

Meeting:	Executive
Meeting date:	14 th December 2023
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Portfolio of:	Cllr Jo Coles

Decision Report: Procurement of the Adult Community Wellbeing and Support Service

Subject of Report

1. This paper seeks permission to reprocure the City of York Council's ("**the Council**") Community Wellbeing and Support contract for Adults for a maximum 7-year value of £6,638,625.
2. The contract was commissioned on 1st February 2017 from The Cyrenians Ltd. (t/a Changing Lives) to reduce homelessness. The Contract will expire on 31st January 2024 (the Term having previously been extended beyond the original expiry date of 31st January 2022 by a further 2-years). The current contract will need a further extension to the 31st July 2024 to ensure continued delivery during the 6-month procurement process (see Annex 4 for Procurement Timelines). The current annual cost is £1,098,375 and a 6-month extension would be at a cost of £549,188.
3. In 2022/23 the Service provided support to 218 of the city's most vulnerable people through provision of the following commissioned services:
 - 24/7 hostel provision at Union Terrace (39 male units);
 - 24/7 hostel provision at Robinson Court (14 female units and 4 young people units);
 - floating tenancy support to shared housing and people within the community (74 units across 14 houses, including Scarcroft, and 12 training flats);

- a Bed Ahead homeless discharge support & advice service within York Hospital;
- Making Every Adult Matter (“MEAM”) service which provides intensive support and multi-agency coordination to up to 28 multiply excluded adults with complex needs; and
- Mental Health Housing First (“MHHF”) service supports up to 21 individuals with a long history of mental ill health and challenging lives to live independently. NB this service element is currently funded by ICB/TEWV as part of the future specialist Mental Health Supported Accommodation pathway.

Benefits and Challenges

4. Benefits of the proposal

Hostels are a key element in the provision of services for those who are homeless, many of whom have other support needs. Without this hostel provision and the support offered through these services the fundamental part of the homeless pathway and strategy will not be able to be delivered. The Council is committed to reducing homelessness and providing appropriate housing for its citizens. The current administration has made a clear commitment to ending rough sleeping through both provision of increased access to affordable housing and to meeting the needs of those currently experiencing rough sleeping and the accompanying health inequalities. The hostels, shared housing and floating support under this Contract provide alternatives to rough sleeping for hundreds of people a year, thus is beneficial in helping the Council meet its preventative duties under the Care Act 2014. Without this provision rough sleeping numbers would dramatically increase, as would associated cost pressures on other Council resources and the wider system – to say nothing of the human cost to the individuals.

5. This Service plays a beneficial role in the Council’s approach to preventing, delaying, or reducing costly care packages. Most people within the resettlement pathway have additional complexities around mental health needs, substance use disorder etc. Without the support provided within these Services, there would be an increase in need and therefore an increase in the numbers of people to whom the Council has a statutory duty of care. It would also have a significant impact on the city’s health inequalities.

6. The service will offer a pathway to substance misuse services as well as general health promotion advice and support. This will ensure the needs of those accessing the service are maximised and making every contact count as an opportunity to improve general health and wellbeing.
7. Monitoring data informs us that the hostels are at capacity most of the time, with the specialist Services above capacity. The impact of decommissioning this contract would be, but not limited to:
 - Decrease in 52 hostel placements resulting in more rough sleeping and increased pressure and demand in alternative provision.
 - Overcrowding within in-house hostel provision and a lack of emergency beds resulting in increased rough sleeping.
 - Visible increase in street homelessness for York residents and visiting tourists.
 - Decreased support from the MEAM team for homeless people coming out of prison/in contact with the criminal justice system/with ongoing substance misuse disorder could increase risk around community safety and a demand on neighbourhood enforcement teams.
 - Significant increase in safeguarding cases for the Council.
 - Reduced preventative options would result in increased referrals to social services without any recourse for onward referral.
 - Social work teams would be overwhelmed managing high numbers of complex vulnerable individuals at a high financial cost than a support worker.
8. The benefits of commissioning services from the market are that it often enables greater efficiency, responsiveness, and innovation. The benefit of procurement is that it enables us to stimulate and shape the local market ensuring that it works to the delivery of outcomes set and monitored by the Council.

Challenges of the proposal

9. There is an untested assumption around the benefits of in-house delivery in relation to economy, efficiency, and effectiveness as per the Local Government Act 1999. Factors such as the current shared delivery of the Homelessness Pathways with the Resettlement Services indicate there would be some level of increased effectiveness through reducing systemic duplication and a closer

working across the pathway. In addition, in-house services deliver better outcomes in relation to the key indicator of positive and planned move-on. The disadvantage of this approach would be the financial impact on the Council of the increased staffing costs. The absence of a financially informed options analysis, particularly given the complexity in relation to TUPE, is a barrier to recommending this as a beneficial approach.

Policy Basis for Decision

10. The Council Plan highlights that in York the average cost of houses are at least 10 times higher than average earnings and rents rising 10% in 2021-22. In York, 4.5 per 100,000 people slept rough for the same period compared to 3.1 regionally. By a different measurement 24 people were sleeping rough on the last Thursday in July 2023.
11. The Council Plan demonstrates this administration's commitment to reducing homelessness by including "number of people sleeping rough" as one of its new key performance indicators.
12. In addition, provision of good quality housing to meet the range of needs across the City's residents is recognised as central to the Council's 2023-27 Plan as part of Core Commitments, Affordability and Health and Wellbeing, and to the vision of "One City, for all".
13. The National Institute for Health and Care Excellence ("NICE") guidelines published last year highlighted that people experiencing homelessness face significant health inequalities: mortality is around ten times higher than the rest of the population and life expectancy is around 30 years less. Barriers accessing health and social care services is attributed in part to the high numbers of preventable deaths within this population. The draft Council plan contains a focus on fairness and health inequalities with the ambition to reverse the widening trend of health inequalities in our city. It is recognised in the Health and Wellbeing Strategy that housing access and affordability is fundamental in meeting the aims of the Strategy and tackling wider determinants of health.
14. The Council's approved 2018-23 Homelessness Strategy is currently under review. It is expected that the key themes relevant to this proposal will be maintained in the new strategy. This proposal

delivers outcomes integral to 3 of the key strategic aims set out in the document:

- Prevention of homelessness
- Ensure appropriate accommodation for people who are homeless or at risk of homelessness
- Ensure appropriate support for people that are homeless or at risk of homelessness

Financial Strategy Implications

15. The contract has a current annual value of £1,098,375. Monitoring data shows that the services outlined in paragraph 1.3 are at capacity apart from the floating tenancy support service. Reduced demand for the floating tenancy support service element of service provision indicates scope for savings and contract reduction. £150k (~ 14%) could potentially be removed from the future contract without significant negative impact. This would result in an annual value/saving of £948,375 and a value/saving over full 7-year term of the contract of £6,638,625.

Recommendation and Reasons

16. Recommendation(s):

- a) To delegate authority to the Corporate Director of Adults and Integration (and their delegated officers) in consultation with the Head of Procurement (and their delegated officers) to seek Providers from the market for provision of a total 7-year Community Wellbeing contract (with initial length and break-clauses to be delegated to the Corporate Director of Adults and Integration) via an open, fair and transparent competitive procurement process and evaluation criteria in compliance with the Council's Contract Procedure Rules under Appendix 11 of the Council's Constitution (the "**Council's CPRs**") and the Light Touch Regime under Regulations 74 to 76 and Schedule 3 of Public Contract Regulations 2015 (the "**Procurement Regs**").
- b) To delegate authority to the Corporate Director of Adults and Integration (and their delegated officers), in consultation with the Director of Governance (and their delegated officers), to determine the provisions of the new Community Wellbeing

contract, and to award and conclude the Community Wellbeing contract following an open, fair, and transparent competitive process and evaluation criteria in compliance with the Council's CPRs and the Light Touch Regime under the Procurement Regs.

c) To delegate authority to the Corporate Director of Adults and Integration (and their delegated officers), in consultation with the Director of Governance (and their delegated officers), to negotiate the provisions of, and conclude and effect entry into, of leases to the appointed provider of the new Community & Wellbeing contract of:

- i. Union Terrace hostel;
- ii. Robinson Court hostel;
- iii. part of 16/18 Bootham;
- iv. 89/91 Scarcroft Road;
- v. 9 Melbourne Street; and
- vi. 2 Sandringham Street

for a Term of 7 years from and including the Commencement Date of the service contract but excluded from the security of tenure provisions of the Landlord and Tenant Act 1954 and containing provisions entitling the Council as landlord to terminate such leases early upon expiry/termination/non-extension of the service contract.

d) To approve the extension of the current Community Wellbeing and Support Contract for Adults with Changing Lives by 6- months until 31st July 2024.

e) To delegate authority to the Corporate Director of Adults and Integration (and their delegated officers) in consultation with both the Director Governance and the Chief Finance Officer (and their respective delegated officers) to draft, negotiate and conclude any necessary documentation with The Cyrenians Ltd (Changing Lives) to extend the Contract, in compliance with the terms and conditions of the Contract, the Council's Contract Procedure Rules set out within Appendix 11 of the Council's Constitution ("**the Council's CPRs**") and the Council's statutory obligations under the Public Contract Regulations 2015 ("**the Procurement Regs**").

f) To delegate authority to the Corporate Director of Adults and Integration (and their delegated officers), in consultation with the Director of Governance (and their delegated officers), to negotiate the provisions of, and conclude and effect entry into, of further leases to The Cyrenians Ltd (Changing Lives) of the following properties::

- i. Union Terrace hostel;
- ii. Robinson Court hostel;
- iii. part of 16/18 Bootham;
- iv. 89/91 Scarcroft Road;
- v. 9 Melbourne Street; and
- vi. 2 Sandringham Street

for a Term expiring on 31st July 2024 excluded from the security of tenure provisions of the Landlord and Tenant Act 1954 and containing provisions entitling the Council as landlord to terminate such leases early upon expiry/termination/non-extension of the current extended service contract.

17. Reason(s):

The proposed Community & Wellbeing contract will ensure that services are procured in line with our statutory duties and obligations under the Care Act 2014 and the Light Touch Regime under the Procurement Regs, as well as our own standing orders set out within the Council's CPRs and to ensure the Contract is set up within the procurement timescales.

Background

18. In 2016, the Executive agreed to deliver efficiency savings through the consolidation of the formerly ring-fenced Supporting People services into a Community Wellbeing Service. These services are non-statutory, and the majority of the individuals supported are prevented from eligibility for social care services through these preventative services. This provision enables us to meet our duties under Section 2(1) of the Care Act 2014 to "*provide or arrange provision of Services, facilities or resources that it considers will prevent, reduce or delay needs*". Our responsibilities apply to all adults including:

- a) *“people who do not have any current needs for care and support; and*
- b) *“adults with needs for care and support, whether their needs are eligible and/ or met by the local authority or not.”*

19. People who are rough sleeping are experiencing extreme deprivation often as part of a vicious cycle which perpetuates existing vulnerabilities and health needs. In addition to the moral case for supporting the most vulnerable in our society there is an economic case for reducing homelessness and its associated costs to the public sector. Under its previous form, Housing Related Support is not a key aspect of Adult Social Care, nor eligible under the Care Act 2014 but is seen as a preventative role best defined as *“support services which are provided to any person for the purpose of developing that person’s capacity to live independently or sustaining his/her capacity to do so.”*

20. **National Background**

In 2022 the Department for Levelling Up, Housing and Communities launched the national homelessness strategy *Ending Rough Sleeping for Good* acknowledging the national picture: *“We know that many people sleeping rough suffer from poor mental health and substance misuse. Some are caught in a vicious cycle between prison and a life on the streets. Others are leaving our care system without a fixed destination, uncertain of who to turn to for support.”*

This national strategy outlines four requirements to deliver the ambition. 1) ‘Prevention’ is the first pillar which mirrors our local ambition to improve availability and security of affordable housing. 2) ‘Intervention’ highlights the need for targeted action to get people off the streets as quickly as possible to prevent entrenched rough sleeping. The strategy estimates that 40% of people sleeping rough are new to the streets each month. 3) ‘Recovery’ acknowledges that there are multiple, complex and intersecting drivers behind rough sleeping. National data suggests 82% of people in the 2020 Rough Sleeping Questionnaire reported a mental health need, 60% a substance misuse disorder need and 26% had spent time in care. This pillar is relevant to the services at the heart of this paper and supports taking both a housing-led and Housing First approach as reflects our current delivery options. Key is an offer of specialist approaches to the range of personal and structural issues including unemployment, poor mental health, drug and alcohol misuse disorder as is reflected in our ‘Making Every Adult Matter’ service and ‘Mental

Health Housing First' service which is currently commissioned as part of this contract.

21. **Local Background**

The current administration has made a clear commitment to ending rough sleeping through both provision of increased access to affordable housing and to meeting the needs of those currently experiencing rough sleeping and the accompanying health inequalities.

York is an expensive place. The Council Plan 2023-27 highlights that in York the average cost of houses are at least 10 times average earnings and rents have risen 10% over the last year (2021-22).

Provision of good quality housing to meet the range of needs across the City's residents is recognised as part of Core Commitments of Affordability and Health and Wellbeing, and to the vision of "One City, for all".

The housing crisis has had an impact on York's most vulnerable. We have 4.5 per 100,000 people sleeping rough compared to 3.1 regionally. Alternative measures tell us 24 people were sleeping rough on the last Thursday in July 2023. To address this and reduce homelessness in the city the new administration have included "number of people sleeping rough" as one of its new key performance indicators.

The Council plan contains a focus on fairness and health inequalities with the ambition to reverse the widening trend of health inequalities in our city. It is recognised in the Health and Wellbeing Strategy that housing access and affordability is fundamental to meeting the aims of the Strategy and tackling wider determinants of health. The National Institute for Health and Care Excellence ("NICE") guidelines published last year highlighted that people experiencing homelessness face significant health inequalities: mortality is around ten times higher than the rest of the population and life expectancy is around 30 years less. Barriers accessing health and social care services is attributed in part to the high numbers of preventable deaths within this population. Addressing health inequalities within this population will require multiagency systems approach that includes the services under discussion within this paper.

22. **Local data and demographics**

In January 2022 a deep dive was undertaken with the 323 individuals within the York Homelessness Pathway. The research provided data around the demographics and specialist support needs within the

pathway to enable us to design services that better support people to achieve long-term positive outcomes. There are several key points of learning in relation to the needs of people currently in need of intervention and recovery strategies and how this will impact on the design and outcomes of the service to be recommissioned.

a) *Repeat Presentation.*

Two out of every five people within the pathway are currently on at least their third time through homelessness services. Of this cohort 59% are known to have been in the system for 6 or more years and 46% have been in the system for more than 10 years. This means nearly a fifth of all people currently within the pathway have been in the system for more than 10 years.



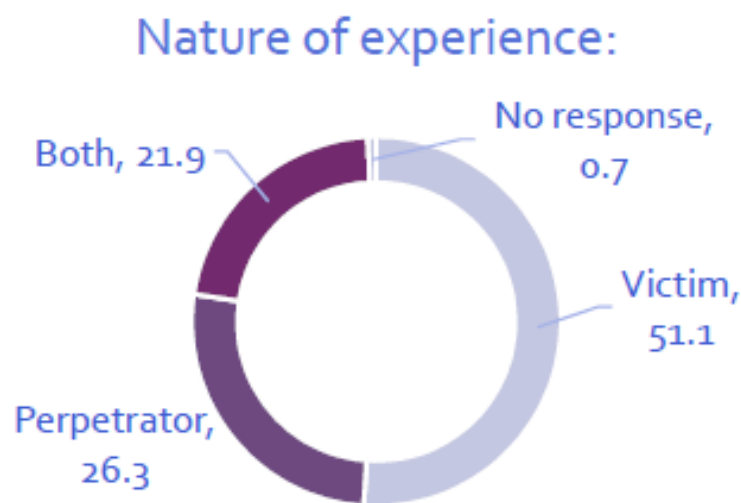
The future service model must support people who have successfully exited formal services to prevent future re-entry into the homelessness pathway. It must also deliver a person-centred service model that responds flexibly to individual changing needs that enables people who have been in the pathway for 10+ years to move towards more independent living.

b) *Complexity of Need.*

The complexity of need of the people within the pathway is broken down using 14 Likert scales on page 14 of Annex 1, however, it is clear from the following headlines that increasing numbers of people within the homelessness pathway have a need for a more specialist offer, for example, individuals presenting more complex needs

including substance / alcohol misuse disorder, mental health issues as well as wider trauma as a result of issues including domestic abuse. This is reflected in the service utilisation data later in the paper.

- 6 in 10 people are known to have had some involvement with the secondary mental health services of Tyne Esk Wear Valley (TEWV), 29% of those in the pathway are currently open to TEWV.
- 68% are known to have experience of trauma.
- 1 in 10 people within the pathway are known to be care leavers - a cohort for which the Council is particularly committed to doing better.
- 42% of people have experience of domestic abuse.



The new service model to be procured must deliver the right level of support for people with multiple and complex support needs and ensure that it operates within the wider system to create working partnerships and agreements with specialist support services.

23. **Coproduction Principles**

Following years of work reviewing the resettlement pathway a series of workshops was held in 2020 to share the data discussed above. These workshops were attended and contributed to by more than 100 people with lived and worked experience. These conversations were distilled into the following eight principles in order to use this work as a practical tool to inform both the design, outcomes and commissioning of this service due to be reprocurd and wider work around homelessness in the City.

1. Deliver a strengths-based, person-centred, positive risk-taking approach.
2. Build on trauma-informed practice.
3. Enable social connection, meaningful activities, and safe spaces.
4. Choice, control and flexibility within the pathway.
5. More consistency, coordination and joined up working between services.
6. Specialist mental health support.
7. Quality, skilled, consistent workforce enabled by working conditions to offer consistent supportive relationships.
8. Access to good quality, affordable and secure housing.

Work has begun in preparation for the procurement pending executive approval to turn these aspirations into deliverable and measurable outcomes for the future service (see Appendix 4 for timelines).

24. **Previous Procurement Decisions**

The Contract commenced on 1st February 2017, and was originally due to expire on 31st January 2022.

The Council had the option to extend the Term up to a maximum of 2-years from 31st January 2022 – that extension option was exercised to take the Term up to and including 31st January 2024. (This time was used to undertake the work around the wider resettlement pathway. We are now able to incorporate the coproduced principles into the new model design.)

All available extensions have been utilised under this Contract. The last extension was granted to prepare for engagement with and procurement from the market. Any further extensions at this point will require a variation of the Contract (see **Legal Implications** below).

25. **Current Contract Performance**

In 2022/23, the Service supported 218 people of which 137 had a planned positive move on out of the Service. Their performance in 2022/3 has been variable and dependent on each area of Service.

As the individuals in the homelessness pathway become more complex, with higher incidences of drug and alcohol and more significant mental health needs, the specialist services (“**MEAM/MHHF**”) are the most able to meet need and are therefore oversubscribed whereas the Floating/Shared Housing Services have experienced a lack of referrals.

This is potentially because their offer is increasingly unable to meet the level of mental health complexity required by these individuals.

In addition, the complexity of need and resulting challenging behaviours are being found to be progressively more difficult to manage within a hostel setting resulting in lower levels of planned positive move-ons.

26. **Union Terrace and Robinson Court Hostels**

The Union Terrace Centre (owned by the Council and currently leased to The Cyrenians Ltd until 31st January 2024.):

- Capacity for 34 men (and couples)
- Supported 32 men to move on to planned positive outcomes in 22/23
- 22/23 Average capacity at 97%

Robinson Court (owned by the Council and currently leased to The Cyrenians Ltd until 31st January 2024):

- Capacity for 14 women and 4 young people
- As at 31/3/23 - Supported 6 women to move on to planned positive outcomes in 22/23
- 22/23 Average capacity at 94%

27. **Shared Housing and Floating Support**

The Shared Housing and Floating Support Service closed several houses during the 6-years of the Contract due to lack of referrals and community complaints about the multiple and complex needs of the people in those properties. This Service was designed to provide tenancy support as opposed to support to people with multiple and complex needs:

- Capacity for caseload of 163 individuals

- Current caseload of 74 (31/3/23)
- Current capacity at 45% (31/3/23)
- 22/23 supported 84 individuals to have a positive move-on

28. **Making Every Adult Matter (“MEAM”)**

The MEAM Service provides intensive support and multi-agency co-ordination to multiply excluded adults with complex needs who often have a significant history of poor engagement or exclusion from local services. It aims to support people to move away from chaotic lifestyles and develop networks and skills to lead fulfilled independent lives as part of the community. Of the 29 individuals on the case load in Q4 of 2022/23, 26 were in Substance Misuse Services, 21 in Probation Services and 16 open to Mental Health Services. Despite that, the Service has managed to support 62% of their caseload to maintain tenancies and supported a further third to maintain contact whilst in custody to plan for more positive future on discharge. The Service has been consistently over capacity in 2022/23.

29. **Mental Health Housing First (“MHHF”)**

The project works under the MEAM remit, supporting individuals facing multiple complex needs and exclusion with a focus on severe and enduring Mental Health need. This Service was launched in 2020 and will be integrated into the Specialist Mental Health Support pathway when it is commissioned in 2025. It is at current capacity and in progress to expand to the planned capacity of 21 individuals.

Consultation Analysis

30. In 2022/3 an in-depth piece of co-production was undertaken to review the resettlement pathway and related services and support. Key stakeholders across York attended and contributed to 4 key recommendations which will inform the delivery and design of the future Service.
31. The planned procurement of this Service has been discussed with Senior Managers and Providers. It was also a topic of interest at “Project Board - Review of Resettlement Pathway & Related Services and Support” on 13th June 2023.

32. The contract funding and finance are currently being interrogated through the budgetary processes to address the deficit.

33. **Option 1 – No service**

As described in paragraph 4.5 and 6 the impact of not having a service is significant and will increase costs and impacts on other areas of service provision as well as having a detrimental effect on those using the services who already have multiple and complex needs.

34. **Option 2 – In-house delivery**

Paragraph 8 describes the situation in relation to in-house service delivery and without a financially informed options analysis this cannot be recommended at this stage.

35. **Option 3 – Procuring Services from the Market**

Commissioning from the market often enables greater efficiency, responsiveness, and innovation. The benefit of procurement is that it enables us to stimulate and shape the local market ensuring that it works to delivery of outcomes set and monitored by the Council and will evidence that the Council receives Value for Money by advertising this tender and evaluating suitable bidders on Quality/Price weightings and criteria.

In relation to in-house provision, management and control of the Contract remains with the funders and thus delivery is often more responsive and driven by performance.

Organisational Impact and Implications

- **Financial**, contact: *Chief Finance Officer*

The current annual contract value is £1,098,375, made up of the core contract (£960,175), MEAM service (£61,500) and Housing First service (£76,700). The MEAM service is currently funded by Housing and the Housing First workers are funded by the Mental Health specialist accommodation pathway budget.

The proposed £150k saving will come from floating tenancy support service element of the core contract.

- **Human Resources (HR)**, contact: Head of HR
- **Legal**, contact: Head of Legal Services

Contract and Procurement Law Implications

General

All options will require advice from Legal Services and Commercial Procurement on the different routes and the associated advantages and risks of each route to ensure compliance with relevant legislation and our constitution.

Options 1 & 2 – No Service or In-House Delivery

Options 1 and 2 would have no procurement law implications.

However, if the intention is to let the Contract expire, then Adults & Integration must consider and factor into their planning any relevant provisions under the Contract, including (but not limited to):

- Clauses 6.24 to 6.37 (**Employment Exit Provisions**) (i.e., TUPE);
- Clause 18 (**Effects of Termination**).

Further advice on any requirements upon termination/expiry within the Contract must be obtained from Legal Services before proceeding with this option, as well as advice from other relevant departments (e.g., HR and Finance in respect of any TUPE/Pension related issues).

Option 3 – Reprocuring the Services

This final option carries the least amount of risk from a procurement law perspective.

Any new Contract will need to be commissioned via a compliant procurement route under the Council's CPRs and the Light Touch Regime under the Procurement Regs, with advice from the Commercial Procurement team. An appropriate form of contract will need to be drafted and completed with support from Legal Services.

Extending the current contract

As outlined in **Background** above, there are no available extensions left under the Contract, and at present the Contract is due to expire on 31st January 2024.

In order to comply with both Clause 12 (**Variation**) of the Contract and Rules 19.3, 20.1 and 20.2 of the Council's Contract Procedure Rules, if the Council wishes to proceed with a 6-month extension, this will require both the Council and Changing Lives agreeing and entering a Deed of Variation to amend the terms of the Contract. Such a Deed will need to be drafted and ultimately sealed by Legal Services.

The Procurement Regs limit the circumstances in which public contracts can lawfully be varied. Regulation 72 of the Procurement Regs is intended to clarify the circumstances in which lawful variations can take place. The regulation establishes several "safe harbours" for certain types of amendment to public contracts without the need of having to run a new procurement exercise. Amendments which fall outside the scope of Regulation 72 will require a new procurement procedure in accordance with the Procurement Regs.

If the Council is successfully challenged (by way of a CPR, Part 7 procurement claim and/or a CPR, Part 8 judicial review claim) for failing to commence a new procurement procedure, the courts may impose a number of sanctions, including the payment of damages by the contracting authority to the claimant, a declaration of ineffectiveness, a fine, or contract shortening.

From the available safe harbour provisions, the following seem most likely to apply in these circumstances:

- **Reg. 72(1)(b) - Additional works, services and supplies by the original supplier**

Reg. 72(1)(b) permits variations to public contracts to allow for additional works, services or supplies by the original supplier where these have become necessary (and were not provided for in the initial procurement) and a change of contractor cannot be made for both economic or technical reasons, and where a change of contractor would cause significant inconvenience or substantial duplication of costs to the contracting authority.

Any increase in price must also not exceed 50% of the value of the original contract (subject to indexation).

Reg. 72(1)(b) can be relied upon in circumstances where the need for the additional works, services, or suppliers was foreseeable, but the contracting authority failed to provide for them for other reasons.

In this instance, the value of the proposed 6-month extension would be £568,363(exc. VAT) (£682,035 inc. Indicative 20% VAT). This would mean that the value of the proposed extension would be considerably less than 50% of the original total contract value:

I.e.,

$£1,008,938 * 7\text{-years} = £7,062,566$

$50\% = £3,531,283$

$£568,363 / £7,062,566 = c.8.05\%$

Therefore, CYC could in theory rely upon this safe harbour provision.

However, it should be noted that when relying on this ground contracting authorities must also publish a modification notice via the Find a Tender Service (“**FTS**”). Such a modification notice would need to outline not only that the relevant financial thresholds have been met but must detail why a change of contractor cannot be made for both economic or technical reasons, and where a

change of contractor would cause significant inconvenience or substantial duplication of costs to the contracting authority. Advice must be sought from Commercial Procurement on completing and publishing such a notice before any variation to the Contract is entered into.

Publishing a notice on FTS has the potential to invite further scrutiny from the market, and therefore carries the risk of a procurement challenge. To mitigate any potential legal challenge, no variation to the Contract should be entered into until 30-days after the publication of the notice on FTS at the earliest. Once the 30-day period has expired, this should mean that any claim against CYC failing to commence a new procurement procedure will be time barred under Regs. 92 and 93 of the Procurement Regs. However, this subject to the notice on FTS being valid and without any defects, which is why advice should be sought from Commercial Procurement (and where necessary Legal Services) when drafting the notice.

- **Regs. 72(1)(e) and 72(8) - non-substantial changes**

Reg. 72(1)(e) permits variations to public contracts where those variations, irrespective of value, are not substantial. A “substantial” variation is defined by Reg 72(8) as any change, irrespective of value, which meets any one or more of the following conditions:

- a. it renders the Contract materially different in character from the original;
- b. it would have allowed other potential suppliers to participate or be selected, or another tender to be accepted;
- c. it changes the economic balance of the contract in favour of the contractor in a way which was not provided for;
- d. it extends the scope of the contract “considerably;” or
- e. it replaces the original contractor, other than where the change arises from a review or option clause in the original contract or from corporate restructuring such as merger, takeover or insolvency.

Point (e) immediately above does not apply in this instance.

As long as no other changes are made to the Services, rates, and/or the terms and conditions, then theoretically (a) and (c) above should not apply.

With regards to (d) above, the term “considerably” is not defined anywhere in the Procurement Regs unfortunately. However, given that the value of the proposed extension falls below the Light Touch Regime procurement threshold, and that it only represents c. 6.99% of the original total value of the Contract when it was first tendered, and that arguably just the extension of the Term on its own would not change the character of the original Contract such as to demonstrate an intention between the parties to renegotiate the essential terms of the Contract, then we may be able to argue that (d) does not apply also.

With regards to (b), this will require advice from Commercial Procurement and review of the original tender submissions and scoring from 2017, however so long as Commercial Procurement and Adults & Integration are satisfied that they can prove on a balance of probabilities that no other ‘realistic hypothetical bidder’ would have applied for the Contract had it been originally advertised with the extended Term, then (b) may not apply also.

If we were to rely on Regs.72(1)(e) and 72(8), then technically there is no requirement to publish a modification notice on FTS. However, a voluntary transparency notice (also known as VEAT notice) can protect a contracting authority from a declaration of ineffectiveness, in circumstances where a modification notice is not required. Further advice should be sought from both Commercial Procurement and Legal Services in due course on this point before proceeding to enter any variation with Changing Lives pursuant to Regs.72(1)(e) and 72(8).

Property Law Implications

According to the records of Legal Services:

- On 6th October 2020 the Council granted:
 - a lease of Union Terrace Centre to Changing Lives for a Term from and including that date until 31st January 2024 at a rent of £133,000 (exclusive of VAT) per annum; and
 - a lease of Robinson Court to Changing Lives for a Term from and including that date until 31st January 2024 at a rent of £75,000 (exclusive of VAT) per annum,

with both of those leases containing an option for either the landlord or the tenant to terminate the lease early at any time after expiry of the Wellbeing Service Contract.

- On 12th June 2018 the Council granted separate respective leases to The Cyrenians Ltd of the following properties:
 - 27/28 St Mary's (at a yearly rent of £20,600 (exclusive of VAT) per annum);
 - part of 16/18 Bootham (at a yearly rent of £7,200 (exclusive of VAT) per annum);
 - 89/91 Scarcroft Road at a yearly rent of £17,000 (exclusive of VAT) per annum);
 - 9 Melbourne Street (at a yearly rent of £4,850 (exclusive of VAT) per annum);
 - 2 Sandringham Street (at a yearly rent of £4,850 (exclusive of VAT) per annum),

each for a Term of 5-years from and including 1st February 2017 until and including 31st January 2022 (although all 5 leases contained provisions in which the Council and Changing Lives agreed that they would enter into further leases of these properties in the event that the Term of Service Contract was extended beyond 31st January 2022, it appears that further leases of these properties were not entered into even though the Term of the Service Contract was extended to 31st January 2024).

- On 9th July 2019 the Council granted Changing Lives a lease of property at 44 ETTY Avenue (at a yearly rent of £7,500 (exclusive of VAT) per annum) for a Term from that date until 31st January 2022 (although the lease of 44 ETTY Avenue contained provisions in which the Council and Changing Lives agreed that they would enter into a

further lease of that property in the event that the Term of Service Contract was extended beyond 31st January 2022, it appears that no further lease of that property was entered into even though the Term of the Service Contract was extended to 31st January 2024).

- On 22nd March 2022, Changing Lives served notices on the Council indicate that they would vacate/hand back possession of:
 - 27/28 St Mary's; and
 - 44 ETTY Avenue,

on/with effect from 25th April 2022

- All the above leases were excluded from/contracted out of the security of tenure/automatic renewal provisions of the Landlord and Tenant Act 1954.

It is understood that the Council's Housing Options Team have also granted leases/tenancies of a considerable number of other properties to Changing Lives for that service provider to house/place service users in as 'starter homes/flats. Legal Services are not aware of how many of those leases/tenancies are still subsisting or how many of those properties are still occupied by service users.

The Council has statutory powers:

- (Pursuant to Section 123 of the Local Government Act 1972) to dispose of any General Fund/non-HRA land held by the Council (including granting a lease of it). Although Section 123 requires that the consent of the Secretary of State for Housing, Communities and Local Government be obtained for a disposal at a consideration (price) less than best reasonably obtained, such consent is automatically given for the disposal of General Fund/non-HRA land by a General Consent Order where (both of the following conditions are satisfied):
 - the Council considers that the disposal will contribute to the promotion or improvement of the economic, environmental, or social well-being of its area; and
 - The difference/shortfall between the consideration/monetary receipt obtained and best consideration amount does not exceed £2M.

- (Pursuant to Section 32 of the Housing Act 1985) to dispose of any HRA land held by the Council (including granting a lease). Although Section 32 requires that the consent of the Secretary of State is obtained for a disposal of HRA land (whether at or below market value), General Consent Orders automatically give SoS consent to disposal/leasing of such land where:
 - the disposal is at market value; or
 - by way of 'short tenancy' comprising a lease for a term not exceeding 7-years (but on the expiry of such tenancy a further short tenancy of the land cannot be granted pursuant to such General Consent until at least one year after the original short tenancy has expired).

With regard to HRA land, Section 25 of the Local Government Act 1988 prohibits a local authority from providing/giving 'financial assistance or gratuitous benefit' when disposing of HRA land (including disposing for a price below market value) without the consent of the Secretary of State. However, a General Consent Order does give SoS consent to the provision of financial assistance/gratuitous benefit in the limited circumstances specified in such G.C.O. including to the provision to any person of financial assistance or gratuitous benefit consisting of the disposal of an asset comprising a dwelling house or hostel where:

- the aggregate amount or value of the financial assistance or gratuitous benefit provided by the local housing authority to all persons under this consent in any financial year shall not exceed the sum ascertained by multiplying the population of the area of the authority by the figure of £3.00;
- the disposal must be:
 - by way of a lease for a term not exceeding 21-years; and
 - to either:
 - a registered provider of social housing; or
 - a person who intends to use the accommodation for occupation by persons with a special need; and

- the aggregate number of dwelling-houses comprised in the disposal and any previous disposal by the local authority under this consent in the same financial year must not exceed a number (the “**ceiling**”) equal to the greater of 50 or one quarter of one per cent of the number of dwelling-houses owned by the authority at the commencement of the financial year in which the disposal takes place.

It is understood that the Council-owned properties presently used by the current service provider for the provision of the Services pursuant to the existing Contract (and therefore that the Council will need to lease to the appointed service provider of the new Contract) comprise a mixture of General Fund and HRA properties.

In any event, it is considered that General Consents give the Council power to dispose (by way of leases for a term up to 7 years) of the necessary properties to the appointed service provider without needing to apply for and obtain express consent from the Secretary of State.

- ***Procurement, contact: Head of Procurement.***

The Adult Community Wellbeing and Support Service contract was commissioned and awarded via an OJEU advertised Open Procedure procurement exercise in 2017 with the contract awarded to the provider The Cyrenians Ltd. (t/a Changing Lives). The Contract included the option to extend the Term up to a maximum of 2-years from 31st January 2022, which was taken by the Council and the Contract was extended up to and including 31st January 2024. All available extensions have now been utilised under this Contract.

This service has not been subjected to a competitive procurement procedure for over 6 years and therefore in compliance with the Council’s CPRs and with Public Contract Regulations 2015 the Adult Community Wellbeing and Support Service contract should be re-procured through an openly advertised procurement procedure for a maximum 7-year contract period and a contract value of £6,370,175.

The total contract value for the Adult Community Wellbeing and Support Service of £6,370,175 is well above the Light Touch Regime threshold as defined within the Procurement Regs, £663,540, and therefore a Contract Notice and tender

documents must be published in the Find a Tender website and on a accessible E-tendering website portal i.e. Yortender respectively in order to invite competitive tenders to be submitted by interested providers to the Council.

There are associated buildings and potentially existing staff that support the delivery of the current Adult Community Wellbeing and Support Service contract that will impact on the procurement and therefore the appropriate advice should be requested from colleagues within Property Services, Finance and Legal Services as well as support from Commercial Procurement to manage the procurement.

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- ***Health and Wellbeing***, contact: *Director of Public Health.*
- ***Environment and Climate action***, contact: *Director of Transport, Environment and Planning, and Head of Carbon Reduction.*
- ***Affordability***, contact: *Director of Customer and Communities.*
- ***Equalities and Human Rights***

The Council recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate

discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

At the time of writing there are no equalities implications identified in respect of the matters discussed in this report. However, an Equalities Impact Assessment will be carried out in due course and the process of consulting on the recommendations in this report will identify any equalities implications on a case-by-case basis, and these will be addressed in future reports.

- **Data Protection and Privacy**, contact: information.governance@york.gov.uk - every report must consider whether to have a Data Protection Impact Assessment (DPIA) and this section will include the compliance requirements from the DPIA or explain why no DPIA is required.
- **Communications**, contact: Head of Communications.
- **Economy**, contact: Head of City Development.
- **Specialist Implications Officers**, as appropriate.
- **Property Implications**, Contact: Head of Property Services

The Current Well Being contract uses two properties within the General Fund and four properties within the Housing Revenue account. The following gives brief comments about each property.

General Fund

Union Terrace and Robinson Court were acquired from York Housing Association in 2020, following approval by the Executive in August 2018. The reasons for the acquisitions were to maintain the level of hostel provision, enable consistent decision making across the provision of hostel accommodation with the Council acting as landlord/owner, and ensuring strategic priorities are maintained through allocation decisions.

Union Terrace Centre

A purpose- built 35 bedroom homeless hostel on a 0.5 acre site built in 2009. Edge of City Centre location, close to York St John University. Leased to Changing Lives for the duration of the contract at a rental of £133,000 per annum plus a service charge to cover maintenance and repairs to the interior of the building.

This is a modern purpose-built and well used hostel with limited scope for an alternative use without major alterations. A multi million pound alternative use value is likely given the location, subject to Planning.

Robinson Court

Purpose built hostel accommodation for vulnerable ex-offenders. Constructed 1992 in two blocks. Site area 0.181 acres. Edge of city centre location in a are of mixed uses including local authority housing, student housing and commercial uses. The property is let to Changing Lives on similar terms to Union Terrace at a rental of £75,000 per annum plus service charge to cover maintenance and repairs to the interior of the building. The property has recently undergone a programme of repairs and decoration to the external joinery of the building.

The building is well used by the service provider. Any alternative use for the building is precluded by a restrictive covenant on the property limiting its use to a bail hostel or other sheltered housing scheme.

Housing Revenue Account

16-18 Bootham

Comprises a three storey Victorian building. The accommodation comprises two one bedroom flats on the first and second floors. Used as supported accommodation in connection with the Well Being contract. The ground floor is let to a pizza takeaway as part of the commercial estate. Let to Changing Lives at a rental of £7,200 per annum. Under the new contract, it is estimated that the rent would rise to c£9,000 per annum.

Possible alternative use would be as private flats to be sold off on premium leases. Value estimated at c£250k per flat.

9 Melbourne Street

Comprises a two storey Victorian terraced house with attic in the roof space. Has been subdivided internally to create bedsitting accommodation with communal kitchen, shower room and WC.

Fully refurbished internally by the Council in 2022. Included new central heating boiler, water heater and new internal fittings. Used as supported accommodation in connection with the Well Being contract. Let to Changing Lives as part of the well Being contract at a rental of £4,850 per annum. Under the new contract it is estimated that this would rise to c£6,000 per annum. Understood to be fully occupied.

Alternative use would be for private residential either as existing bedsit accommodation or conversion back to a single residential dwelling. Estimated value c£400,000.

2 Sandringham Street

A two storey two bedroom Victorian Terrace house. Used as supported bedsit accommodation for two residents. Retains its as-built layout. In need of internal refurbishment. Newly installed central heating boiler. Let to Changing Lives as part of the Well Being contract at a rental of £4,500 per annum. Under new contract it is estimated that this would rise to £6,500 per annum. As there are only two residents, this property is currently under-utilised.

Alternative use would be for a private residential dwelling. Situated in a good class residential area off Fishergate, Estimated value c£400,000.

89/91 Scarcroft Road

A pair of Victorian four storey semi-detached town houses converted into three 3 bedroom self-contained flats, with office, communal sitting room, kitchen and laundry facilities on the ground floor. Underwent internal refurbishment by the Council in 2021. Externally, in need of redecoration. Let to Changing Lives at current rental of £17,000 per annum. Under the new contract this would rise to c£22,000 per annum. Understood that most of the accommodation is occupied.

Alternative use would be for private flats or for conversion back to two separate private residential houses, possibly conversion to Hotel/B&B use. Situated in a high class residential area close to the junction of Scarcroft Road and The Mount Estimated value £650-700,000, although this could be a conservative one.

The rental levels quoted in the property implications above require reviewing as part of the procurement process to make sure that they are in line with current market or social housing levels.

The current service charges payable by Changing Lives in respect of The Union Terrace Centre and Robinson Court will require reviewing as part of the procurement process to make sure that they are in line with current and expected expenditure on the maintenance and repair of the buildings.

Risks and Mitigations

36. No Service

See above for impact of decommissioning the Service.

37. Procurement Failure

There is a risk that having reduced the contact value that it will not be an attractive proposition to the market and no Providers will engage with the tender exercise. Should this happen we can mitigate the impact by re-engaging with the market and revisiting the ask.

38. Timescales

Timescales associated with a procurement exercise on this scale will be demanding. There are a number of the Council properties that will require significant legal input to develop lease agreements etc. The TUPE implications will also have an impact on reasonable mobilisation periods. The biggest risk to completing the procurement exercise within a timely manner is ensuring approval through the governance processes.

39. Provider Quality

With any procurement exercise there is a risk that the appointed provider will fail to deliver a satisfactory level of quality. This can be mitigated for through a rigorous tender procedure involving stakeholders at various stages. Should this fall further mitigations can be provided through contractual mechanisms such as break clauses.

Wards Impacted

40. All wards will be impacted.

Contact details

For further information please contact the authors of this Decision Report.

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Report approved:	Yes
Date:	01/08/2023

Annexes

Annex 1 – York Homelessness Pathway 2022

Annex 2 – Mental Health and Homelessness

Annex 3 – Mental Health Housing and Support Executive Report 27 August 2020

Annex 4 – Procurement Timetable