



**Executive**  
16 November 2009

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

Wards Affected:  
ALL

**Development of Contracts with Voluntary Organisations**

Forward Plan Ref: H&CC-09/10-07

**1.0 SUMMARY**

- 1.1 This report sets out the findings of the review of services provided by West Indian Self Effort (WISE) and New Testament Community Project and proposes changes to funding arrangements.
- 1.2 In accordance with the Executive's decision in November 2002 to move from grant funding mainstream services to provision under contractual arrangements, this report asks the Executive for approval to award contracts to WISE and New Testament Community Project and to agree that they need not be tendered in accordance with usual Contract Standing Order requirements.

**2.0 RECOMMENDATIONS**

- 2.1 That the Executive note the findings of the review and approve the development and subsequent award of three-year contracts to West Indian Self Effort and New Testament Community Project to deliver culturally specific day care services for older people to replace the current grant funding arrangements.
- 2.2 That the Executive agrees an exemption in accordance with Contract Standing Order 84 (a) from the usual tendering requirements of Standing Orders to permit negotiations leading to the award of three year contracts to West Indian Self Effort and New Testament Community Project on the basis of 'good operational and financial reasons' as set out in paragraphs 3.18 and 3.19 of this report.

## **3.0 DETAIL**

### **Background**

3.1 On the 18<sup>th</sup> November 2002, the Executive agreed to move to a system of funding voluntary sector organisations which;

- achieved greater consistency and stability to those organisations providing social care services which were an essential element of local provision, and
- ensured that the allocation of resources was clearly linked to commissioning strategies

This effectively meant moving away from grant funding certain organisations and towards the development of contracts to safeguard essential services. Initially four organisations delivering day care services to older people were identified, namely, Asian Community Care Services (“ACCS”), Brent Irish Advisory Service (“BIAS”), Sudbury Neighbourhood Centre and Elders Voice.

3.2 On 15<sup>th</sup> January 2007, the Executive agreed a number of recommendations about options for day services for older people which included:

- Reconfirmation of the exemption from the tendering requirements, to allow negotiations to be completed with the final one of the original four organisations, namely Elders Voice.
- The extension of the contracts with Sudbury Neighbourhood Centre, BIAS and ACCS to allow market testing for any other viable alternative providers and a tender process if any were identified, and
- For officers from Older People Services to review and evaluate the service provided by the three organisations who were still grant funded: Mission Dine, New Testament Community Project and WISE and report back to the Executive on the future commissioning and funding of these organisations.

3.3 Negotiations were completed with Elders Voice and the contract commenced on 1 October 2007. The other three services were tendered and new three year contracts awarded to the original organisations from December 2007.

### **Review Findings**

3.4 This report concerns the findings in connection with WISE and New Testament Community Project. Those regarding Mission Dine are dealt with in a separate report.

3.5 Officers undertook the review of WISE and New Testament Community Project through a series of visits to the organisations’ services, meetings with organisation representatives, collection of information and analysis of data.

## WISE

- 3.6 WISE provides a day care service to older people primarily from the Caribbean four days a week from the premises in Alric Avenue. There is a programme of regular activities such as keep fit, arts and crafts, computer classes, cultural videos, dominos, board games, poetry, creative writing, flower arranging, discussion groups, quizzes, singing, bingo, indoor gardening, dancing, talks, health checks, outings and religious services. WISE also provides an outreach service on the fifth day of the week. On average 23 people attend each day and around 80% of these meet the Council's Fair Access and Care Services (FACS) criteria at critical or substantial. The organisation accepts people through direct access from the community and referral of older people from Adult Social Care.
- 3.7 The organisation has achieved a three star (good) environmental health rating for its food service.
- 3.8 The organisation has been grant funded for over 20 years and in 2009/10 is due to receive £64,844 in grant funding plus £26,880 in spot purchases.
- 3.9 Historically, there was an issue with overpayment of grant monies to WISE. The overpayment arose because WISE were given a grant which covered their employee costs while at the same time some of their employees were paid via the Brent payroll: the only voluntary organisation staff to be paid this way. The arrangement was ended in May 2007 when it came to light. WISE were unable to repay the full amount of the overpayment and following negotiation with Council officers, it was agreed that WISE should repay £116,717 and this sum has since been repaid. The amount recovered was at the level that left WISE with £10,000 of working reserves at that time.
- 3.10 WISE use half of a Council owned building in Alric Avenue, Harlesden. There is no lease in place between the Council and WISE in respect of the use of these premises. A number of versions of a lease have been discussed with them in the past but they have declined to sign a lease for a variety of reasons, particularly around unsolved issues about lead tenant roles and separation of utilities between WISE and Asian People with Disabilities (APDA) the other organisation using the building. This has meant that they have not made any payment for occupation of the building to the Council.
- 3.11 A report entitled 'Community Use of Council Buildings' was agreed by the Executive on 14 July 2009 which will introduce a standard approach for all organisations using Council buildings by introducing
- a standard length of lease,
  - a market rent,
  - a set of agreed outcomes for the service and
  - a rent abatement where these are met
- 3.12 Any contractual arrangement entered into with WISE would require a formal agreement for the use of the property drawn up by Property Services in line with the above, including a market rent.

- 3.13 There are still some historic issues to be resolved between WISE and APDA concerning payment of utilities and other building related costs. WISE maintain that they have been responsible for paying for all utility and other building related costs and that APDA should reimburse them for an agreed portion of those costs. APDA in turn have disputed the validity of some of the invoices, which meant that there has been no payment by them to WISE for several years. There have been extensive discussions between the two organisations with the aim to try and get agreement as to what is owed by APDA. The Council has been trying to facilitate negotiations and recently progress appears to have been made in finally resolving this matter. It has been made clear to both parties that unless this matter is resolved it would jeopardise continued funding to both organisations and provision will be included in contracts permitting the Council to terminate on notice.
- 3.14 Property Services are also exploring a long term solution which would see the separation of the premises into two units, each with their own utilities which would ensure that this issue is not repeated.

#### **New Testament Community Project**

- 3.14 New Testament Community Project provides a day care service to older people three days a week, again primarily for Caribbean Service Users. They offer a structured programme of activities in line with the Council's own day centres. On the other two days they provide benefit advice and general support to the community.
- 3.15 Approximately 35 people attend on each occasion of which around half would meet the Council's FACS criteria at critical or substantial. The organisation takes referrals for older people direct from Adult Social Care as well as from the community.
- 3.16 There have been no building related or funding issues with this organisation. The organisation has achieved a four star (very good) environmental health rating for its food service.
- 3.17 The organisation has been grant funded since 1987 and in 2009/10 is due to receive £72,424 plus £14,000 in spot purchases.

#### **'Good Operational and Financial Reasons' not to let contracts through a tender process to WISE and New Testament Community Project**

- 3.18 Both WISE and New Testament Community Project have previously been given a grant with a brief outline of its intended use. Based on the findings of the review the service delivered by each organisation was in line with the mainstream day care services purchased by Adult Social Care for older people meeting the Council's eligibility criteria and specifically catered for the cultural needs of the older Caribbean community.

3.19 As detailed at paragraph 3.1, a move away from grant funding towards the development of more formal purchasing arrangements is favoured in order to clearly identify what the Council will receive. Officers considered whether to tender for contracts for the services provided by WISE and New Testament Community Project but concluded that it would be preferable to negotiate a formal contractual arrangement directly with these two organisations. Approval is being sought to conclude this without recourse to tendering on the basis that:

- Both organisations offer a culturally specific service for the older Caribbean community with both capacity and capability to meet the Council's eligibility criteria for care services which is not currently available elsewhere in the borough.
- At present there are no other service providers with appropriate facilities and a proven track record in the area.
- The Council has experience of these long standing providers and is generally satisfied with the services they deliver. The services are well received within the community.
- Tendering the service gives no guarantee of any saving to the Council for the service provision particularly as it is likely that financial agreement can be reached with each organisation to deliver the service at the current combined grant funded and spot purchased sum. Based on other contracts, this is considered to represent best value.
- There is an intention to offer relatively short term contracts and to carry out market testing in the latter part of the contract period (see below).

### **Contract Period and Market Testing**

3.20 The contracts proposed would be for a three year period from the time when negotiations are completed which it is hoped would be by December 2009 or at latest by April 2010. This contract duration would allow sufficient time for full consultation with service users and service providers to explain the impact and implications of tendering in order to minimise disruption and distress of any future tendering exercise. It would also assist with capacity building for the market to ensure that there could be genuine competition for any re-tender.

3.21 In the latter part of the contract period a commissioning review would be carried out to determine if the service should be re-commissioned and if this were the case a market testing exercise would be carried out with a view to helping to identify other providers in the market capable of providing the service. Officers would then intend pursuing a procurement process in accordance with the Council's Standing Orders.

## 4.0 FINANCIAL IMPLICATIONS

- 4.1 The proposed exemptions to the Contract Standing Orders for developing contracts with WISE and New Testament Community Project do not have any specific financial implications as the new contractual arrangements will be negotiated within the current financial resources. Funding after the first year will be negotiated in line with the principles of Best Value. Expenditure is currently incurred from the Adult Social Care (Older People) budget although the grant funding was previously transferred from the Social Services Grants Budget.
- 4.2 The value of the funding allocated to the organisations in 2009/10 is as follows:

Organisation	Grant Funding	Spot Purchase
West Indian Self Effort (WISE)	£64,844	£26,880
New Testament Community Project	£72,424	£14,000

## 5.0 LEGAL IMPLICATIONS

- 5.1 The Council, being a public authority, has to comply with legislation which includes EU Public Procurement Regulations and the Council's own Financial Regulations and Contract Standing Orders in terms of letting contracts.
- 5.2 The value of each of the proposed contracts with WISE and New Testament Community Project over the three-year lifetime is approximately £275k and £259k respectively and therefore higher than the EU threshold for Services under the EU Public Contracts Regulations 2006 (the "EU Regulations"). However, Day Care Services are Part B services under the EU Regulations and as such are not subject to the full application of the EU Regulations with regard to competitive tendering. An Interpretative Communication was issued by the European Commission in July 2006 which indicates that the general requirements for transparency, non-discrimination and equal treatment will normally require advertising and some form of competitive process before contract award, even for Part B services, especially if the contract is likely to be of interest to overseas EU providers. Given the current very limited market in the type of services provided by WISE and New Testament Community Project as identified by the review, the limited duration of an interim contract and the intention to expose the contracts to competition in due course, it is considered that the award of interim contracts is acceptable under the EU Regulations.
- 5.3 The value of the proposed contracts with WISE and New Testament Community Project is such that they are classed as Medium Value Contracts for the purposes of the Council's Contract Standing Orders. The Council's Contract Standing Orders provide that Medium Value Contracts should be let by inviting competitive tenders. However Contract Standing Order 84(a) states the Executive may agree otherwise where there are "good operational and/or financial reasons". Officers consider that there are good operational and / or financial reasons for negotiating contracts with WISE and New Testament Community Project rather than carrying out a formal tendering process at this stage. These reasons are set out in paragraphs 3.18 and 3.19.

## **6.0 DIVERSITY IMPLICATIONS**

- 6.1 The proposals in this report have been subject to screening and officers believe that there are no diversity implications because the same services will continue. The services will be available to all older people from the Caribbean community throughout the Borough following assessment of need under the Fair Access to Care Services criteria at critical and substantial levels.

## **7.0 STAFFING/ACCOMMODATION IMPLICATIONS**

- 7.1 These services are currently provided by voluntary organisations and there are no implications for Council staff arising from this report.

### **WISE**

- 7.2 The service is provided from a Council owned building in Alric Avenue and in accordance with the Executive decision on 14 July 2009 regarding Community Use of Council Owned Buildings the organisation will be required to enter into a formal arrangement with the Council for the use of the premises.

### **New Testament Community Project**

- 7.3 The organisation provides the service at Willesden Centre for Health & Care under a negotiated agreement between the organisations and therefore there are no accommodation issues for the Council in connection with this organisation.

## **8.0 BACKGROUND PAPERS**

- 8.1 Organisations Review File

### **Contact Officers**

- Joy Mitchell, Interim Head of Older People Services
- Linda Martin, Head of Service Development and Commissioning
- Jayne Spencer, Section Manager(Contracts), Service Development & Commissioning

Martin Cheeseman  
Director of Housing and Community Care