



Executive
19 October 2009

**Report from the Director of
Housing and Community Care**

Wards Affected:
ALL

**Key issues in implementation of personalisation of adult
social care – Direct Payments**

Forward Plan Ref: H&CC-09/10-12

1.0 Summary

1.1 The Adult Social Care service has been in the process of implementing the Putting People First policy since December 2007, a key part of which is Direct Payments. The next steps require some specific decisions and a strategic review. The decisions required will resolve the difficulties arising from a procurement exercise for Direct Payment support such that the service is secured pending a wider strategic review.

2.0 Recommendations

2.1 The Executive note the discontinuation of the tender process in 2009/10 for a new Direct Payments support service

2.2 The Executive approves a short extension of up to 3 months to a contract with the Penderels Trust for a Direct Payments support service from the current expiry date of 31 October 2009.

2.3 The Executive to delegate authority to the Assistant Director of Community Care to negotiate with Penderels Trust about the terms for the extension described in paragraph 2.2.

2.4 The Executive approves the transfer of this Direct Payment support service and associated resources from Penderels Trust to the Council on expiry of the contract extension referred to in paragraph 2.2.

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- 2.5 The Executive note that bringing the service in-house as described in paragraph 2.4 will result in a TUPE transfer of the current Penderels staff to the Council.
- 2.6 The Executive approves the Director of Housing and Community Care undertaking a strategic review of all relevant support services and resources required to implement the Putting People First policy and report back in February 2010.

3.0 Detail

The Background:

- 3.1 Brent Council has been developing the implementation of the Putting People First policy (known as personalisation) since it was issued in December 2007, chiefly through the Adult Social Care Transformation Board. The progress of this was endorsed in the CSCI Inspection of these services in 2008. The Older Peoples' and Physical Disabilities assessment and care management services have been restructured in 2009 to align the processes and staff to the new arrangements for personalisation as well as deliver efficiencies to the value of £400k.
- 3.2 The development of person centred assessments of need, self directed support, personal budgets, and reviews of care services has been progressed in terms of staff training, pilots of new arrangements, and changes in ways of working. An example of this has the transfer of customer contact with the public and people seeking services to the Council's One Stop Shop, which started on September 14, 2009, and has rapidly improved the responsiveness and reliability of the advice, information and onward referral to the public.
- 3.3 There are further developments needed to complete the range of services and support required to implement the new approach. These include, systematically expanding advocacy, brokerage and self directed support services in the community. It will be essential to achieve this in a manner that safely delivers the quality, reliability and choice of service users and their carers wish at the pace and manner that best meets their circumstances. It will be equally essential to do this within existing budgets and deliver efficiencies over time. In addition there have been an increasing number of users and carers with Direct Payments falling into difficulties over the last year with audit and other issues leading to the withdrawal of the Direct Payments facility.
- 3.4 In view of the issues outlined in paragraph 3.3, a strategic review in Adult Social Care is proposed to look at other models of practice, the range of potential options both in-house, partners (such as NHS) and independent sources of such services, and the costs attached before longer term decisions are taken.
- 3.4. There has been a support and advice service to those in receipt of Direct Payments for the past 5 years delivered through a contract with a charity,

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Penderels Trust (“Penderels”). This contract was initially for 3 years and has had a series of extensions while a competitive tendering process took place for the new contract. A procurement exercise started in July 2008 with a view to awarding a 3 year contract, however officers decided in September 2009 to discontinue this process. Following the receipt of tenders, officers commenced evaluation of quality and price evaluation criteria. Whilst officers were able to score the quality criteria, a series of clarification exercises with tenderers regarding price was necessary. This clarification was required due to the differing approaches tenderers had taken to completion of pricing schedules and as a result of further clarification of anticipated future demand for the service. On receipt of the final pricing clarification it was noted that the tenderers had submitted details of revised staffing levels significantly different from those originally submitted which thus impacted on the evaluation of the quality criteria. Following further clarification of the revised staffing levels with tenderers, the procurement panel decided that the tender exercise could not proceed as originally specified and no award of contract could be made. This decision, when linked with the need for a wider strategic review, has led to the recommendations in this report.

- 3.5. In order to address the need for a continuing and expanding support and advice service, it is proposed to bring the service in-house. The service needs to expand because of increasing numbers of service users moving to Direct Payments and so requiring this support. The options considered before reaching this decision are set out below. The key decision which the Executive is asked to approve, is recommended as best dealing with the consequences for the service at this stage, and without prejudice to outcome of the review.

The options considered include:

- a) Further extension of the contract until another tender is completed, which is not recommended due to the escalation in volume and cost of the service as currently constituted which is not affordable. In particular the payroll element of the Penderels service would be over the threshold for VAT with the expansion of the service and thereby incur the Council that VAT cost without reimbursement;
- b) Ceasing the service, which cannot be done if the legislative and policy duties of the council in relation to direct payments are to be fulfilled under the Health and Social Care Act 2001;
- c) To seek an extension for up to 3 months for the contract with Penderels and bring the service in-house. This is the preferred option. This will include a TUPE transfer of staff (3.9 FTE) to the Council. The detailed business case for this option is set out in Appendix 1 below. The key advantages are that this would allow for the continuity of service without continuing longer than necessary with current arrangements, whilst seeking efficient controls of costs as the expansion occurs. The element of pension costs that may be additional would be considerably less than the VAT element of retaining the contract for longer.

4.0 Financial Implications

- 4.1 The current annual budget for the Direct Payments Support Services is £128,737
- 4.2 If the contract with Penderels is extended for the 3 months from 1st November 2009 to 31st January 2010, the cost of the extension will be £32,184 i.e. based on current budget levels. A summary budget and staffing details is attached in Appendix 1 of the Business Case
- 4.3 The cost of delivering the service in house as detailed in Appendix 1 assumes that all staff chose to join the council's pension scheme immediately, this will increase costs as staff do not currently enjoy an employer's pension contribution. It also assumes that vacant posts are filled, although this may not be necessary as it is possible that management can be absorbed in current management responsibilities. The cost for the months February – March 2010 is assumed to be £29,791, including full pension payments and a full staff group. The full year cost will be in the region of £130,746. This also assumes all vacant posts are filled and that staff chose the council's pension scheme. This can be managed within current Adult Social Care budgets.

5.0 Legal Implications

- 5.1 The Council is authorised, and in some cases required, to make Direct Payments to individuals under the Health and Social Care 2001 and Regulations made under it.
- 5.2 In the event that the Council takes the current Penderels service in-house it is highly likely that the Penderels staff currently assigned to the contract will transfer to the Council's employment as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) on their existing terms and conditions of employment. However it will always be open to individuals to object to transferring to the Council in which case they will not do so. It will also be open to individuals to agree with the Council improvements in their terms and conditions post-transfer so as to ensure harmonisation of their terms and conditions with other Council staff. Assuming a TUPE transfer will take place, the Council has obligations under TUPE to ensure the transferring staff's representatives, and the trade union representatives of any existing Council staff who may be affected by the transfer, are informed of the implications of the transfer for these staff. Further, the Council will become liable for any claims the transferring staff may have against Penderels arising out of their contract with Penderels. The Council's contract with Penderels requires Penderels to indemnify the Council against some but not all of such claims.
- 5.3 As Officers have in the past extended the contract with Penderels under powers delegated to Officers under para. 2.5. of Part 4 of the Constitution and Contract Standing Order 112, any further extensions of the contract require the approval of the Executive.

- 5.4. This service is a Part B service under the Public Contracts Regulations (EU regulations). As such the procurement of this service is not subject to the full application of the EU Regulations but it is still subject to the overriding obligations of fairness and transparency.
- 5.5. Given the difficulties identified in this report for the aborted tender process, with regard to the clarification of pricing and the evaluation panel identified there were quality implications in the revisions to the tenders submitted, it is appropriate that Officers decided to discontinue the procurement exercise.

6.0 Diversity Implications

- 6.1 Experience elsewhere shows that Direct Payments can be an effective means for those from ethnic and other minority communities to ensure they source services appropriate to their culture and needs. This aspect can be expanded under the Council's management of the service.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 There are 3.9 FTe staff currently employed in the Penderels working on the Brent Direct Payments Service who would be transferred with the reassignment of the contract to the Council as an in-house service in adult Social Care. They would be entitled to access to the Council's pension scheme. They could continue in the rent free accommodation currently used in the New Millennium day Centre.
- 7.2. The Penderels will need to be supported to ensure information about the implications of the transfer of the staff, as required by law, is provided to the staff and that such consultation, as may be required by law, is held with the staff. It is recommended that an early meeting with the affected staff is held. This information will need to include any changes that might be proposed post transfer. Such changes are likely to include the harmonisation of their terms and conditions for either an economic, technical or organisational reason, and the management arrangements that will exist for them post transfer. Harmonisation is likely to avoid other legal implications such as equal pay claims.
- 7.3 Harmonisation of their terms and conditions is likely to increase costs but until full due diligence is undertaken it is not possible to be more accurate about these.
- 7.4 A TUPE transfer into a larger organisation such as the Council ought to be seen as a positive step for the staff as this will open up development and career opportunities for the staff. A TUPE transfer will require proper due diligence and this will reveal whether any potential liabilities exist which may require indemnity from Penderels.

Appendices

Appendix 1

Business case for the Direct Payment Support Service

Background Papers

Executive Report 8 October 2007 - Extension of Contract with Penderels Trust and Authority to invite Tenders for a Direct Payments Support and Advice Services Contract

Executive Report February 2009 - Extension of Contract with Penderels Trust for a Direct Payments support and Advice Service Contract

Executive Report June 2009 - Extension of Contract with Penderels Trust for a Direct Payments support and Advice Service Contract

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