

# Birmingham City Council

## Report to Cabinet

23 April 2024



<b>Subject:</b>	<b>COMMISSIONING STRATEGY FOR EXTERNALLY PROVIDED DAY OPPORTUNITIES</b>
<b>Report of:</b>	<b>Louise Collett Acting Strategic Director for Adult Social Care</b>
<b>Relevant Cabinet Member:</b>	<b>Cllr Rob Pocock - Health &amp; Social Care</b>
<b>Relevant O &amp;S Chair(s):</b>	<b>Cllr Mick Brown – Health &amp; Adult Social Care</b>
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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 012586/2024		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:		

### 1 Executive Summary

This report sets out a Commissioning Strategy for the Provision of Day Opportunities provided by the external market to ensure that the Council's statutory duties to meet care and support needs including having a diverse range/quality of services available for citizens under the Care Act 2014 can be met.

### 2 Recommendations

That the Cabinet is recommended to:

- 2.1 Approve the Commissioning Strategy for the Provision of Day Opportunities provided by the external market.
- 2.2 Approves the commissioning intention to procure a new Flexible Contracting Arrangement (a Dynamic Purchasing System (DPS) type arrangement for the provision of Day Opportunities in accordance with the Procurement Act 2023.
- 2.3 Delegate the approval of the Procurement Strategy to the Cabinet Members for Health and Social Care and Finance and Resources in consultation with the Assistant Director Procurement (or their delegate) and the Strategic Director, Adult Social Care.
- 2.4 Delegates to the Assistant Director Procurement (or their delegate) in consultation with the Strategic Director Adult Social Care to appoint, as and when required, suppliers onto the new Flexible Contracting Arrangements where they meet the selection criteria.
- 2.5 Delegate the award of call off contracts under the new Flexible Contracting Arrangements, when established, to the Director of Adult Social Care, the Director of Commissioning and the Head of Service - Commissioning (Complex Care).
- 2.6 Notes that the outcome of all call-offs from the Flexible Contracting Arrangement will be reported to the Assistant Director Procurement (or their delegate) and the Strategic Director, Adult Social Care, Interim Finance and Section 151 Officer (or their delegate) and the Interim City Solicitor & Monitoring Officer (or their delegate).
- 2.7 Approve for the NHS to call off from the Flexible Contracting Arrangement for day opportunities as required.
- 2.8 Authorises the City Solicitor (or their delegate) to execute and complete all necessary legal documents to give effect to the above recommendations.
- 2.9 To delegate any modifications to the contracts to the Directorate of Adult Social Care, the Director of Commissioning, and the Head of Service - Commissioning (Complex Care), including the annual setting of fees in line with the Commissioning Strategy and the Council's revenue budget and Medium-Term Financial Plan.

### **3 Background**

- 3.1 In April 2023 Cabinet gave approval for the development of a Co-produced Commissioning Strategy for the external market and an Improvement Plan for internal day centres. The latter is being implemented as part of the Adult Social Care Directorates' response to the Reset, Reshape, Response programme.
- 3.2 The Council has a range of statutory duties and powers under the Care Act 2014 to assess the needs of citizens for care and support and commission a range of services that meet those needs. The Council currently commissions a range of day opportunities services via spot purchase arrangements.
- 3.3 The vision for Adult Social Care in Birmingham is to promote community resilience and enable vulnerable citizens to access support and services within the

communities in which they live, exercising choice and control so that they can live good quality lives and enjoy good health and wellbeing.

- 3.4 Day Opportunities (traditionally referred to as day centres) is a broad term given to the services provided for people with care and support needs and their carers that take place, mainly, over daytime hours which provide vital support in two main ways:
- They provide meaningful activities, including learning, stimulation and recreation, promoting independence, supporting the development of skills, preparing for access to employment, making friends and enjoying the company of others.
  - They provide valuable respite for unpaid carers.
- 3.5 Day Opportunities support autistic people, those with a learning disability, physical disabilities, acquired brain injury, older adults including those with dementia.
- 3.6 This report is focusing on day opportunities provided by the external market, private and third sector. Currently 57 providers, across 74 day centres (18 of which are outside of Birmingham) support 954 adults funded by Adult Social Care. There are also 302 adults who self-fund their attendance at day opportunities. Provision is largely building based with limited community integrated models of support.
- 3.7 The Council is on schedule to pay circa £8,000,000 for directly commissioned day opportunities as part of citizen's care packages to the external providers. Prices of services vary considerably even when packages of care are similar. There is no pricing structure to inform the spot purchasing of day opportunities. Provision is either directly commissioned or citizens have a personal budget and pay for their care themselves. Spend on direct payments for 23/24 will be circa an additional £3,000,000.
- 3.8 Day opportunities are not regulated by CQC and, to date, whilst there are no contracts in place with external market, the providers engage voluntarily with a co-produced quality assurance framework and there is regular engagement between providers and commissioners. The proposed commissioning strategy and procurement of a Flexible Contracting Arrangement will set the foundation for quality and value, applying clear commissioning expectations and defined outcomes for citizens. It provides an opportunity for building on the learning of the significant work carried out with the regulated market, ensuring that the day opportunities market is developed and reshaped to enable it to be transformed.
- 3.9 In 2022 an independently co-produced review of day opportunities post-pandemic was carried out. The report of the review was presented to Cabinet in April 2023. The review identified a range of issues to be addressed through a co-produced commissioning strategy for external day services These included:
- A review of both specialist and public transport arrangements for accessing day care centres and activities in the wider community.

- Consideration for increased access to, and choice of, day opportunity services that reflect the strengths, abilities and aspirations of people who need or choose to use them.
- Improving accessibility to services in the community across Birmingham including access to more Changing Places.
- Review of workforce training and development

3.11 Further co-production has been undertaken to:

- Hear from citizens who currently use day opportunities, those who will be leaving education soon, and carers to understand their aspirations for their day opportunities for the future.
- Hear from those who choose not to use day opportunities as described. Is it, for example, to do with quality, not being age appropriate, not meeting support needs or interests, cultural needs, or maybe they have found something different to do?
- Engage with providers to better understand their ideas, concerns and challenges.

3.12 The key messages from the recent co-production are:

**What people do now and what they would like to do in the future.**

One size did not fit all - there was a wide range of preferences and citizens were able to say what they enjoy doing on a regular basis. These ranged from arts and crafts, games, and quizzes, to practical skills and support in daily living. People also wanted to learn and develop new skills, gain qualifications and to find work. Citizens also wanted and enjoyed trips into the community and doing sports and leisure activities.

However, continuity and certainty were also important. Families / carers needed continuity in terms of time, location, and activity as they needed to plan lives, work other caring responsibilities around these. Staff also needed a level of continuity to enable planning in terms of resources, staffing and transport.

**Community / friendships and mutual support**

There was a strong sense that services were essential in enabling friendship, community, and mutual support to each other. Long standing friendships and connections were made, and citizens wanted these to continue. Citizens said they felt safe, welcomed and could be themselves within services. Many did not feel that they were understood or welcomed in the wider community. Can the council help with improving community facilities, transport and raising awareness on promoting the rights, needs and aspirations of citizens with disabilities?

## **Status of day services – their voice and expertise, training, skills, and knowledge**

To support citizens in a person centred and impactful way the staff and services needed to adapt and develop continually. They need to be able to support across a wide range of disciplines as well as those related to the client groups they serve.

A constant theme is the need to recognise the need to plan throughout the person's life transitioning from children to adult services and then as citizens get older and families and carers get older. Services wanted to be more involved and felt they could be playing an important role in supporting care planning and helping families to plan/prepare for the future.

Day services across Birmingham vary enormously in terms of offer, cost, content and quality – does the Council know what good looks like and do we have a plan to improve standards everywhere? A level playing field is required to ensure fairness and to incentivise innovation and change. Providers coming together was seen as a great way to share ideas and make the most of opportunities - and the recent provider co-production was welcomed.

### **Information about what's available.**

Everyone we spoke to felt that they needed help understanding what is available and how to access it. This ranged from access to assessments, funding and health services to knowing what other specialist day services, clubs and activities there were in Birmingham. Understanding what is available locally was important in terms of making connections on a day-to-day basis reducing travel and enabling sustainable connections to be made.

- 3.13 The findings from the co-production are detailed in **Appendix 1** – Commissioning Strategy for Externally Provided Day Opportunities, and **Appendix 2** – Co-production Report 2024 (RedQuadrant).
- 3.14 The Commissioning Strategy also refers to the Images of Possibility slide set and Stories of Success that illustrate how day opportunities have developed both in Birmingham and other parts of the UK to meet citizens' aspirations.
- 3.15 The benefits of the Commissioning Strategy 2024+ are detailed below:

### **Aim 1: To improve outcomes.**

- 3.16 The Council will commission high quality services to ensure better outcomes for service users.
- 3.17 Implementation of a quality rating system will ensure informed choice can be made, giving citizens and their family's choice and control over the services they receive.
- 3.18 Implementation of a pricing schedule will stabilise the sector and ensure it remains sustainable, with fees paid by the Council, keeping pace with a number of significant cost pressures in the market - as allowed for by the Council's

budgetary position. This will ensure better continuity of opportunities for citizens and will allow providers to invest in the quality of their services.

- 3.19 Citizen, family, and carer feedback about the quality of services received will mean that this information is used to inform future commissioning decisions, again giving choice and control to service users.

**Aim 2: To improve the quality.**

- 3.20 Implementation of a quality framework will provide an incentive and support to providers to improve the quality of their services and also to be clear about how this should be achieved.
- 3.21 The integration of customer feedback will drive up the quality of services, based on real service user experiences.

**Aim 3: To improve the resilience and sustainability of our health and social care system.**

- 3.22 The Council will continue to contract with a range of providers which will improve the resilience of the market. The strategy will be a move towards greater parity across the social care market.
- 3.23 The implementation of a pricing schedule will:
- Allow Birmingham City Council to plan both financially but also in terms of the types and volumes of services needed in future.
  - Enable providers to plan and invest in their service, as they will know how much they can expect to be paid by the Council.
  - Be transparent and fair across all providers.
  - Keep pace with significant price pressures in the care market to ensure sustainability in future - within the constraints of the Council's revenue budget.
- 3.24 The Adult Social Care Directorate has a bespoke IT solution (the Care Match Portal) that will be considered for use to operate the contracts for the services in scope of this report. Using this system allows successful providers to be passported directly through to a micro-procurement module. This system is then used to manage call-offs from the contract in the forms of individual packages of care for citizens. This makes the process simpler for professionals and providers.

**4 Options considered and Recommended Proposal**

The following options were considered before selecting option 4 as the recommended proposal.

**Option 1** - Do nothing. This has been discounted because the current spot purchased arrangements do not offer a guarantee of provider stability, quality or

price. The process takes time to navigate and often leads to a small group of providers being approached, limiting citizen and carer choice. The future approach to commissioning of day opportunities services requires planning and development and to do nothing in the long term would put the Council at significant risk of not being able to manage quality and expenditure.

**Option 2** – Use a select list of providers and spot purchase individual packages of care and support - This option has been discounted for the same reasons as Option 1.

**Option 3** – Move to block contracted provision - Although the Council does still have a very small number of block-contracted providers for other care services, the Council has already reduced its reliance on block contracted provision, including internal Council operated provision. This has allowed us to provide choice for citizens (as required under the Care Act 2014) as well as to facilitate competition and to meet changes in demand for regulated adult social care services over time. This option has therefore been discounted.

**Option 4** – Implement a Flexible Contracting Arrangement – This will provide the Council with the infrastructure and contracting arrangements to be able to manage the day opportunities service provision for citizens. A Flexible Contracting Arrangement is like a DPS in that it remains open for new providers to join during the life of the contract. This will allow for new innovative providers to join the framework as we seek to increase the opportunity for meaningful activity. The Arrangement will be designed in a way that ensure transparency, fairness and value for money across the operation of the contract. Through a flexible contracting arrangement, the fees, quality, service requirements can all be set out through a robust and transparent process. This is the recommended proposal.

## **5 Consultation**

- 5.1 Building on the co-produced review of day opportunities post-pandemic of winter 2022, which was reported to Cabinet in April 2023, further co-produced engagement activity was undertaken across winter 2023/24 with day opportunities providers, citizens, and their carers. The outcome from this co-produced engagement has been carefully considered and used to develop the Commissioning Strategy (**Appendix 1**) and there will be further engagement as the establishment of the Flexible Contracting Arrangement progresses.
- 5.2 The contents of this report were discussed at the Commissioning Management Team meeting on 9<sup>th</sup> February 2024 and the Adult Social Care Management Team on 28<sup>th</sup> February 2024. Both were supportive of the recommendations within this report.

## **6 Risk Management**

- 6.1 The most significant risk to the implementation of the Commissioning Strategy for the Provision of Day Opportunities provided by the external market is if the current

providers of existing spot purchased arrangements choose not to sign up to the proposals in the commissioning strategy resulting in a situation where citizens are receiving a service from these providers who are not then on the framework. Given the positive feedback received from provider engagement Commissioners are confident that enough providers will sign up to the new arrangements.

- 6.2 Risks will continue to be monitored throughout the project through a dedicated Risk Register which will be maintained and updated regularly.

## **7 Compliance Issues:**

### **7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

- 7.1.1 The Council has set out a bold and challenging agenda to ensure Birmingham is a city in which every citizen can live a healthy enjoyable life, which is contained in our Corporate Plan 2022/2026. This sets out our ambition to have a city where every citizen, at every stage of their life, in all communities can make healthy choices that are affordable, sustainable, and desirable to support them to achieve their potential for a happy, healthy life.
- 7.1.2 The aim of adult social care in delivering the Council's ambition is to protect and empower the most vulnerable citizens. This means supporting vulnerable citizens to maximise their independence, health, and wellbeing, whilst ensuring that publicly funded care and support provides value for money for Birmingham citizens and is provided only when it is really needed.

### **7.2 Legal Implications**

- 7.2.1 Under Section 8 of the Care Act 2014, a local authority can discharge its duty to meet assessed eligible need for care and support under sections 18 to 20 of the Act, by providing care and support at home or in the community or goods or facilities and the local authority can provide these by arranging for them to be provided by another person or body other than the local authority.
- 7.2.2 The Commissioning Strategy further supports the Council's statutory duties under Section 5 of the Care Act 2014 to shape and maintain an efficient and effective market of services for meeting care and support needs. The market that is shaped should ensure that any person requiring care and support; has a variety of providers supplying a variety of services to choose from; has a variety of high-quality services to choose from; and has sufficient information to make an informed decision about how to meet their needs.
- 7.2.3 The Council is enabled, by Section 111 of the Local Government Act 1972, to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The Council therefore has a general power to enter into contracts for the discharge of any of its functions.



### **7.3 Financial Implications**

- 7.3.1 The Flexible Contracting Arrangement (FCA) is proposed to be established for a period of 5 years, with the option to extend for up to two years. Based upon an indicative annual value of £10m which includes allowance for growth in demand, the potential total value is £70m for 7 years. This will be confirmed in the subsequent Procurement Strategy.
- 7.3.2 It is proposed that there will be a full review of the FCA at the end of year three to measure the impact of the arrangement as intended and to determine if it is fit for purpose for the remainder of the five-year term and if the option to extend for two further years is likely to be used.
- 7.3.3 It is not anticipated at present that there will be a need for significant additional investment from the Council following the implementation of the Flexible Contracting Arrangement and its pricing schedule. Planned expenditure through the new contracts is largely expected to replicate current expenditure from existing spot purchased arrangements.
- 7.3.4 However, all spend is subject to changes in demand and inflation and for future years and will need to be managed in line with the Council's available budget. Currently, spot purchased packages of care for day opportunities are subject to annual uplifts in line with regulated services, but this has only been applied in recent years after significant years of underinvestment.
- 7.3.5 Due to the underinvestment and lack of a pricing schedule there will be a need to adjust the price of historic packages of care to ensure that they are in line with charges for more recent packages of care. the proposed open book exercise will identify the scale of this.
- 7.3.6 If the Commissioning Strategy is approved, the Flexible Contracting Arrangement will not be live until 2025/26 and any expenditure will be in line with Council's approved budget for this year and beyond.

### **7.4 Procurement Implications (if required)**

- 7.4.1 The proposed Flexible Contracting Arrangement is new with regard to the purchasing of day opportunities. The Council is able to set out its commercial arrangements with providers, as long as they are legally compliant. The services in scope of this report will be covered by the regulations relating to Light Touch Contracts under the Procurement Act 2023. The Council can design its own procedure provided it; complies with the principles of equal treatment and transparency; carries out the procedure in conformity with information included in the notice (except in specified circumstances); and sets time limits that are reasonable and proportionate.
- 7.4.2 The new Procurement Act 2023 is likely to be in place with effect from 1<sup>st</sup> October 2024.
- 7.4.3 The proposed new arrangement will be co-produced where appropriate and compliant.

7.4.4 If the recommendations in this report are approved the Commissioning Strategy and procurement process will be completed as shown in the indicative timeline below.

**Table 1**

<b>Activity</b>	<b>Indicative Dates</b>
Cabinet Approval (Strategy)	23 April 2024
<i>All dates beyond this point assume the proposal is approved</i>	
Further market engagement inc. open book	May – October 2024
Co-production of service specification and quality standards	May – October 2024
Explore options to address issues re: community accessibility and transport.	May – October 2024
ITT developed inc.	November 2024
Procurement Strategy written	November 2024
Procurement strategy approved via delegations	January 2025
ITT Issued Clarification Period (3 weeks) ITQ Return (allowing 30 days) Evaluation Period (6 weeks) Award Approval (3 weeks) FCA Contract Award FCA Award Letters Issued	March 2025 – July 2025  The evaluation will involve experts by experience so will take a longer period to be completed
FCA Starts – Individual Contracts	August 2025

## 7.5 Human Resources Implications (if required)

7.5.1 There are no human resource implications.

## 7.6 Public Sector Equality Duty

7.6.1 An Equality Impact Assessment has been carried out to identify the impact of the proposed changes. Details of the Equality Assessment can be found in **Appendix 3**. As the proposals will impact on all citizens of commissioned external day opportunities services, the assessment has not identified any groups that will be adversely affected. The proposals are designed to improve the outcomes, quality of services and continuity of service for all citizens regardless of their protected characteristics.

## 7.7 Environmental and Sustainability Implications

7.7.1 All successful providers are required to be familiar with the Council's aims for a Sustainable Birmingham and ensure that in its performance of the Service,

it uses working methods, equipment, materials, and consumables which minimise environmental impact. An Environmental & Sustainability Assessment is attached as **Appendix 4**.

## **7.8 Social Value**

- 7.8.1 Social Value requirements will be included within the Council's ongoing contract and quality management arrangements. Providers will be required to submit a Social Value action plan as part of their annual Provider Quality Assurance Statement and will receive support from Commissioners (Adult Social Care) in developing and reviewing these. This will include providers telling the Council about the steps they are taking in relation to Environmental and Sustainability implications of their services through their Social Value action plans.

## **8 Appendices**

- 8.1 **Appendix 1:** Commissioning Strategy for Externally provided day Opportunities.
- 8.2 **Appendix 2:** Co-production report 2024 (RedQuadrant)
- 8.3 **Appendix 3:** Equality Impact Assessment
- 8.4 **Appendix 4:** Environmental & Sustainability Assessment

## **9 Background Documents**

- 9.1 My Daily Life, My Choice. Report of the review of day opportunities post-pandemic (Cabinet 25<sup>th</sup> April 2023)