

Notice of Non-key Executive Decision

Subject Heading:	Waiver to allow the Direct Award of a contract to EML (formerly Prepaid Financial Services) for the provision of prepaid cards
Cabinet Member:	Councillor Jason Frost, Cabinet Member for Health and Adult Care Services
SLT Lead:	Barbara Nicholls, Director of Adult Services
Report Author and contact details:	Chris Atkin, Commissioner and Project Manager, Joint Commissioning Unit Chris.Atkin@Havering.gov.uk 01708 434470
Policy context:	Under the Care Act (2014), individuals with capacity have the right to request a Direct Payment that enables service users the choice, freedom and independence to select their own method of support to meet their eligible support needs.
Financial summary:	The estimated cost for 12 month contract is in the region of £57,000.
Relevant OSC:	Individuals
Is this decision exempt from being called-in?	Yes

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The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This report seeks approval from a member of Senior Leadership Team to waive the Council's Contract Procedure Rule (CPR) to permit a direct award of the contract for the provision of prepaid cards to EML from the NEPO Framework.

AUTHORITY UNDER WHICH DECISION IS MADE

Authority to waive the Contract Procedure Rules is set out in Part 4 of the Council's Constitution (Contract Procedure Rules) in paragraph 14as follows:

14.3 Exceptions to the competition requirements may be made only if all relevant law is complied with and one of the following circumstances applies: i. the contract falls within one of the exceptions listed in this Rule; AND a. the Competition Financial Thresholds Exceptions, is fully and properly completed and signed by the relevant Member of SLT; AND b. the person awarding the contract can demonstrate that the contract represents the best value that can be obtained in the circumstances.

14.4 The exceptions are:
[...]

14.6.5 Exceptions permitted under European procurement rules - where the contract is subject to the full application of the European procurement rules and there are specific exceptions which shall be complied with; [...]

STATEMENT OF THE REASONS FOR THE DECISION

Background and Context

The current contract for the provision of pre-paid cards is due to expire 28th February 2022. This is a call off arrangement from the NEPO framework and there is no option to extend. The provision of prepaid cards allows the Council to deliver upon its statutory duty of offering choice to residents, who require care and support, by acting as a flexible payment option to providers for those in receipt of direct payments.

When the current contract was entered into in early 2021, the original intention was for the Joint Commissioning Unit to put in place a long term arrangement for pre-paid cards. However, it has been identified that there are other Council departments using pre-paid cards for other purposes. It would make better use of resources to have one supplier for all cards being supplied to the Council and for this contract to be centrally

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managed. However it will not be possible to do this and have a supplier in place by the expiry of the current contract. Therefore, we are now seeking to directly award the contract via the NEPO framework to the incumbent provider EML for a period of 12 months from 1 March 2022 to allow the wider review and re-procurement on behalf of all departments to take place and be centrally managed. The complexity of the service and the transactional data reporting requirement limits the Authority's options with regard to suppliers. The same fixed fee cost will apply to this contract. The NEPO framework permits a direct award.

NEPO is in the process of creating a new solution due to go live in June 2022.

Direct Payments are fundamental to achieving Havering's aim of increasing our service users' independence, choice and control by allowing the user to make an informed choice as to how best they can be supported. Direct Payments offered by Havering give people with eligible care and support needs (including Carers) greater flexibility. The Council uses pre-paid cards as the tool used to manage the Direct Payments system in Havering.

EML pre-paid cards gives the Council greater visibility and transparency of how each individual's finances are managed, in line with the service users' responsibilities as outlined in their Direct Payment agreement. In addition, we were able to improve the efficiencies of the personalisation team (the use of a prepaid card mechanism with online transactional solutions negates the need to manually check physical receipts), who are responsible for managing all Direct Payments.

Benefits of the service

The cards are loaded by the Direct Payment team and operate in the same way as a standard UK bank account, including the ability to make regular payments, pay vendors and receive statements. There is no option to access an overdraft facility – ensuring that there are no fees applicable to the user. Utilising a prepaid card solution negates the requirement of service users needing to submit quarterly spend returns, receipts and invoices, saving the service user time and increasing efficiency in the direct payments team. Other benefits of utilising prepaid cards include:

- Efficient clawback of unspent funds;
- Streamlining of operations and resources (efficiency savings);
- Increased control, transparency and analysis for the Authority;
- Faster responsiveness in the distribution of funds.

Utilising this method of delivering direct payments supports the personalisation agenda as set out by the Care Act 2014.

Finance

Realistically, there is only one option that we are able to pursue that would be able to continue to deliver the service.

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Most notable implications of a change in supplier have been described below:

- There are over 1000 EML prepaid accounts. A change in supplier would affect not only the Direct Payments team but also the payroll providers and may adversely affect personal assistants being paid on time (where changes in direct debits are required);
- Payroll providers will have to migrate bank details and other information onto a new system. This could lead to a charge payable by the Authority to carry out the additional work of transferring approximately 600 accounts;
- Service users who are self-managing their direct payments would need to learn how to use a new system – causing additional stress during a time where COVID19 has exacerbated concerns/issues.
- As mentioned, a change in supplier would result in the team having to adopt new staff to cover the mobilisation of the new contract. It is estimated that this task would require two staff at Grade 5 (approximately 60k).
- Utilising the incumbent provider negates costly set up fees for the services to be transferred to the new supplier.
- Change in supplier would lead to issues for those cards that fall under the corporate umbrella

During 2020/21, £10m of funding has been paid by the Authority to support adults via direct payments.

The existing contract with EML operates on a fixed fee model as outlined below.

The annual cost for a one year contract based on the above fixed fee model is £57K

The supplier has confirmed that the same fixed fee costs will apply for the period outlined above.

Recommendation

It is recommended that the Council waives the requirement of its Contract Procedure Rules for a request for at least 3 quotes and instead that the contract for the provision of pre-paid cards be awarded directly to EML for a period of 12 months by calling off the NEPO Pre-paid Card Accounts Framework.

This will allow the Council to begin to the process of re-procuring the Pre-paid Card Account services either via another framework call-off or by open competition depending on the total cost.

OTHER OPTIONS CONSIDERED AND REJECTED

Option 1: Do nothing and allow the contract to expire

This option was considered and rejected. Allowing the contract to expire will mean the supplier will cease supplying cards and managing the accounts linked to the cards, leading to the Authority having to revert to the manual task of requesting paper evidence for transactions. Utilising a model of pre-paid cards allows the Authority to audit £11m worth of spend and enables any issues to be identified and funds clawed back as necessary.

This would have large resource implications for the Direct Payment team who do not have the capacity to carry out this type of work. All direct debits and standing orders that Service Users have would need to be cancelled. There is a high risk of fraudulent behaviour during this transition which would affect the opportunity to claw back unspent funds.

Option 2: Recommission service via open competition

This option was explored and rejected. It is impractical, in the current circumstances, to implement the required lengthy mobilisation should a new supplier win the contract. The reasons are outlined above.

PRE-DECISION CONSULTATION

All relevant business partners and internal stakeholders have been consulted as part of the creation of this report. These include;

- Commissioning Programme Manager;
- Procurement;
- Legal;
- Personalisation team;
- NEPO framework procurement lead.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: John Green

Designation: Head of Commissioning, Joint Commissioning Unit

Signature:



Date: 06.01.22

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. This report seeks to waive the Contract Procedure Rules permitting the direct award of a contract to EML for the provision of pre paid cards through the NEPO framework for a period of 12 months.
2. The Council has a range of statutory duties under the Care Act 2014 to ensure that an individuals' eligible care needs are met. These can be met via direct payments. The Council has the general power of competence under section 1 of the Localism Act 2011 to do anything an individual may generally do subject to any limitations. The contract may be awarded in accordance with these powers.
3. A tender exercise was not carried out as required by the Contract Procedure Rules (CPR) and the contract will need to be directly awarded to the provider. In accordance with CPR 14 a waiver is being sought to authorise the direct award and is lawful under Reg 33 Public Contract Regulations 2015(as amended).
4. The proposed contract value is below the EU threshold for servicesand accordingly is not subject to the full rigours of the Public Contracts Regulations 2015 (as amended).

FINANCIAL IMPLICATIONS AND RISKS

The contract currently operates on a fixed fee model with a variable amount per card issued. The fixed fee model is based on the number of cards in use and is as follows:

Up to 250 cards @ £950 per month
251-500 cards @ £1.7K per month
501-1000 cards @ £3.5K per month
1001-1500 cards @ £4.5K per month
1501-2000 cards @ £5.5K per month
2001-3000 cards @ £7.5K per month
3001 to 4000 @ £9.5K

As at 30th November 2021, there was 1091 cards in use, our fixed fee per month currently falls into the £4,500 per month bracket, this equates to an annual fee of £54,000 per annum. Over the period April 2021 – November 2021, the average amount of cards that has been in use is 1075, therefore it seems likely the fixed costs will remain within this bracket. There is a small risk that the monthly fee could increase to £5,500 per month if the number of cards in issue increased significantly. The annual cost would therefore increase to £66,000 per annum. This risk is considered to be very small.

There is also a £5 issue cost per card, the total amount for card issues is variable and dependent on the amount of cards issued. Over the period April 2021 – November 2021,

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the average number of cards issued was 48 per month, giving an average monthly cost of £240 per month, this gives an annual cost of £2,880 for card issues.

If all remains in line with the averages detailed above, the annual cost is forecast to be in the region of £56,880.

There is a currently a budget of £32,600 for the costs associated with pre paid card set ups, this is funded from the Better Care Fund and is on cost centre A34060. The shortfall of £24,280 will need to be found from within the Adult's commissioning budget.

There are no additional costs as a result of this waiver, the current contract costs will continue.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would directly or indirectly affect either the Council or its workforce.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

BACKGROUND PAPERS

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Part C – Record of decision

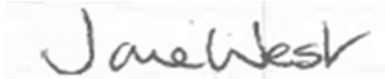
I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Details of decision maker

Signed 

Name: Jane West

Cabinet Portfolio held:
CMT Member title: Chief Operating Officer
Head of Service title
Other manager title:

Date: 06.01.22

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____