

# Agenda Item 7



## Policy and Scrutiny

### Open Report on behalf of Glen Garrod, Executive Director of Adult Care and Community Wellbeing

Report to:	<b>Adults and Community Wellbeing Scrutiny Committee</b>
Date:	<b>6 September 2017</b>
Subject:	<b>Strategic Market Support Partner Procurement</b>

#### **Summary:**

This item invites the Adults Scrutiny Committee to consider a report entitled *Strategic Market Support Partner Procurement* which is due to be considered by the Executive Councillor for Adult Care, Health and Children's Services for decision between 11-15 September 2017. The views of the Scrutiny Committee will be reported to the Executive Councillor, as part of her consideration of this item.

#### **Actions Required:**

- (1) To consider the report entitled: *Strategic Market Support Partner Procurement* (attached at Appendix 1) and to determine whether the Committee supports the recommendations to the Executive Councillor set out in the report.
- (2) To agree any additional comments to be passed to the Executive Councillor in relation to this item.

#### **1. Background**

The Executive Councillor is due to consider a report entitled *Strategic Market Support Partner Procurement* between 11 and 15 September 2017. The full report to the Executive Councillor is attached at Appendix 1 to this report.

#### **2. Conclusion**

Following consideration of the attached report, the Committee is requested to consider whether it supports the recommendations in the report and whether it wishes to make any additional comments to the Executive Councillor. The Committee's views will be reported to the Executive Councillor.

#### **3. Consultation**

##### **a) Policy Proofing Actions Required**

Not applicable.

#### **4. Appendices**

These are listed below and attached at the back of the report	
Appendix 1	Strategic Market Support Partner Procurement – Report to Executive Councillor for Adult Care, Health and Children's Services – 11-15 September 2017.

#### **5. Background Papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Alex Craig and Reena Fehnert who can be contacted on 01522 554070 or 01522 553658 [alexander.craig@lincolnshire.gov.uk](mailto:alexander.craig@lincolnshire.gov.uk) / [reena.fehnert@lincolnshire.gov.uk](mailto:reena.fehnert@lincolnshire.gov.uk)

**Executive/Executive Councillor****Open Report on behalf of Glen Garrod, Executive Director of Adult Care and Community Wellbeing**

Report to:	<b>Executive Councillor for Adult Care, Health and Children's Services</b>
Date:	<b>11-15 September 2017</b>
Subject:	<b>Strategic Market Support Partner Procurement</b>
Decision Reference:	<b>I014126</b>
Key decision?	<b>Yes</b>

**Summary:**

A number of grant funded initiatives have been in place for over two and half years that relate to supporting the Adult Care market. This is primarily supported through a Workforce Development grant together with a separate grant agreement with the same provider for the provision of Discharge Support in Hospitals through the use of Care Home Trusted Assessors (CHTA).

This report seeks approval for a change in the commissioning arrangements for these services from grants to a formal commercial arrangement under contract. It is considered that this will benefit the Council, the eventual provider, and the Lincolnshire market.

**Recommendation(s):**

That the Executive Councillor:

1. Approves that the commissioning model for Strategic Market Support Services and Trusted Assessor Services be changed from a grant approach to a services contract approach.
2. Approves the carrying out of a procurement to deliver a contract, or contracts, to be awarded to a single provider of a county-wide service for Strategic Market Support services and for the Trusted Assessors services for a period of three years
3. Delegates to the Director of Adult Care and Community Wellbeing in consultation with the Executive Councillor for Adult Care Health and Children's Services the authority to determine the final form of the procurement and the contract and to approve the award of the contract and the entering into of the contract and other legal documentation necessary to give effect to the said contract.

### **Alternatives Considered:**

- 1 Continue with a revised grant agreement with the current provider

Whilst outcomes and performance levels under the grants have been very strong, continuing with the grant approach is not recommended as the ongoing level of spend and the Council's commercial requirements of the service are best supported by a contract for services which will require a procurement exercise to be completed

To discontinue funding in any form and not commission these services

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This is not a viable option as Lincolnshire County Council is committed to support the Care sector markets to sustain capacity and capability. The activities in the scope of this service are crucial to the proper functioning of Adult Care services and compliance by the County Council with its legal obligations.

### **Reasons for Recommendation:**

The performance and capability of the market for Adult Care services is critical to the proper functioning of the Council and fulfilment of its statutory duties. As such there must be effective support and coordination of providers by establishing a strategic partner for the provision of Market Support that offers training, guidance, representation and networking opportunities for adult care markets within Lincolnshire. Furthermore;

1. Service provision under the current grant aid agreement has delivered required outcomes however it is considered that by exposing this service to competition it will provide the opportunity to enhance services. A review, possible revision and clarity around the scope of the current specification may enable further efficiencies and opportunities to set robust outcome based measures.
2. Appointing a Strategic Partner will ensure that the Council can work closely with the Provider with engaging with the market and enabling focused approaches to stimulate the market to meet demand for services.
3. Delivering through a single strategic provider model will provide longer term stability for the Council and Provider which in turn will allow for greater opportunities to develop the service further. It also ensures that the support to the market is placed on a firmer footing, is more sustainable and attractive to the market. This is essential considering the market faces significant challenges.

## **1.0 Background**

### **The Current Situation**

- 1.1 A grant agreement has been in place over two and a half years to provide Workforce Development services for Adult Social Care providers within Lincolnshire.
- 1.2 The purpose of the grant is to develop and deliver workforce and skills development for independent and third sector providers of:
  - Residential and Nursing Home Care Services;
  - Home Care and Community Support Services;
  - Extra-Care Housing.
- 1.3 In addition to this there is a separate grant agreement for the provision of Discharge Support in Hospitals through the use of Care Home Trusted Assessors (CHTA).
- 1.4 The purpose of the grant is to develop and deliver a Discharge Support Programme to support and facilitate discharges into care homes and to avoid Discharge delays from the following hospitals:
  - Boston Pilgrim Hospital
  - Grantham Hospital
  - Lincoln County Hospital
  - Peterborough City Hospital
- 1.5 While both agreements are with the same provider, the Lincolnshire Care Homes Association (LINCA), these initiatives have been created independently of each other and are currently managed separately.

### **Service delivery**

#### *Strategic Market Support Partner services*

- 1.6 The current service has engaged successfully with over 90% of the Care Providers in the County. They have in 2016 provided Assessing the Care Certificate training to 178 delegates from 101 Provider organisations.
- 1.7 They work with a variety of organisations to improve work placement opportunities and support future recruitment across Lincolnshire. There is a real shortage of nursing staff available in the County. Since January 2015, the county has lost 368 nursing beds through de-registration, or the closure, of homes in the county. This trend is likely to continue with the strong possibility of losing nursing beds at five further homes in the near future resulting in a further 239 nursing beds being lost from the market. The impact of this will put substantial pressure on the entire health and social care economy through increased costs and the inability to find suitable local placements for vulnerable service users with nursing needs.

### *Care Home Trusted Assessor (CHTA)*

- 1.8 Providers must undertake a needs assessment before providing a service and to do so in collaboration with the person being cared for or someone with legal powers to make a relevant decision which is a major fundamental for providing good care.
- 1.9 Where a provider is confident they can rely on information from the hospital or care management staff and on the basis of this information they are able to meet the person's needs, they do not necessarily need to see them in person. This includes gaining consent to their care or treatment being transferred back to the care home.
- 1.10 The CHTA provides a timely and factual assessment to care homes allowing for a quicker discharge from the Hospital. It is estimated that 1086 bed days were saved across Lincolnshire in from April 2016 to March 2017. Given that there are sustained pressures on Hospitals and acute services any measure that directly supports discharging people effectively and safely directly benefits the Health and Social care system as a whole.
- 1.11 The Agreements under which these services are currently delivered expire in March 2018 and a review has been undertaken of the commercial structure of the Council's requirements to support decisions about the best commissioning approach.

### **Scope and Commercial Structure**

#### *Strategic Market Support Services*

- 1.12 The nature of the work being carried out under this contract will take a number of different forms. There will be a core of ongoing work throughout the year that will require sustained funding with variable volume or project work which could be costed on a per day or unit basis. This is estimated as requiring a core budget higher than the baseline £700,000, over three years, for all services which will allow the council to draw down funding for any variable or ad-hoc work.
- 1.13 The core service which is currently being provided undertakes the following activities:
  - Assesses need and produces and sources a wide range of sector specific training workshops and opportunities
  - Sets up and maintains a database of providers and supports consultations
  - Provides leadership support and access to further and higher education and development routes
  - Supports the market by providing networking opportunities
  - Provides recruitment and retention strategies to the market

- Delivers advice, advocacy and liaison and practical business related support where required
- It also currently provides engagement with school leavers and young person's with opportunities to gain employment and/or access education leading to work in the sector, thus building capacity

1.14 Both activities and outcomes are subject to refinement following stakeholder engagement and the development of the procurement and contract documentation. However, the proposed commercial approach is set out in the table below:-

Service Type	Description	Proposed Payment and Performance Mechanism
Workforce development and support as in keeping with the existing grant agreement	<p>Development of a training directory to offer training services to the Lincolnshire Adult Care market</p> <p>Delivery of training sessions to providers, the price of the training being supported by LCC thus encouraging providers to complete sessions.</p>	<p>Core funding for the dedicated staff to develop and deliver training</p> <p>Understanding of unit pricing to support monitoring of training activity levels</p> <p>Performance will be managed through provider engagement and satisfaction</p>
Generic support to the Council in supporting market initiatives including:		
Market liaison activities	Promotion and communication of key issues	<p>Part of core funding</p> <p>Council involvement in defining key issues and communication approaches</p>
Promotion of the sector and workforce	This currently forms a part of the existing funding streams however under this arrangement it will be managed separately as a discrete part of the contract.	<p>Part of core funding</p> <p>Council involvement in identifying strategies and priority areas</p>
Event Support	Coordination, marketing and set up of Market related events.	Day rate as required

Service Type	Description	Proposed Payment and Performance Mechanism
Targeted support to Providers who may require enhanced support (at the Council's direction)	In circumstances where additional training may be insufficient the Provider will be able to offer interim management and/or operational support to providers in crisis.	Day rate as required
A contractual mechanism to allow for new initiatives directly related to Market Support to be considered and approved by the Council with any additional funding to be determined at each point.	<p>For any new initiatives relating to the effectiveness, sustainability or operation of the Adult Care market in Lincolnshire the provider would be able to put forward a business case describing the initiative and any necessary increased funding</p> <p>This option would only be available for new initiatives clearly beyond the scope of the main agreement.</p>	Defined per initiative at the satisfaction of the Council

#### *Care Home Trusted Assessors*

1.15 While the Care Home Trusted Assessors project directly supports care homes and hospitals in Lincolnshire the specific nature of the work is quite distinct from the core services outlined above. While training, generic support and promotional activities are county wide and affect all Adults providers the CHTA service is related to discrete locations, specifications and outcomes. The commercial structure for this contract reflects this difference and is set out in the table below.

Service Type	Description	Proposed Payment and Performance Mechanism
Care Home Trusted Assessor Services in Lincolnshire Hospitals as in keeping with the existing grant agreement	Trusted assessors in Lincolnshire hospitals undertake referrals on behalf of Care Homes to expedite discharge.	<p>Core Funding</p> <p>Staff related activity. Performance will be managed through the identification of successful discharges and lower DTOC from supported hospitals</p> <p>Identification of unit costs will assist with the monitoring of activity under the contract</p>

## **Differences between a grant and a contract**

- 1.16 There is no single factor which determines whether funding can and should be provided under a grant or under a services contract. It is only analysis of a specific arrangement as a collective whole which will determine whether the funding is provided as a grant or under a services contract.
- 1.17 A grant is a specific amount of funding given to an organisation for specific activity. HMRC defines a grant as “a financial transfer used to fund an activity which is in broad alignment with the funder’s objectives”. In essence, rather than contract for the provision of specific services to a specific standard, the grant funds a third party to help meet the costs of carrying out certain activities which the Council has determined are of value to the Council or its area. Grant funding is generally therefore paid in tranches. Although it may only be paid against proof of cost being incurred or activity being carried out, it is not ultimately performance related. Nor does it lend itself to flexibility against changing Council requirements or the adoption of a mixture of payment arrangements within the same agreement.
- 1.18 A contract for services between a public authority and a provider is essentially a legally enforceable agreement between those parties under which the provider provides services in return for payment. The services may be provided either directly to the public authority or to third parties. In the latter case the provider would provide services to individuals on a public authority’s behalf in return for payment by the public authority.
- 1.19 A contract for services therefore allows the Council to specify the nature of the service it requires and to amend this requirement as circumstances change. It can define these requirements by reference to outcomes rather than activity. It can specify performance requirements and flex the amount it pays by reference to the provider’s performance. It can structure its payments to incentivise performance levels and volumes of activity. It can control the amount of activity undertaken and adopt different payment methodologies to reflect different service requirements and service delivery models.
- 1.20 If a provider under a contract for services fails to meet its obligations, there would be a breach of the contractual relationship which could result in compensation being paid by the party in breach which amount could be more than the total value of the contract. Under a grant agreement, the Council can recover grant paid or withhold future grant payments but cannot sue for the recovery of its losses as a result of the activity that the Council agreed to grant fund not meeting its expectations.
- 1.21 A grant will usually be given for a time limited one-off project whereas a contract for services is applicable to an ongoing requirement.

- 1.22 These distinctions matter because a contract is subject to EU rules on procurement, whereas a grant is not. Any decision to fund services as a grant has some risk since if the courts become involved they will make a decision based on substance, not on what the parties choose to call it. If the public procurement rules apply and are not followed, there could be severe consequences for both the public authority and the grant recipient including the contract being declared void by a court, significant legal costs, costs associated with delays, service disruption and re-procurement and potentially damages being awarded against the Council.
- 1.23 It can therefore be seen that the more the Council's commercial arrangements tend towards those that are best served by a contract for services the more likely it is that a court will consider that any contractual arrangement is a contract for services rather than a grant agreement. In these circumstances the use of a grant approach carries risk of challenge.

### **Grant or contract for services**

- 1.24 As can be seen the commercial structure that the Council envisages for the ongoing provision of the services point to this being a contract for services and in particular
- The need to specify services
  - Flexibility of payments to volumes
  - Payment for services as and when called for rather than a core payment
  - Payment on a mix of bases including day rates
  - Identification of unit pricing to better understand volumes of activity
- 1.25 In addition, the use of a contract for services gives much greater potential for relating payment to performance and exposure of the services to a competitive procurement process enables the Council to explore more innovative and efficient ways in which the service can be provided. Finally a contract management approach provides a more robust means for the Council to monitor performance and value for money across the life of the contract.
- 1.26 For these reasons it is recommended that a contract for services approach is adopted to be awarded following a competitive procurement. It is proposed that the same level of funding is secured for the continuation of the services in scope, the final cost of the service to be determined via competition.
- 1.27 By doing so it will allow;
- the Council to ensure the funding provided to the Provider is part of a legally compliant and effective commercial arrangement
  - a clear governance and reporting structure that will allow for efficient coordination of activities as well as gateways to enable any new initiatives

- The provider to operate with greater clarity with regard to outcomes, objectives, and the agreed scope of work.
- provide greater confidence and financial assurance for the provider.
- a mechanism that would allow for further development of key initiatives the Council may deem worthwhile in contributing to the overall good performance of the sector

## **Application of the Public Contracts Regulations**

- 1.28 Under the Public Contracts Regulations (PCR) 2015 activities relating to social care are generally dealt with under a 'Light Touch Regime' (LTR) which conforms to the general principles of the EU Procurement Directive but does not impose any strict procedural requirements. Training services are also captured under this regime.
- 1.29 The threshold at which LTR contracts must be formally competed for is €750,000 or approximately £640,000. A contract for services which includes both the existing Workforce and Discharge grants will exceed this value and therefore a procurement process is required under the LTR.

## **Tender process**

- 1.30 The Procurement is being undertaken in accordance with regulations 74 to 76 of the Public Contract Regulations 2015 under "Light Touch Regime" utilising an Open Procedure method. The ultimate decision as to which provider is awarded the single provider status will be based on their evaluation performance.
- 1.31 Tender evaluation will focus on service quality and the capability of the provider and any organisations they may wish to form sub-contracting arrangements with to deliver the required work and quality outcomes across the county set against clearly defined financial budgetary controls.

## **Procurement implications**

- 1.32 It is proposed that the procurement will be reserved for certain qualifying organisations relating to the pursuit of a 'public service mission' for Social Care services as detailed in Article 77 of the Public Contracts Regulations 2015.
- 1.33 This reservation is designed to support the establishment of these types of services that have not previously been exposed to more formal commercial arrangements. The maximum duration for such reserved contract is three years.
- 1.34 To verify that there will be sufficient competition within the procurement if such a reservation was put in place, a Prior Information Notice was published on 25th July 2017. This initiated a process of pre-tender market engagement and enabled us to use a questionnaire based on Regulation 77

of the Public Contracts Regulations. Returns are still being processed but if it is the case there are insufficient numbers of viable returns then the Council can then choose to a more traditional process and open the competition to any type of bidder.

- 1.35 It is the intention to issue an OJEU Notice for publication on 22nd September 2017 and a Contract Award Notice will be issued on any award to a successful bidder. In undertaking the procurement the Council will ensure the process utilised complies fully with the EU Treaty Principles of Openness, Fairness, Transparency and Non-discrimination. The procurement process will conform with all information as published and set out in the OJEU Notice. All time limits imposed on bidders in the process for responding to the OJEU Notice and Invitation to Tender will be reasonable and proportionate. The Procurement will be carried out in line with the timetable in Appendix A.
- 1.36 Consideration is being given to whether the Trusted Assessor element can be awarded as a separate lot. However, there are benefits in having a single provider for both lots, most notably with regard to the importance of having strong working links with Providers in Lincolnshire, and as such the procurement design will seek to encourage the award to a single provider where possible.
- 1.37 It is intended that the resulting contractual arrangements of this procurement exercise will provide the following:
  - A countywide Service with a single point of contact
  - A Service that is both flexible and responsive to the Adult care markets
  - A Service that will be delivered with the aim of strengthening the market for Adult Care Services across Lincolnshire
  - A Service Provider who will work in strategic partnership with the Council and health to tailor and deliver its services.
  - An affordable service that meets the Council's obligations in carrying its duties

### **Public Services Social Value Act**

- 1.38 In January 2013 the Public Services (Social Value) Act 2012 came into force. Under the Act the Council must before starting the process of procuring a contract for services consider two things. Firstly, how what is proposed to be procured might improve the economic social and environmental wellbeing of its area. Secondly, how in conducting the process of procurement it might act with a view to securing that improvement. The Council must only consider matters that are relevant to

the services being procured and must consider the extent to which it is proportionate in all the circumstances to take those matters into account. In considering this issue the Council must be aware that it remains bound by EU procurement legislation which itself through its requirement for transparency, fairness and non-discrimination places limits on what can be done to achieve these outcomes through a procurement.

- 1.39 It is clear that a stronger and well-resourced market for Adult Care services will have the potential to deliver increased social and economic benefits to the area by helping people live at home for longer; helping relieve pressure on acute hospitals, care homes, and the wider health system by assisting with front line care and preventing avoidable admissions to hospital; Furthermore the service will directly contribute to a more skilled and trained workforce with stronger, more sustainable employment conditions.
- 1.40 Under section 1(7) of the Public Services (Social Value) Act 2012 the Council must consider whether to undertake any consultation as to the matters referred to above. The service and the value it delivers are well understood. This is not a statutory service and it is unlikely that any wider consultation would be proportionate to the scope of the procurement.

## **2.0 Legal Issues:**

### Equality Act 2010

- 2.1 Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:
  - \* Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
  - \* Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
  - \* Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 2.2 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation
- 2.3 Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:
  - \* Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
  - \* Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
  - \* Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

- 2.4 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities
- 2.5 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding
- 2.6 Compliance with the duties in section 149 may involve treating some persons more favourably than others
- 2.7 The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

The key purpose of the service is to support the better functioning of Adult Care services in Lincolnshire. In that sense the delivery of the service helps to advance equality of opportunity and adverse impact would arise out of a failure to re-procure the services rather than as a result of continued delivery of the service through a different commissioning route. The providers' ability to provide services which advance equality of opportunity will be considered in the procurement and providers will be obliged to comply with the Equality Act.

An Impact Assessment has been completed for the Strategic Market Support Partner re-procurement which addresses the risk of adverse impact on service users which can be found as Appendix B.

There is a risk that a change of provider will impact on persons with a protected characteristic arising out of the employment impact on staff. The staff employed by the current provider will be affected by the termination of the current grant agreement. Mitigating factors will relate to the legal protections that will be in place through TUPE and general employment laws. The contract that will be entered into will also contain clauses requiring the contractor to comply with the Equality Act.

#### Joint Strategic Needs Analysis (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

The JSNA is the evidence base that underpins the Joint Health and Wellbeing Strategy and is a crucial commissioning tool to support service.

The JHWS has five priorities, which include improving the Health and Wellbeing of Older People and Delivering high quality systematic care for major causes of ill health and disability. These services would contribute to these priorities.

## Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

Section 17 matters have been taken into account in preparing the Report. The Proposals in this Report do not directly contribute to the furtherance of the section 17 matters and there is no risk of adverse impact identified.

## **3.0 Conclusion**

- 3.1 Through undertaking a procurement exercise for the Strategic Market Support Partner services on the basis of a contract for services the Council will establish a formal, sustainable service that builds on the success of the prior grant agreements and will provide vital support to the local market for Adult Social service.
- 3.2 In addition by including the Care Home Trusted Assessors (CHTA) element will ensure that this specialist element of the service provision will be focused in providing preventative support and critically facilitate decrease in delays of discharges into care homes.

### **Legal Comments:**

The Council has the power to enter into the contract for services proposed in the Report. The legal risks involved in continuing with a grant arrangement are set out in the Report. The procurement proposed is compliant with the Council's legal obligations.

The decision is consistent with the Policy Framework and within the remit of the Executive Councillor if it is within the budget.

### **Resource Comments:**

A number of grant initiatives are currently in place to support the Adult Care market via an arrangement with a Strategic Market Partner, the total value of services supported via this arrangement in 2017/18 is £151m. The grant funding used to support these initiatives will now be funded from Adult Care base funding at a value of £390,000 per annum. As a result it is recommended that these grants along with other activities described in the above report are consolidated into a formal commercial arrangement under a single contract. It is anticipated that this change will encourage financial efficiency and effectiveness with the service delivered on a set of robust outcome based measures

## 12. Consultation

### a) Has Local Member Been Consulted?

N/A

### b) Has Executive Councillor Been Consulted?

Yes

### c) Scrutiny Comments

This report will be considered by the Adults Scrutiny Committee on 6 September 2017. The comments of the Committee will be reported to the Executive Councillor prior to reaching her decision.

### d) Policy Proofing Actions Required

See the body of the Report

## 13. Appendices - These are listed below and set out at the end of the report

Appendix A	Timeline for 2017/18 Commissioning Process
Appendix B	Equality Impact Analysis

## 14. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Alex Craig and Reena Fehnert who can be contacted on 01522 554070 or 01522 553658 [alexander.craig@lincolnshire.gov.uk](mailto:alexander.craig@lincolnshire.gov.uk) / [reena.fehnert@lincolnshire.gov.uk](mailto:reena.fehnert@lincolnshire.gov.uk)

## Timeline for 2017/18 Commissioning Process

<b>For the Review and Procurement of the Strategic Market Support Partner Project</b>				
Event/ Activity	Responsible	Task	Date (w/c)	
Start-up Meeting	All	E	15 <sup>th</sup> May 2017	
SMSP Project Board – Start work on specification	All	E	13 <sup>th</sup> June 2017	
Proposal goes to DMT	AC/RF	M	19 <sup>th</sup> June 2017	
Market Engagement planning (mapping suppliers and comms and engagement strategy)	RF/All	O	For the 13 <sup>th</sup> July 2017	
First Project Board Meeting (planning, Identifying stakeholders, agreeing timescales, project brief and roles and responsibilities etc.)	All	E	19 <sup>th</sup> July 2017	
Report for Scrutiny to DMT	AC	M	14 <sup>th</sup> July 2017	
Market Engagement Activity	RF	O	2 <sup>nd</sup> August 2017	
SMSP Project Board Meeting (review feedback from Market engagement activity)	All	E	10 <sup>th</sup> August 2017	
<b>Final report to be submitted for Scrutiny</b>		<b>M</b>	<b>18<sup>th</sup> August 2017</b>	
Adults & Community Wellbeing Scrutiny 10.00AM	AC/RF	M	6 <sup>th</sup> September 2017	
SMSP Project Board Meeting (review findings from MEA and approve final version of Tender docs)	All	E	14 <sup>th</sup> September 2017	
Procurement Board Approval of Tender docs	AC	M	21 <sup>st</sup> September 2017	
Issue of Tender documents and Invitation	RF	M	22 <sup>nd</sup> September 2017	
Tender out for submissions (33 full days)	RF	E	22 <sup>nd</sup> September 2017 to 26 <sup>th</sup> October 2017	
Applications evaluated	Evaluation team/RF	E	26 <sup>th</sup> October 2017 to 13 <sup>th</sup> November 2017	
Evaluation report and Delegated decision	AC/RF	M	14 <sup>th</sup> November 2017 to 22 <sup>nd</sup> November 2017	
Standstill period	RF	M	24 <sup>th</sup> November 2017 to 4 <sup>th</sup> December 2017	
Contract Award	RF	E	12 <sup>th</sup> December 2017	
Fourth Project Board Meeting (planning implementation, communications etc)	All	E	14 <sup>th</sup> December 2017	
Implementation period ( 2 <sup>nd</sup> Jan 2018 to 31 <sup>st</sup> March 2018)	All	E	13 weeks	
Contract commencement date	RF/AC	M	1 April 2018	

## Equality Impact Analysis to enable informed decisions

**The purpose of this document is to:-**

- I. help decision makers fulfil their duties under the Equality Act 2010 and
- II. for you to evidence the positive and adverse impacts of the proposed change on people with protected characteristics and ways to mitigate or eliminate any adverse impacts.

### Using this form

This form must be updated and reviewed as your evidence on a proposal for a project/service change/policy/commissioning of a service or decommissioning of a service evolves taking into account any consultation feedback, significant changes to the proposals and data to support impacts of proposed changes. The key findings of the most up to date version of the Equality Impact Analysis must be explained in the report to the decision maker and the Equality Impact Analysis must be attached to the decision making report.

**\*\*Please make sure you read the information below so that you understand what is required under the Equality Act 2010\*\***

### Equality Act 2010

The Equality Act 2010 applies to both our workforce and our customers. Under the Equality Act 2010, decision makers are under a personal duty, to have due (that is proportionate) regard to the need to protect and promote the interests of persons with protected characteristics.

### Protected characteristics

The protected characteristics under the Act are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

### Section 149 of the Equality Act 2010

Section 149 requires a public authority to have due regard to the need to:

- Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by/or under the Act
- Advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share those characteristics
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The purpose of Section 149 is to get decision makers to consider the impact their decisions may or will have on those with protected characteristics and by evidencing the impacts on people with protected characteristics decision makers should be able to demonstrate 'due regard'.

### **Decision makers duty under the Act**

Having had careful regard to the Equality Impact Analysis, and also the consultation responses, decision makers are under a personal duty to have due regard to the need to protect and promote the interests of persons with protected characteristics (see above) and to:-

- (i) consider and analyse how the decision is likely to affect those with protected characteristics, in practical terms,
- (ii) remove any unlawful discrimination, harassment, victimisation and other prohibited conduct,
- (iii) consider whether practical steps should be taken to mitigate or avoid any adverse consequences that the decision is likely to have, for persons with protected characteristics and, indeed, to consider whether the decision should not be taken at all, in the interests of persons with protected characteristics,
- (iv) consider whether steps should be taken to advance equality, foster good relations and generally promote the interests of persons with protected characteristics, either by varying the recommended decision or by taking some other decision.

### **Conducting an Impact Analysis**

The Equality Impact Analysis is a process to identify the impact or likely impact a project, proposed service change, commissioning, decommissioning or policy will have on people with protected characteristics listed above. It should be considered at the beginning of the decision making process.

### **The Lead Officer responsibility**

This is the person writing the report for the decision maker. It is the responsibility of the Lead Officer to make sure that the Equality Impact Analysis is robust and proportionate to the decision being taken.

### **Summary of findings**

You must provide a clear and concise summary of the key findings of this Equality Impact Analysis in the decision making report and attach this Equality Impact Analysis to the report.

## Impact – definition

An impact is an intentional or unintentional lasting consequence or significant change to people's lives brought about by an action or series of actions.

### How much detail to include?

The Equality Impact Analysis should be proportionate to the impact of proposed change. In deciding this asking simple questions "Who might be affected by this decision?" "Which protected characteristics might be affected?" and "How might they be affected?" will help you consider the extent to which you already have evidence, information and data, and where there are gaps that you will need to explore. Ensure the source and date of any existing data is referenced.

You must consider both obvious and any less obvious impacts. Engaging with people with the protected characteristics will help you to identify less obvious impacts as these groups share their perspectives with you.

A given proposal may have a positive impact on one or more protected characteristics and have an adverse impact on others. You must capture these differences in this form to help decision makers to arrive at a view as to where the balance of advantage or disadvantage lies. If an adverse impact is unavoidable then it must be clearly justified and recorded as such, with an explanation as to why no steps can be taken to avoid the impact. Consequences must be included.

**Proposals for more than one option** If more than one option is being proposed you must ensure that the Equality Impact Analysis covers all options. Depending on the circumstances, it may be more appropriate to complete an Equality Impact Analysis for each option.

**The information you provide in this form must be sufficient to allow the decision maker to fulfil their role as above. You must include the latest version of the Equality Impact Analysis with the report to the decision maker. Please be aware that the information in this form must be able to stand up to legal challenge.**

## Background Information

<b>Title of the policy / project / service being considered</b>	Strategic Market Support Partner	<b>Person / people completing analysis</b>	Alexander Craig, Reena Fehnert
<b>Service Area</b>	Commercial Team	<b>Lead Officer</b>	Alina Hackney
<b>Who is the decision maker?</b>	Councillor P Bradwell	<b>How was the Equality Impact Analysis undertaken?</b>	By the Project Board
<b>Date of meeting when decision will be made</b>	06/09/2017	<b>Version control</b>	V1
<b>Is this proposed change to an existing policy/service/project or is it new?</b>	Existing policy/service/project	<b>LCC directly delivered, commissioned, re-commissioned or de-commissioned?</b>	Commissioned
<b>Describe the proposed change</b>	The services is currently funded via a Grant agreement this will change due to going through a formal Procurement process and resulting in a contract.		

## **Evidencing the impacts**

In this section you will explain the difference that proposed changes are likely to make on people with protected characteristics. To help you do this first consider the impacts the proposed changes may have on people without protected characteristics before then considering the impacts the proposed changes may have on people with protected characteristics.

You must evidence here who will benefit and how they will benefit. If there are no benefits that you can identify please state 'No perceived benefit' under the relevant protected characteristic. You can add sub categories under the protected characteristics to make clear the impacts. For example under Age you may have considered the impact on 0-5 year olds or people aged 65 and over, under Race you may have considered Eastern European migrants, under Sex you may have considered specific impacts on men.

### **Data to support impacts of proposed changes**

When considering the equality impact of a decision it is important to know who the people are that will be affected by any change.

#### Population data and the Joint Strategic Needs Assessment

The Lincolnshire Research Observatory (LRO) holds a range of population data by the protected characteristics. This can help put a decision into context. Visit the LRO website and its population theme page by following this link: <http://www.research-lincs.org.uk> If you cannot find what you are looking for, or need more information, please contact the LRO team. You will also find information about the Joint Strategic Needs Assessment on the LRO website.

#### Workforce profiles

You can obtain information by many of the protected characteristics for the Council's workforce and comparisons with the labour market on the [Council's website](#). As of 1<sup>st</sup> April 2015, managers can obtain workforce profile data by the protected characteristics for their specific areas using Agresso.

**Positive impacts**

The proposed change may have the following positive impacts on persons with protected characteristics – If no positive impact, please state '*no positive impact*'.

<b>Age</b>	Positive impact. By increasing the provision and capability of Adult Care providers those in receipt of any Adult Care service should benefit from better outcomes
<b>Disability</b>	Positive impact. By increasing the provision and capability of Adult Care providers those in receipt of any Adult Care service should benefit from better outcomes
<b>Gender reassignment</b>	No impact
<b>Marriage and civil partnership</b>	No impact
<b>Pregnancy and maternity</b>	No impact
<b>Race</b>	Positive impact
<b>Religion or belief</b>	Positive impact

Sex	Positive impact
Sexual orientation	Positive impact

If you have identified positive impacts for other groups not specifically covered by the protected characteristics in the Equality Act 2010 you can include them here if it will help the decision maker to make an informed decision.

### **Adverse/negative impacts**

You must evidence how people with protected characteristics will be adversely impacted and any proposed mitigation to reduce or eliminate adverse impacts. An adverse impact causes disadvantage or exclusion. If such an impact is identified please state how, as far as possible, it is justified; eliminated; minimised or counter balanced by other measures.

If there are no adverse impacts that you can identify please state 'No perceived adverse impact' under the relevant protected characteristic.

**Negative impacts of the proposed change and practical steps to mitigate or avoid any adverse consequences on people with protected characteristics are detailed below. If you have not identified any mitigating action to reduce an adverse impact please state '*No mitigating action identified*'.**

<b>Age</b>	No perceived adverse impact
<b>Disability</b>	No perceived adverse impact
<b>Gender reassignment</b>	No perceived adverse impact
<b>Marriage and civil partnership</b>	No perceived adverse impact
<b>Pregnancy and maternity</b>	No perceived adverse impact

Race	No perceived adverse impact
Religion or belief	No perceived adverse impact
Sex	No perceived adverse impact
Sexual orientation	No perceived adverse impact

If you have identified negative impacts for other groups not specifically covered by the protected characteristics under the Equality Act 2010 you can include them here if it will help the decision maker to make an informed decision.

## **Stakeholders**

Stake holders are people or groups who may be directly affected (primary stakeholders) and indirectly affected (secondary stakeholders)

You must evidence here who you involved in gathering your evidence about benefits, adverse impacts and practical steps to mitigate or avoid any adverse consequences. You must be confident that any engagement was meaningful. The Community engagement team can help you to do this and you can contact them at [consultation@lincolnshire.gov.uk](mailto:consultation@lincolnshire.gov.uk)

State clearly what (if any) consultation or engagement activity took place by stating who you involved when compiling this EIA under the protected characteristics. Include organisations you invited and organisations who attended, the date(s) they were involved and method of involvement i.e. Equality Impact Analysis workshop/email/telephone conversation/meeting/consultation. State clearly the objectives of the EIA consultation and findings from the EIA consultation under each of the protected characteristics. If you have not covered any of the protected characteristics please state the reasons why they were not consulted/engaged.

### **Objective(s) of the EIA consultation/engagement activity**

To ensure that no protected characteristics are impacted by the change to the way the services are delivered. As there is no reduction in provision, apart from it going through a robust procurement process, the outcomes of the service will only be improved.

**Who was involved in the EIA consultation/engagement activity? Detail any findings identified by the protected characteristic**

Age	Yes
Disability	
Gender reassignment	No
Marriage and civil partnership	Yes
Pregnancy and maternity	No
Race	Yes
Religion or belief	Yes

<b>Sex</b>	Yes
<b>Sexual orientation</b>	Yes
<b>Are you confident that everyone who should have been involved in producing this version of the Equality Impact Analysis has been involved in a meaningful way?</b>  The purpose is to make sure you have got the perspective of all the protected characteristics.	Yes
<b>Once the changes have been implemented how will you undertake evaluation of the benefits and how effective the actions to reduce adverse impacts have been?</b>	Through an appropriately structured Strategic Contract management process

**Further Details****Are you handling personal data?**

Yes

If yes, please give details.

Provider contact details

<b>Actions required</b> Include any actions identified in this analysis for on-going monitoring of impacts.	<b>Action</b>	<b>Lead officer</b>	<b>Timescale</b>
	None		
<b>Signed off by</b>		<b>Date</b>	Click here to enter a date.