



**Cabinet**  
20 January 2016

**Report from the Strategic Director,  
Community Well-being**

Wards affected: ALL

**Authority to participate in the joint procurement of a Dynamic Purchasing System for Residential, Nursing And Supported Living Care Placements**

**1. Summary**

1.1 This report requests approval for Brent Adult Social Care to participate in a collaborative procurement with the West London Alliance (WLA) for the establishment of a dynamic purchasing system for provision of residential, nursing and supported living accommodation and care home placements. The proposed procurement is to be led by the London Borough of Ealing therefore approval is also sought for using Ealing's contract standing orders and financial regulations as per Contract Standing Order 85.

**2. Recommendations**

2.1 That Cabinet give approval to the Council to participate in WLA collaborative procurement led by the London Borough of Ealing to establish a dynamic purchasing system (DPS) for residential, nursing and supported living care services led by London Borough of Ealing.

2.2 That Cabinet give approval to the procurement detailed in 2.1 being exempt from the normal requirement of Brent Council's Contract Standing Order and Financial Regulations for good operational and/or financial reasons in accordance with the Contract Standing Order 84(a) and 85(c).

2.3 That Cabinet give approval to the pre-tender considerations set out in 4.0 of this report that will be applied to select the DPS providers and used to award individual contracts.

**3. Detail**

3.1 The WLA is a partnership between the London Boroughs of Brent, Barnet, Hounslow, Harrow, Hillingdon, Kensington and Chelsea, Hammersmith and Fulham and Westminster (the WLA members).

3.2 The WLA has in the past jointly procured an approved list for the provision of residential and nursing care homes on behalf of participating Adult Social Care departments, primarily for people aged over-55. Current providers met approved admission criteria and

agreed to provide placements in line with a series of WLA usual fees for 4-years. Providers benefited from both a level playing field and a significantly larger marketplace; in return, they provided placements that delivered value for money for the participating boroughs. The existing approved list expires on 28.02.2016.

- 3.3 Following a service review and options appraisal, WLA members have agreed that a joint collaboration for the provision of residential and nursing care homes continues to be advantageous to members and for the market-place. It has been agreed that any scheme should include supported living provision to enable it to cover the majority of accommodation based provision to working age and older adults in line with The Care Act 2014. Inclusion of supported living provision to such scheme ensures these services are subject to the same level of vetting and monitoring to promote good quality services.
- 3.4 It has been agreed by the WLA members that a Dynamic Purchasing System (DPS) offers more benefits to members and the market than an approved list or a framework agreement. The primary advantage of using a DPS model is that new providers can apply to be added to the DPS throughout the period that it is operational ensuring a maximised approved provider list from which purchases can be made.
- 3.5 The DPS will ensure that successful providers and the Council will be working within a structured legal framework, which is more robust than spot purchasing and more cost effective than block contracting. This model will support the Council to manage the cost of the service as payment is only for services purchased and will be at standardised rates within the DPS. This model is anticipated to encourage diversity of local provision and create a level of provider stability which may build capacity within the market. Thus, it provides the best option for achieving value for money and will allow the use of different providers based upon their areas of specialism.
- 3.6 It is acknowledged that Brent has recently undertaken procurement for a DPS for local Accommodation Plus Services largely related to the New Accommodation for Independent Living (NAIL) project. It is recommended that Brent participates in all lots (residential, nursing and supported living) for this joint procurement despite having a current DPS for supported living locally. This will enable Brent to call upon supported living provision external to the Borough when required (e.g. service user requests to be in greater proximity to family members based out of borough).
- 3.7 The previous Accreditation, Purchasing and Contract Management Scheme ("APC1") approved list procurement was lead and procured by the London Borough of Ealing. It was agreed within the WLA that a lead Borough for the procurement continues to be the best way of completing the procurement. London Borough of Ealing was agreed by the WLA to act as the lead agency and central purchasing authority for the purpose of the procurement of the DPS. Directors of Adult Social Care across the WLA and Brent's Strategic Director, Community Well-being will sign a Memorandum of Understanding setting out full details on which Ealing will lead on the procurement. As the London Borough of Ealing is leading on the procurement on behalf of all the WLA boroughs, it is proposed to use the London Borough of Ealing's Standing Orders for the procurement process in order to avoid duplication of work and duplication of costs.
- 3.8 It is proposed that the DPS will be operational for a period of 4 years from 01.09.2016 to 31.08.2020. In the 6 month interim period between the end of APC1 in February 2016 and the commencement of the DPS in September 2016, Brent Council will use spot-purchase contractual arrangements with providers, continuing to use the same terms and conditions as was used for contracts under APC1. This has been discussed and agreed by Legal Officers as legally permissible.

3.9 Officers consider that there are good financial and operational reasons to participate in a collaborative procurement. There is insufficient residential, nursing, and supported living accommodation within Brent to meet the needs of the vulnerable people the Council serves. Under the DPS, officers will be able to access specialist accommodation, using pre-agreed price bandings with clear service standards across the West London area. This will support requirements under the Care Act 2014 to offer personalised services taking account of family and social networks. In addition the Council will reserve the right to seek care placements outside the DPS should the need arise.

3.10 It is expected that participating in the DPS will benefit the Council by managing rising care costs and providing greater choice for individuals who require specialist placement. On that basis and given the London Borough of Ealing are leading on the procurement, approval is sought for this collaborative procurement to be exempted from the normal requirements of the Council's Contracts Standing Orders.

#### 4. The Tender Process

4.1 It is proposed by the WLA Members that subject to relevant approvals, advertisements will be placed in the Official Journal of the European Union (OJEU), the London Tender Portal and on Contracts Finder on 1<sup>st</sup> March 2016 to seek initial expressions of interest for a number of different areas/categories of service. These will be divided into the following Lots and Elements:

<i>Lots</i>	Nursing Care Home	Residential Care Home	Supported Living Accommodation
<i>Elements</i>			
Frail Older Person	✓	✓	✓
Dementia	✓	✓	
Learning Disability	✓	✓	✓
Physical Disability	✓	✓	✓
Mental Ill Health	✓	✓	✓
Respite	✓	✓	

4.2 In accordance with the Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the Cabinet:

Ref.	Requirement	Response
(i)	The nature of the service.	A Dynamic Purchasing System (DPS) for the provision of residential care, nursing home and supported living placements for all vulnerable adults.
(ii)	The estimated value	Total estimated value of the DPS across participating WLA members: £114.000m  Total estimated value of contracts procured by Brent Council under the DPS: £25.9m.  Please see section 5.2 and 5.3 for spend breakdown.
(iii)	The contract term	4 years (2 years with an option to extend by a further 2 years).
(iv)	The tender procedure to be adopted.	Restricted (two stage) tender undertaken and lead by Ealing Council on behalf of all participating WLA

		boroughs.
(v)	The procurement timetable	<p>Indicative Dates Are:</p> <p>Advert to released: 01<sup>st</sup> March 2016  Expressions of interest returned: 31<sup>st</sup> March 2016  Invitation to tender issued: 09<sup>th</sup> May 2016  Deadline for tender submissions: 02<sup>nd</sup> June 2016  Evaluation &amp; Selection: w/c 06<sup>th</sup> June 2016  Cabinet approval to award: July 2016  Contract start date: 01<sup>st</sup> September 2016.</p>
(vi)	The evaluation criteria and process	<p>At selection (pre-qualification) stage shortlists are to be drawn up in accordance with the London Borough of Ealing's policies and procedures which, like Brent's own policies, aims to identify organisations that meet mandatory financial standing, technical capacity and experience standards..</p> <p>At tender evaluation stage for procurements under the DPS, evaluation will be against criteria and weightings agreed by the Cabinet of London Borough of Ealing. Brent Council will participate in the evaluation at Pre-Qualification stage, Brent Council will evaluate at Invitation to Tender stages for procurements under the DPS.</p>
(vii)	Any business risks associated with entering the contract	<p>The DPS procurement offers the opportunity for Care Provider's to submit new costs for each tender call off which may lead to the establishment of a higher average cost of care placements when assessed against their indicative market rate provided at the time of their appointment to the DPS.</p> <p>Mitigations are provided within 5.4 to 5.7 of this report.</p>
(viii)	The Council's Best Value duties.	The competitive procurement of a DPS supports the Council's Best Value duties.
(ix)	Consideration of Public Services (Social Value) Act 2012	Social Value will be criteria that will be built into the tender evaluation stage.
(x)	Any staffing implications, including TUPE and pensions.	None
(xii)	The relevant financial, legal and other considerations.	See sections 5 and 6 below.

## 5. Financial Implications

5.1 Ealing Council will be leading and undertaking the procurement of the DPS on behalf of the West London Alliance participating boroughs. Each borough will contribute approximately £4,000 as a one off cost to the legal and procurement costs of establishing the DPS.

5.2 It is anticipated that the value of the DPS across participating WLA members for the 4 year contract duration will be £114.0m.

5.3 The cost of new placements for residential, nursing and supported living for 2014/15 was £9.7m. The estimated annual contract cost for Brent is estimated at £7.4m as placements spend is expected to reduce significantly with the continued implementation of the New Accommodation of Independent Living (NAIL) project through 2015/16 and for the duration of the contract period.

#### Mitigating Financial Risks

5.4 In terms of the council containing placement spend through this contract, the major financial risk comes through the increasing challenges with the placement market regarding the sustainability of Brent's current prices for care. Care home and supported living placement prices are anticipated to rise from April 2016 onward – driven by factors outlined below.

- Increasing overheads driven by inflation, new national minimum / living wage increases set from 2015 to 2020 as well as Brent's commitment to be a London Living Wage borough.
- Pension reform and new care certificate training requirements that have resulted in a challenging financial climate for care providers.

5.5 It is unclear at this stage what the full extent of the financial impact on local authorities will be. However, using the assumptions outlined above, Brent's potential spend on placements procured via the DPS scheme will be higher by 2020 as compared to current 2015-16 prices to ensure that factors above are met and that there is a sustainable local care market as per the duty under section 5 of The Care Act 2014.

5.6 Financial impact modelling is being undertaken via the London (ADASS) Commissioners Network and will be reported to Cabinet in due course. It is likely that the London-wide modelling will recommend a banded pricing structure for future placement and home care purchases. The procurement of the DPS will be informed by appropriate benchmarking of price bandings for the duration of the contracts, to take into account the known inflationary pressures.

#### Budget

5.7 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £250,000 shall be referred to the Cabinet for approval.

5.8 Adult Social Care will seek to manage the cost of residential, nursing and supported living placements within the allocated annual revenue budgets for the duration of the contract.

5.9 Placement spend is monitored as part of the council's budget monitoring process and associated costs with this contract will form part of this monitoring from the contract's inception.

### **6. Legal Implications**

6.1 Contracts for provision of residential care, nursing home and supported living placements fall within Schedule 3 of the Public Contracts Regulations 2015 ('PCR 2015'). In procuring such services, where they are above the EU threshold for services (currently 750,000 Euros (£589,148)), contracting authorities are required to publish a contract

notice or PIN as a call for competition in the OJEU in the usual way and a contract award notice once the contract has been awarded. A restricted procurement procedure must be used for the procurement of a DPS.

6.2 The DPS will be established through a collaborative procurement exercise to be undertaken on behalf of the Council and the other WLA Members by the London Borough of Ealing in accordance with the requirements of the EU procurement regulations as detailed in this report.

6.3 As the estimated value of the services which the Council would call off under the DPS agreement during its lifetime is in excess of £250,000, it is subject to the requirements of the Council's Contract Standing Orders (CSO) in respect of High Value Contracts. CSO 85 provides that any collaborative procurement shall comply with the Council's Standing Orders and Financial Regulations unless in the case of High Value Contracts, the agreement of the Cabinet is obtained under the CSO No 84(a). Exemption under CSO No 84(a) can be approved by the Cabinet where there are good operational and / or financial reasons, and these reasons are set out in paragraph 3.7 and as detailed in this report.

6.4 Under section 5 of the Care Act local authorities are under a general duty to promote the effective operation of a market in services for meeting care and support needs with a view to ensuring that those in its area have access to a variety of high quality providers to choose from. Provision of the DPS will facilitate the Council to meet this duty by purchasing care under a legal framework which ensures effective monitoring of the financial sustainability of Provider's and the quality of the service they are providing.

## **7. Staffing Implications**

7.1 Services are currently provided by external contractors and there are no implications for Council staff arising from the procurement of the DPS.

## **8. Diversity Implications**

8.1 The proposals in this report have been subject to an Equality Assessment screening; please see Appendix 1. Officers believe that there are no negative diversity implications. By participating in a multi-borough procurement, there will be greater access to providers offering services that meet the needs of our diverse population at a negotiated rate.

## **9. Public Services (Social Value) Act 2012**

9.1 Since 31<sup>st</sup> January 2013, the Council, in common with all public authorities subject to the EU Regulations, has been under duty pursuant to the Public Services (Social Value) Act 2012 to consider how the services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the council might act with a view to securing that improvement and whether the council should undertake consultation. This duty applies to the procurement of the proposed contract as Services over the threshold for application of the EU Regulations are subject to the requirements of the Public Services (Social Value) Act 2012.

Current service users and their families state that remaining close to friends and family is an important consideration when choosing the right care home. The procurement will be open to all providers who meet the minimum requirements; sessions will be held in advance of placing the OJEU Notice to assist SME providers in correctly completing the

documentation to give them the greatest opportunity to join the DPS. This will support the sustainability of a diverse local market, maximising the options available locally.

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## **Appendix 1: West London Alliance APC2 Dynamic Purchasing System Equality Assessment**

The proposal is to establish a Dynamic Purchasing System (DPS) for Residential and Nursing Care Home accommodations and Supported Living accommodations. The DPS will replace the current APC1 Framework procured in combination with The West London Alliance, which terminates in February 2016.

The procurement of the Dynamic Purchasing System is to be completed in combination with The West London Alliance (WLA), known as APC2. Ealing Council is undertaking the procurement of the DPS on behalf of the WLA. Permission is to be sought from Cabinet for Ealing Council to undertake the procurement on behalf of Brent Council.

It is anticipated that the APC2 DPS will be operational from September 2016. Brent Council will use spot purchasing arrangements per service user referred to purchase Residential, Nursing and Supported Living care home placements between February- September 2016.

The DPS is a procurement tool which in this case will provide a legal framework for purchasing residential, nursing and supported living placements. Residential, Nursing and Supported Living Provider's who meet the procurement criteria will be awarded a place on the DPS should they meet the criteria set out in the tender process. Providers will be called off the DPS when residential, nursing and supported living placements are required for clients assessed as eligible for and needing placement .

The DPS is being procured within The West London Alliance so that prices and quality are consistent across this region.

### **Equality Assessment Analysis**

5. What effects could your policy have on different equality groups and on cohesion and good relations?

5.1 Age (*select all that apply*)

Neutral

Positive

The procurement of the WLA APC2 DPS system will have a neutral impact on age as a protected characteristic. The DPS will include providers of residential and nursing care homes and supported living services to adult's age 18+ who meet the eligibility criteria for residential and nursing care home support and supported living services.

The residential, nursing or supported living services purchased from the DPS will be based upon the assessment of the individual's needs as completed by a social worker or care assessor. The individual will be involved in the planning of their care home arrangements. The selected provider and allocated worker will work together to ensure that the service meets any needs arising from the individual's age; such as older age related frailty to ensure the accommodation and care meets these needs .

The residential, nursing or supported living services purchased from the DPS will be based upon the needs assessment of the individual who is to receive the service as completed with



them and their circle of support by their allocated worker (social worker or care assessor). The individual will be involved in the planning of their care home arrangements. The selected provider and allocated worker will work together to ensure that the service meets any needs arising from the individuals age; such as older age related frailty to ensure the accommodation and care meets these needs .

The DPS will provide a legal framework for the purchasing of residential, nursing and care home services, and will support the monitoring of care services purchased by Brent Council in accordance with the legal framework. This will ensure that the care provider is subject to monitoring checks to ensure quality of care which takes into account the needs arising from age continue to be provided for and met.

### 5.2 Disability (*select all that apply*)

Neutral

Positive

The procurement of the APC2 DPS system will have a neutral impact on disability as a protected characteristic. Approved providers on the DPS will include care home providers of residential and nursing care homes and supported living services for adults with disabilities, including learning, physical, mental health and cognitive disabilities. The procurement process for APC2 will ensure that all providers are approved to provide an accepted standard of care and support which includes the capability to support individual's needs arising from disability.

Any residential, nursing or supported living placements purchased under APC2 by Brent Council will be based upon the needs assessment of the individual completed with them and their circle of support by their allocated worker (social worker or care assessor). The individual will be involved in the planning of their care service and arrangements. Other relevant partners and agencies may be involved in the placement care planning (such as GP, OT, other health professionals or appropriate person) as appropriate to the individuals needs and circumstances to ensure that any placement purchased can meet all of their needs, including those arising from the protected characteristic of disability.

The provider selected from the DPS, the allocated worker, the individual (where possible), their circle of support and any other relevant partners involved in the individuals care will work together to ensure that the service meets their needs, including any needs arising from the individuals disability.

APC2 will provide a legal framework for the purchase of residential, nursing and supported living services, which ensures regular, legally mandated monitoring of the provider to ensure the care provided meets the standards set out in the contractual arrangements. Monitoring will include service user feedback of the service provided.

### 5.3 Gender identity and expression (*select all that apply*)

Neutral

The procurement of the WLA APC2 DPS system will have a neutral impact on gender identity and expression as a protected characteristic.

Any needs or consideration of an individual's gender identity and expression will be taken into account by the individual's assessment and support planning, and incorporated into their support plan as appropriate. Service providers of residential, nursing and supported living placements will be required to demonstrate their capability to provide for and respond individuals protected characteristics including gender identity and expression.

APC2 will provide a legal framework for the purchase of residential, nursing and supported living services, which ensures regular, legally mandated monitoring of the provider to ensure the care provided meets the standards set out in the contractual arrangements. Monitoring will include service user feedback of the service provided.

#### 5.4 Marriage and civil partnership *(select all that apply)*

Neutral

The procurement of the WLA APC2 DPS system will have a neutral impact on marriage and civil partnership as a protected characteristic.

Any needs or consideration of an individual's marriage or civil partnership status will be taken into account by the individual's assessment and support planning, and incorporated into their support plan as appropriate. Service providers of residential, nursing and supported living placements will be required to demonstrate their capability to provide for and respond individuals protected characteristics including marriage and civil partnership.

APC2 will provide a legal framework for the purchase of residential, nursing and supported living services, which ensures regular, legally mandated monitoring of the provider to ensure the care provided meets the standards set out in the contractual arrangements. Monitoring will include service user feedback of the service provided.

#### 5.5 Pregnancy and maternity *(select all that apply)*

Neutral

The procurement of the WLA APC2 DPS system will have a neutral impact on pregnancy and maternity as a protected characteristic.

Any needs or consideration of an individual's pregnancy or maternity status will be taken into account by the individual's assessment and support planning, and incorporated into their support plan as appropriate. Service providers of residential, nursing and supported living placements will be required to demonstrate their capability to provide for and respond individuals protected characteristics including pregnancy and maternity.

APC2 will provide a legal framework for the purchase of residential, nursing and supported living services, which ensures regular, legally mandated monitoring of the provider to ensure the care provided meets the standards set out in the contractual arrangements. Monitoring will include service user feedback of the service provided.

In order to become an approved provider on APC2 providers will have to demonstrate how their policies and procedures meet employment legislation regulations which will include supporting and managing their workforce including pregnancy and maternity arrangements.

#### 5.6 Race *(select all that apply)*

Neutral

Positive

The procurement of the WLA APC2 DPS system will have a neutral impact on race as a protected characteristic.

Brent remains the most diverse borough in London with 63.7% of the population being from BAME groups. The largest ethnic group in Brent is Asian-Asian-British, Indian or British Indian population at 18.6%.

Any residential, nursing or supported living placements purchased under APC2 by Brent Council will be based upon the needs assessment of the individual completed with them and their circle of support by their allocated worker (social worker or care assessor). The individual will be involved in the planning of their care service and arrangements. Other relevant partners may be involved in the placement care planning (GP, OT, other health professionals or an 'appropriate person') as appropriate to the individual's needs and circumstances to ensure any placement purchased meets all of their needs via their personalised support plan. This will include needs arising from the protected characteristic of race, such as meal planning to ethnic preference.

APC2 will provide a legal framework for the purchase of residential, nursing and supported living services, which ensures regular, legally mandated monitoring of the provider to ensure the care provided meets the standards set out in the contractual arrangements. Monitoring will include service user feedback of the service provided.

There is potential for the APC2 to have a positive impact upon the protected characteristic of religion and belief as providers of residential, nursing and supported living placements will have the opportunity to apply to be an approved provider on the DPS at any time in the lifespan of APC2. New providers who may offer specialist services for particular races or ethnicities will have the opportunity to ascertain approved provider status, and will not be limited by a single procurement process.

#### 5.7 Religion or belief (*select all that apply*)

Neutral

Positive

The procurement of the WLA APC2 DPS system will have a neutral impact on religion or belief as a protected characteristic.

There is a diverse range of belief systems represented in the population of Brent including, Roman Catholic, Christian, Hindu, Muslim, Sikh and Jewish religions.

Any residential, nursing or supported living placements purchased under APC2 by Brent Council will be based upon the needs assessment of the individual completed with them and their circle of support by their allocated worker (social worker or care assessor). The individual will be involved in the planning of their care home service and arrangements. Other relevant partners may be involved in the placement care planning (GP, OT, other health professionals or an 'appropriate person') as appropriate to the individual's needs and circumstances to ensure any placement purchased meets all of their needs via their

personalised support plan. This will include needs arising from the protected characteristic of religion and belief, such as support to attend religious ceremonies, observance of religious festivals and dates and preparation of meals which are congruent with the individual's religion (kosher or halal).

APC2 will provide a legal framework for the purchase of residential, nursing and supported living services, which ensures regular, legally mandated monitoring of the provider to ensure the care provided meets the standards set out in the contractual arrangements. Monitoring will include service user feedback of the service provided.

There is potential for the APC2 to have a positive impact upon the protected characteristic of religion and belief as providers of residential, nursing and supported living placements will have the opportunity to apply to be an approved provider on the DPS at any time in the lifespan of APC2. New providers who may offer specialist services for particular religious or belief groups will have the opportunity to ascertain approved provider status, and will not be limited by a single procurement process.

#### 5.8 Sex (*select all that apply*)

Neutral

The procurement of the WLA APC2 DPS system will have a neutral impact on sex as a protected characteristic.

Any needs or consideration of an individual's sex will be taken into account by the individual's assessment and support planning, and incorporated into their support plan as appropriate. Service providers of residential, nursing and supported living placements will be required to demonstrate their capability to provide for and respond individuals protected characteristics including marriage and civil partnership.

Providers will demonstrate how their recruitment and staffing arrangements will meet the needs of service users of both sexes, to ensure where possible that same sex matching for support with intimate care will be accommodated.

APC2 will provide a legal framework for the purchase of residential, nursing and supported living services, which ensures regular, legally mandated monitoring of the provider to ensure the care provided meets the standards set out in the contractual arrangements. Monitoring will include service user feedback of the service provided.

#### 5.9 Sexual orientation (*select all that apply*)

Neutral

The procurement of the WLA APC2 DPS system will have a neutral impact on sexual orientation as a protected characteristic.

Any needs or consideration of an individual's sexual orientation will be taken into account by the individual's assessment and support planning, and incorporated into their support plan as appropriate. Service providers of residential, nursing and supported living placements will be required to demonstrate their capability to provide for and respond individuals protected characteristics including marriage and civil partnership.

APC2 will provide a legal framework for the purchase of residential, nursing and supported living services, which ensures regular, legally mandated monitoring of the provider to ensure the care provided meets the standards set out in the contractual arrangements. Monitoring will include service user feedback of the service provided.

5.10 Other (please specify) (*select all that apply*)

No other issues identified.