

**DELGATED DECISIONS BY CABINET MEMBER FOR  
CHILDREN, EDUCATION FAMILIES – 7 OCTOBER 2013**

**CONTRACT PROCEDURE RULES – EXEMPTION REPORT**

Report by the Director for Children's Services

**Executive Summary**

1. The purpose of this report is a justification for an extension of the contract with Bournemouth Churches Housing for a period of fourteen months for the following reasons:
  - i) Longer term strategy
  - ii) An extremely vulnerable client group
  - iii) Suitable available premises
2. Taking the above into consideration the best interests of the young people and Oxfordshire County Council are served by extending the current contract until March 31<sup>st</sup> 2015. An exemption is, therefore, being sought from tendering this contract under 4.3 of the 'Contract Procedure Rules'.

**Background**

3. This request for exemption relates to contract held with Bournemouth Churches Housing (BCHA) for provision of a 20 unit direct access hostel for young people aged 16 – 25 year olds based in Oxford but with countywide access. The service, known as 'One Foot Forward', is high needs and forms the front end of a pathway of supported housing services for young people. It is staffed 24 hours a day. The expected stay for a young person is up to six months with the intention of move on to other supported housing within the pathway as appropriate.
4. The service has an annual contract value of £349k and the current contract is due to expire on 31 January 2014. Oxford City jointly commissions this service to the value of £42k per annum which is included in the above contract value figure. This contract is one of nine that form the core strategy for 'Housing & Related Support for Young People & Families aged 16 – 24' and totals £2.5m per annum.
5. The scheme was commissioned with the current specification in 2009, 14 months earlier than the other services that form the young people's pathway. The service is delivered from a large Victorian terraced house in East Oxford, owned and leased to the provider by Oxford City

Council. It was originally commissioned as a 20 unit hostel with one additional emergency access bed funded solely by Oxford City Council. As a result of recent service development 3 of the direct access beds forming part of this service are now located in another of the provider's supported housing projects on an alternative site.

6. There is consensus among commissioning partners that as part of a wider commissioning process an alternative building should be sourced as the current property places significant restrictions on service delivery.
7. A large proportion of children and young people using this service are owed a statutory duty under children's social care legislation. As the only direct access countywide service it supports some of the highest risk and most vulnerable 16 -25 year olds in Oxfordshire. As such it is a critically important service both in its own right and in relation to the success of the rest of the Young Person's Housing and Support Pathway.

## **Reason for requesting exemption from Contract Procedure Rules**

### **Longer Term Strategy**

8. The re-commissioning of the Young People's Housing and Support Pathway is due to start in June 2013 with a strategic review that will look at strategic relevance, effectiveness and efficiency of both the separate elements and the pathway as a whole entity. The direct access hostel forms the front end of this pathway. As such it is of critical importance in any decisions to be made about change in emphasis, for example towards a more preventative model, or even more fundamental reconfiguration of the pathway or models of service within it. If we were to recommission the One Foot Forward service in advance of the main strategic review the commissioning options for 2015 would be severely limited particularly since this service accounts for a significant proportion of the whole pathway budget
9. It is also important to note that the levels of need expected to be met by this service are greater than expected when the service was originally commissioned. This is both due to case law made after the service was commissioned which clarified the application of legislation pertaining to the duty owed to vulnerable homeless 16 and 17 year olds ("The Southwark Judgement"). This has meant that there is an increased number of very young people (children) accessing the service. There is also anecdotal evidence to suggest that those accessing the service are increasingly complex in their needs and behaviours and that this places greater pressure on staff and creates a dynamic within the service which is more difficult to manage safely. Therefore, recommissioning for a short period will not meet broader strategic objectives that are likely to involve delivering this part of the

pathway not only from different premises but also using a significantly different model that could mean altering other aspects of the pathway.

10. To ensure the new strategic 'pathway' provides the best solution at an affordable cost the component parts need to be reviewed as a whole. This can be supported by the evidence of the previous review in 2009 which delivered an improved service at significant cost savings.

### **Vulnerable Client Group**

11. Consideration was given to the option for recommissioning the service for a short (14 month) period to enable the contract to be aligned with the other services. The difficulty with this option is the potential impact on the client group. The service is already under strain as the level of need in the service is higher than was anticipated when the service was originally commissioned. The potential impact of not one but two transitions in close succession are likely to have a destabilising impact on morale of staff and young people and pose real risks to young people's safety at an unacceptable level. We have evidence from previous commissioning experiences that the transition from one provider to another can have a negative impact on both the staff morale and service users' engagement with the service. Disruption to service delivery and performance when this service was commissioned in 2009 proved to be not much less than 12 months. Our learning from previous commissioning exercises suggests the best way to promote continuity and protect against the disruption when transitioning to a new provider is to ensure the transition period is long enough to enable providers to plan well ahead for commencement of the new service.
12. One Foot Forward has recently suffered a significant period of difficulty in terms of safeguarding concerns, standard of service delivery and management of increased levels of need both in terms of clients with risky behaviours and increased vulnerability. This has meant increased bullying and anti-social behaviour within the project. Although the service has regained stability and is now managing the risks more effectively there is a risk with further disruption that the project will become destabilised. Being the "front end" of the young people's pathway and the only high needs service the stability of One Foot Forward is critical for the whole pathway. The project accepts referrals where other services would not be able to and supports young people to move through to the medium and lower needs projects and on to independent living.

### **Premises**

13. The building is expensive to maintain and in many ways could be described as not fit for purpose as it requires regular work to the fabric of the building in response to the heavy usage it receives from this client group. The current provider has agreed to invest in the refurbishment and maintenance of the building to an agreed acceptable

level. Whilst this is not cost effective for them they are keen to maintain standards to protect their own reputation and future commissioning prospects. It is unlikely that a new provider coming in would be willing to make such an investment over what would be such a short-term contract. Similarly it would be very difficult to lease alternative premises for such a short period.

### **Consequences if the proposed action is not approved**

1. Risks to young people: Destabilisation of the service is likely to produce risks to the safety and wellbeing of young people using or with a need for the service and lead to a failing service.
2. Financial risks: if this service is failing we will need to house those young people to whom we owe a housing duty somewhere. Alternatives are limited, more costly, less desirable and less effective in terms of outcomes for young people.
3. Resources: The impact in terms of resources will be greater if conducting a two stage process. This because it will require more County Council officer time than conducting the various elements of the re-commissioning process in one go. This is both to undertake the various elements of the commissioning process and to oversee the service at a time of greater instability and provide the extra monitoring required during the transitions from one service provider to another.
4. Legal risks: failure to provide suitable accommodation for those to whom we owe a duty may have serious legal consequences
5. Reputational risks: failure to meet our legal and social responsibilities to meet the needs of our most needy and vulnerable children and young people may cause a loss of reputation for the County Council and could attract media interest where there are specific incidences that may be attributed to failures in this service.
6. Political risks: District housing authority partners rely on this service to respond to the needs of homeless young people from their own districts. Any failure in this countywide service could impact heavily on them both financially and in terms of their meeting their own statutory duties.

### **Legal and Financial Appraisal**

14. The Legal and Financial Appraisals that support the recommendation can be found at Appendix A.

### **RECOMMENDATION**

15. **The Cabinet Member for Children, Education & Families is RECOMMENDED to approve this exemption from the Council's Contract Procedure Rules.**

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September 2013

## **Appendix A**

### **Request for exemption from tendering under Contract Procedure Rule (“CPR”) 4 in respect of a contract with Bournemouth Churches Housing Association (“BCHA”) for the provision of young people’s housing and related support.**

#### **Legal Appraisal by County Solicitor**

##### **A. Background**

The contract with BCHA came into effect on 1 February 2009 and expires on 31<sup>st</sup> January 2014. The contract has an annual value of £349,000. The service (the “One Foot Forward Service”) represents the first, and the most intensive, part of a series of services offered to high risk and vulnerable young persons and was entered into approximately 14 months before the contracts for the remainder of the services which make up the “Pathway”. The contracts for the remaining services in the Pathway expire on 31 March 2015.

##### **B. Grounds for Exemption**

CEF do not wish to procure this service separately from the other services making up the pathway because:

1. a strategic review of the whole service is planned to commence this month. CEF believes that to separately re-commission the One Foot Forward service might compromise the strategic review;
2. two changes to the service provider in short succession are likely to have a harmful impact on the vulnerable client group as well as on staff;
3. it is unlikely that premises of sufficient quality would be available for a 14 month contract.

##### **C. Appraisal**

1. In making its contract arrangements, the Council is required to demonstrate that it has acted in accordance with the EU Treaty-based principles of fairness, transparency, non-discrimination and proportionality (“the EU Principles”). Aside from the application of the Council’s own Contract Procedure Rules, public bodies are also required to comply with the Public Contracts Regulations 2006 (“the Regulations”), which impose further procedural requirements in relation to contracts for services over a prescribed pecuniary threshold.
2. Both the Contract Procedure Rules and the Regulations are drafted with the EU Principles in mind. The Regulations impose two levels of procedural requirement, depending on the nature of services being procured. The Contracts fall under the Part B regime imposed by the

Regulations and are therefore subject to more limited procedural requirements.

3. Notwithstanding the limited procedural requirements, the County Solicitor is concerned to ensure that the contractual arrangements proposed by Children, Education & Families demonstrate compliance with the EU principles.
4. The County Solicitor accepts that this is an interim arrangement to synchronise the end date of a suite of contractual arrangements that should be viewed and commissioned together and that to re-commission this service for an interim 14 month period would represent a real risk to service delivery in relation to a highly vulnerable group.

#### **D. Recommendations**

The County Solicitor considers therefore that the requested exemption is justified in these special circumstances and recommends that the request for exemption is approved.

**PETER CLARK**  
County Solicitor

**Request for exemption from tendering under Contract Procedure Rules in respect of a 14 month extension to a contract with Bournemouth Churches Housing Association for provision of 20 direct access hostel places for young people aged 16 to 25 in Oxford and county wide.**

**Financial Appraisal by Finance Business Partner for Children, Education and Families**

**A. Financial and Budgetary Position**

1. The existing contract is accounted for within the budget for external placements. The total budget is £6.456m per annum. Latest forecasts indicate that the budget is likely to be overspend by £1.545m in 2013-14, however this overspend arises from increased demand for services beyond that included in the budget and does not arise in the cost structure of this contract. Indeed if the places provided by this contract became unavailable it is likely that more expensive places would have to be procured for this group of young people.

**B. Assessment of Business Case**

1. The business case presented in this exemption request revolves around creating an opportunity to align a number of contracts for safe housing for young people in order to provide a more holistic solution to the demand for places. Alignment of these contracts appears to be a key opportunity to obtain more integrated solutions and possible cost efficiencies in this area.
2. In addition the existing contractor has agreed to make a significant investment in improvement of the facilities for the proposed extended period. It would be difficult to attract another provider to make a similar investment for such a short contract period.

**C. Assessment of Financial Risk**

1. The proposed contract extension with a value of some £0.407m significantly exceeds EU thresholds. If challenged this proposed contract extension could therefore give rise to an expensive retrospective procurement exercise.
2. Consideration has therefore been given to advertising the contract extension in order that other providers could express an interest if they feel that they could offer similar provision. However a desktop survey of available properties available in the City of Oxford has not identified any suitable alternative building. As highlighted in the report, it is implausible that any provider would be willing to make a substantial property investment in order to obtain a 14 month contract.



3. Accordingly it is considered that an advertisement would be extremely unlikely to attract interest from any partner that is able to make a significant offer of accommodation. Accordingly the costs incurred in making an advertisement would be abortive. Furthermore the time that would elapse before a commitment to BCHA could be confirmed would render it unlikely that the suggested improvements to the existing building could be completed.

#### **D. Assessment of Exemption**

5. The synchronisation of a suite of contracts in this area would offer a clear opportunity to improve arrangements. To fully re-commission this service for an interim 14 month period would represent a real risk to service delivery in relation to a highly vulnerable group.

#### **E. Recommendations**

1. It is considered that the requested exemption is justified in these special circumstances, and recommended that the request for exemption is approved.

Finance Business Partner CEF

September 2013