate caps of £12.15 per hour (standard) and £14.15 per hour (enhanced). By 2019 the Placement Team were unable to source services from DPS registered providers as the capped rates had become untenable. As a result, the Placement Team were forced to spot purchase services as the pool of available providers was limited.

3.9 Since the removal of the price caps, there has been increase in the number of people using the service.

3.10 In 2020/21 Medway Council spent £14.5million on supported living placements, this represents an increase of 55% from expenditure in 2018/19. Expenditure for 2021/22 is currently forecast to increase further to around £16.6million.

Year	Learning Disability (£000)	Physical Disability (£000)	Mental Health (£000)	Total (£000)
2018/19	6,965	959	833	8,757
2019/20	7,900	1,147	979	10,026
2020/21	9,777	1,214	2,589	13,580

3.11 During the same period, the number of people using the service has also increased by 27%, from 243 to 308

Year	People using service
2018/19	243
2019/20	257
2020/21	308

3.12 In 2019 the rate cap was removed in response to the difficulties in sourcing services. This was intended to create a more competitive market and increase the number of providers available. The DPS was opened to any provider who wished to join, and Medway Council took

⁵ <https://paradigm-uk.org/what-we-do/reach-support-for-living/>

the position that services would only be spot purchased in exceptional circumstances.

- 3.13 Since removing the rate caps, a further 22 providers have been approved to join the DPS.
- 3.14 Supported living services in Medway should be focused on service user outcomes, and the achievement of these outcomes through good quality care and support. We envisage a service with a vibrant competitive marketplace, where all providers are working with their service users and their families/support groups to meet short, medium, and long-term targets.
- 3.15 The key objectives to be achieved through this procurement are:
- Improved offering to service users
 - More choice in the market
 - Outcomes focused care leading to greater independence
 - Financial efficiencies across the system
 - Greater independence leads to reduction in support hours
 - Providers encouraged to share resources
 - System wide transparency in the delivery of care
 - Peer challenge and review
 - Openness in the cost of care
 - Long term planning
 - Support the transition to adulthood
 - Improved ability to life plan
- 3.16 The new service will be commissioned as DPS and kept open to new providers throughout the life of the contract.

4. Timetable

- 4.1 The two-year extension built into the DPS contract has already been exercised. The re-commissioning of this service was delayed due to the COVID pandemic. Commissioners are keen to commence this procurement exercise and so minimise any further delays. The proposed project timetable is outlined below:

Project phase	Action	Date
Gateway 1	CADMT	Oct 21
	Procurement Board	Nov 21
	Cabinet	Dec 21
Service Specification	Internal engagement	Oct 21 - Jan 22
	External engagement	Nov 21 – Jan 22
	Service user engagement	Nov 21 – Dec 21
	Finalise specification	Jan 22
Tender	Invite tenders	Jan – Feb 22
	Tender evaluation (stage 1)	March 22
Gateway 3	CADMT	March 22
	Procurement Board	March 22
	Cabinet	April 22
Contract Award	Notification and award	April 22
Mobilisation		May – June 22
Implementation	Service Go Live	13 June 2022

4.2 Funding/Engagement from External Sources

- 4.2.1 These services are funded from existing adult social care budgets.
- 4.2.2 Where an individual receives Continuing Health Care funding, Kent and Medway CCG will have an agreed funding plan in place for a percentage of the cost.

4.3 Parent Company Guarantee/Performance Bond Required

- 4.3.1 Parent Company Guarantee or Performance Bond is required for all Supplies (Goods), Services and Works contracts, over £250K unless otherwise agreed by the Council's Monitoring Officer in conjunction with the Council's Chief Finance Officer as part of the Procurement Gateway Process.
- 4.3.2 Commissioners request that the requirement for a performance bond be waived for this procurement on the basis of the additional costs to bidders who may be deterred from participating in the procurement process. Most individual packages of care should fall below £250K. A Parent Company Guarantee would be requested from any successful organisation which has a Parent Company.

5. Procurement Dependencies and Obligations

5.1 Project Dependency

- 5.1.1 The proposed service model is dependent on the existence of a brokerage service that refers supported living packages to providers. The existing placement function within Medway Council for Adult Social Care services is The Brokerage Team.
- 5.1.2 Providers wishing to be accepted onto the DPS will be required to use the provider portal bolt-on to Mosaic to support with electronic invoicing. This system upgrade is currently being implemented, and should be in place shortly after the go-live date.
- 5.1.3 The costings of all new supported living packages will be confirmed through CareCubed. Costs which fall outside agreed parameters, will be subject to further scrutiny. CareCubed is a secure online tool that helps calculate the fair cost of specialist care placements, it is the successor of the Care Funding Calculator.

5.2 Statutory/Legal Obligations

- 5.2.1 The Council has a range of statutory duties and powers to provide services to vulnerable adults such as older people, people with learning disabilities, physically disabled people and people with mental health conditions. The purchasing of Supported Living services is one of the fundamental ways in which this statutory duty is performed.
- 5.2.2 The Care Act 2014 and statutory guidance forms the basis of statutory duties for Local Authorities, replacing the National Assistance Act 1948, the Chronically Sick and Disabled Persons Act 1970, and the NHS and Community Care Act 1990.

- 5.2.3 A fundamental principle of the Care Act 2014 places emphasis on promoting an individual's wellbeing by ensuring care and support provided meets the individual's identified outcomes.
- 5.2.4 Supporting people to live as independently as possible, for as long as possible, is a guiding principle of the Care Act. Under the Act, Local Authorities can provide or commission services in a variety of ways, including through a Direct Payment, to meet the needs of those it assesses as eligible for services.
- 5.2.5 When arranging services, local authorities must ensure commissioning practices and the services delivered comply with the requirements of the Equality Act 2010, the Mental Capacity Act 2005 and the Human Rights Act 1998.
- 5.2.6 Supported living is only provided where there is an assessed need for the service and a financial assessment is made to determine the contributions towards the cost of care payable by the service user. The assessments are in line with Medway Council's eligibility criteria.

6. Business Case

6.1 Procurement Project Outputs / Outcomes

As part of the successful delivery of this procurement requirement, the following procurement project outputs / outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
Provider capability / competence	Performance and compliance visits, provider reports, service user surveys and feedback, service user outcomes	Partnership Commissioning, Business and Intelligence Team, Social Work Team, Quality Assurance Team	Tender evaluation and contract award, contract management meeting, annual service user satisfaction survey
Encourage service user independence	Identifying and working towards short-, medium- and long-term targets.	Providers, Social Workers, Partnership Commissioning, Service Users and their families,	Service user assessment Provider – ongoing LA - annual
A service that meets the needs of Service Users	Feedback from service users and their families. Evidence that service users and families are involved in planning care. Evidence that complaints are dealt with effectively.	Social work teams, Partnership Commissioning, Quality Assurance Team	Annual service user satisfaction survey, care plan evaluation, annual assessment
A service that demonstrates that service users are making constant progress towards their outcome targets	Providers required to complete regular progress survey for each client	Partnership Commissioning, Social workers at annual review	Contract management meetings Regular use of data analysis tool

6.2 Procurement Project Management

- 6.2.1 The commissioning process will be led by the Adults Partnership Commissioning Team with support from Category Management.
- 6.2.2 The Adults Partnership Commissioning Team working in conjunction with social care colleagues will take responsibility for the design of a detailed service specification. A panel of relevant internal stakeholders will evaluate tender submissions.

6.3 Post Procurement Contract Management

- 6.3.1 Medway Council will be responsible for contact managing the service. Adults Partnership Commissioning will hold regular contract management meetings with all providers. The Quality Assurance Team will conduct annual site visits to ensure the quality of service provision and validate performance data.
- 6.3.2 The provider will review each person they support at regular intervals and report on several key metrics, including identified targets/outcomes, physical health and mental health.
- 6.3.3 Medway Council will undertake an annual client satisfaction survey, results of which will be shared with providers to further inform quality assurance and contract management processes.

7. Market Conditions and Procurement Approach

7.1 Market Conditions

- 7.1.1 Removing the price cap for supported living, and position to only purchase services from DPS providers where possible has led to healthy marketplace. As a result, the number of approved providers has risen from 15 to 37. Commissioners are regularly approached by external providers seeking to set up new provisions.
- 7.1.2 The Brokerage Team still find it challenging to source services for people with complex or challenging needs and or behaviours. This procurement process will seek to develop the market in these areas.

7.2 Procurement Options

- 7.2.1 Option 1 – Do nothing: Due to the contract extension already exercised this would see services continue without a formal contract in place.
 - Advantage: Allows more time to design, commission and procure services.
 - Disadvantage: If the DPS does not remain open there is a risk of provider challenge. Similarly, if contractual controls over providers are limited then we cannot be assured of quality.
- 7.2.2 Option 2 – Insource: Medway Council to provide the services required.

- Advantage: May provide some long-term savings in terms of cost of package of care, once initial set-up costs had been recouped.
- Disadvantage: Medway Council, as the sole provider, do not have access to the staff or housing resources required to set this up. Would take too long to set up.

7.2.3 Option 3 – Contract: Operate the service with contracted provider(s).

- Advantage: Simpler contract management – known pool of providers, flexibility in the system for service users.
- Disadvantage: Lack of choice for service users, lack of specialisms, difficult to agree rates with variation of conditions and behaviours, risk of services lacking innovation. Limits the ability to add additional providers and shape services in response to local pressures.

7.2.4 Option 4 – Medway Council to commission a New Dynamic Purchasing System (DPS) framework: Recommission a new framework, with easy sign-up process, to be kept open throughout the life of the contract.

- Advantage: Continuation of what is in place, competitive pricing through market forces, variation of specialisms leading to diverse and varied offer of services.
- Disadvantage: No fixed price or volume, however the DPS model seeks to mitigate this disadvantage.
- **This is the preferred option.**

7.2.5 Other considerations

- Contract extension – this contract has already been exercised.
- Procurement via existing framework – there are no known suitable frameworks.

7.3 Procurement Process Proposed

7.3.1 The Restricted Procedure will be used to set up the Dynamic Purchasing System in accordance with the Public Contracts Regulations (2015).

7.4 Evaluation Criteria

7.4.1 Admission to the DPS will be in two stages. The initial stage will confirm the provider as a fit and competent organisation to provide supported living services (100% quality), the second stage will be a mini competition for a specific care package. Decision to award at this stage will be based on ability to meet assessed need, service user choice, and cost. (Quality 65%, Cost 35%).

7.4.2 To be admitted onto the DPS (stage 1), providers will need to meet all the required criteria, including (but not limited to):

- Experience
- Quality
- Finance
- Quality Assurance
- Health and Safety

8. Risk management

8.1 Risk Categorisation

Item	Risk Description	Risk Category	Likelihood	Impact	Plans to Mitigate
1.	Failure to attract enough providers, leading to lack of competition	Procurement	Low	Marginal	Removing price caps two years ago led to a surge of new applicants to join the DPS. Confident that market forces will ensure that there is always competition, but where providers fail to come forward, spot purchasing will be an option.
2.	Provider failure	Contract delivery	Significant	Critical	Commissioners will work in partnership with providers to ensure early identification of issues Contract management will be robust and performance reviews will be conducted regularly
3.	Financial – rates paid to providers are not sustainable	Service model	Low	Critical	Without price caps providers are responsible, to some degree, to set their own rates – we would expect to only award where competitively priced. All package prices run through Care Cubed – outliers of main body to be subject to further scrutiny.
4.	Overpopulated marketplace – too many providers on DPS, providers not sustainable due to low numbers of packages	Service model	Significant	Critical	Providers should always be free to enter market to ensure competition. New placements to undergo sustainability checks around the placement property. Key element of the specification will be around management of voids.

Item	Risk Description	Risk Category	Likelihood	Impact	Plans to Mitigate
5.	Service fails to deliver required outcomes	Service model / reputational	Low	Critical	Regular contract management meetings, performance review meetings, individual care review meetings.
6.	Service disruption as a result of Covid pandemic – potential for further delays	All	High	Critical	Regular contract meetings, regular updating and monitoring of business continuity plans

9. Consultation

9.1 Internal (Medway) Stakeholder Consultation

9.1.1 Once outline service model is agreed (DPS), we will develop a specification further in consultation with a working group of identified internal stakeholders. To include (but not limited to): Children's Commissioning, Housing, Transition Team, Adult Social Care, Quality Assurance, Brokerage Team, Finance, Legal and Systems.

9.2 External Stakeholder Consultation

9.2.1 Simultaneous to Internal Stakeholder Consultation, we will also reach out to external stakeholders and providers for their input into the specification to co-produce services that work for all parties. This will be achieved through the creation of a provider/stakeholder working group.

9.2.2 Neighbouring authorities will be consulted to create solutions and protocols for the allocation of shared hours when residents are funded by different authorities.

9.2.3 Community organisations will be consulted to ensure that providers are fully aware of their presence and offering, and how service users can best to access these resources.

9.2.4 Service users and their families will be asked to give their thoughts and views on current services as well as feedback about how services should be shaped as part of the new contract. We will engage with this people through one to one and group virtual consultations (using Teams or Zoom), carry out a bespoke survey and ensure representation from the Parent Carer Forum in the relevant working groups.

10. Financial implications

10.1 The procurement requirement and its associated delivery (as per the recommendations at Section 14), will be funded from existing revenue budgets.

10.1.1 Further detail is contained within Section 2.1 Finance Analysis of the Exempt Appendix at the end of this report.

11. Legal Implications

11.1 Medway Council has the power under the Local Government (Contracts) Act 1997 and the Localism Act 2011 to enter into contracts in connection with the performance of its functions.

11.2 The process described in this report complies with the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules.

12. Other Implications

12.1 TUPE Implications

12.1.1 TUPE will not apply to this procurement process.

12.2 Procurement Implications

12.2.2 The current DPS has expired and requires renewal. The DPS is governed by Public Contracts Regulations (2015). An initial 4-year duration for the DPS has been proposed, however this can be extended provided it is done so within the 4-year period and subject to internal approvals.

12.3 ICT Implications

12.3.2 Not applicable.

13. Other Considerations

13.1 Diversity & Equality

13.1.1 Providers' diversity and equality policies and procedures will be reviewed to ensure that they meet necessary requirements. Commissioners will work with appointed service providers to achieve conformity to Medway Council's Equality and Diversity Strategy and Safeguarding Children & Vulnerable Adults Procedures.

13.2 Social & Economic Considerations

13.2.1 The Public Services (Social Value Act) 2012 requires all public bodies to consider how the services they commission might improve the economic, social and environmental wellbeing of the area. As part of this procurement, social value themes, outcomes and measures will be set out in the service specification and tender documents. Provider commitments will be captured in tender responses and verified through performance monitoring.

13.3 Environmental Considerations

13.3.1 Medway Council has a climate change action plan⁶ which will develop further over the coming years. All providers accepted onto the DPS will be required to implement and adhere to the plan's recommendations.

13.3.2 Providers being accepted onto the DPS will be required to have an environment policy. This policy should align with Medway's declared ambition to become carbon neutral by 2050.

⁶ <https://www.medway.gov.uk/climatechangeplan>

13.3.3 Recommissioning of supported living services is not expected to adversely affect Medway Council's Local Plan priority for a clean and green environment.⁷

14. Recommendation

14.1 The Cabinet is recommended to approve the commencement of the project to recommission Supported Living Services in Medway, as set out in paragraph 7.2.4 to the report.

15. Suggested reasons for decision

15.1 To fulfil the Council's obligations under the Care Act (2014)

15.2 To ensure that Medway residents are supported to live fulfilled and enriched lives.

15.3 To continue to ensure best value for money for provision of these services.

Lead Officer Contact

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Appendices

Exempt Appendix 1 – Financial Analysis

Background Papers

The following documents have been relied upon in the preparation of this report:

Description of Document	No	Location	Date
Care Act	1	https://www.legislation.gov.uk/ukpga/2014/23/section/9/enacted	21/10
NICE Guidance	2	https://www.nice.org.uk/guidance/ng93/chapter/Recommendations	21/10
Building the right support	3	https://www.england.nhs.uk/wp-content/uploads/2015/10/ld-nat-imp-plan-oct15.pdf	21/10
The Council Strategy and Plan	4	https://www.medway.gov.uk/info/200138/your_council/342/the_council_plan/1	21/10
Reach support for living	5	https://paradigm-uk.org/what-we-do/reach-support-for-living/	21/10
Climate Change Plan	6	https://www.medway.gov.uk/climatechangeplan	21/10

⁷ https://www.medway.gov.uk/info/200387/council_plan

Description of Document	No	Location	Date
Medway Council Plan	7	https://www.medway.gov.uk/info/200387/council_plan	21/10