

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Council: 31 August 2011

Subject: Standing orders – Amendment

1. Purpose

- 1.1** This report recommends certain changes to the Council's Standing Orders in relation to Contracts, following on from issues raised at the Council meeting on 24th March 2010, and the publication of the Scottish Government's guidance on the Procurement of Care and Support Services, in September 2010. It is considered that the amendment requested is a "special circumstance" in terms of Standing Order 19(c), allowing the amendment to be considered by Council at this time.

2. Background

- 2.1** At the Council meeting on 24 March 2010, paragraph 3.2.18 of the report "Standing Orders – review", advised that consideration was being given to amending Contract Standing Orders to deal with contracts involving a degree of social care, including those for residential schools, in view of the fact that such contracts require to be dealt with to ensure the interests of the service user are kept paramount. It was noted that a further report would be submitted to Council in due course.
- 2.2** Following publication of the Scottish Government's guidance on the Procurement of Care and Support Services, consideration of the recommendations contained within the guidance by the relevant officers of the Council, and discussions with other authorities, it is now felt appropriate to seek Council approval to amend Contract Standing Orders.

3. Main Issues

- 3.1** Contracts involving a degree of social care, including those for residential schools, are considered to justify a different approach in terms of procurement and appointment of external service providers. Such contracts often deal with the most vulnerable groups of Council service users, and the approach to service procurement has a significant and direct impact on the quality of life, health and well-being of service users. In effect, with such contracts, the Council is contracting on behalf of and in the place of the service user.
- 3.2** It is also a key feature of such contracts, that the needs of individual users may change markedly and often from the date of the initial identification of the

need, until the service is no longer required. Continuity of service and of service provider will more often than not be vital, and together these mean that the ultimate scope and value of contracts may markedly exceed the initially identified sums.

- 3.3** The Council strives to achieve the best outcomes for its service users and respect for their rights, and it is essential that the procurement process is applied in a manner that does not undermine the aims of keeping the interests of service users paramount, while at the same time meeting the Council's statutory and social responsibilities, and complying with Council Standing Orders.
- 3.4** It is therefore considered necessary for changes to be made to the Contract Standing Orders that permit officers to award these contracts within the constraints of the applicable law and the Council's Standing Orders, whilst providing the assurance to service users that the scope, quality, and continuity of the services they receive will not be inhibited or interrupted by overly restrictive rules.
- 3.5** Having taken these matters into account, the following changes to Council standing orders are proposed:-

(i). Amend Standing Order 39 (a) (the amendment being shown in underline)
:-

“39. Tenders will not be required in the following situations:-

(a) Save for contracts predominantly involving the provision of Social Care or Education which are dealt with in Standing Order 39(g) below, where the estimated expenditure is less than £50,000.

(ii). Insert a new Paragraph 39(g)

“(g)

(i) In the case of a Social Care or Education package or placement, either (a) the contract is for a single package or placement of less than £150,000 or (b) exceptionally that the contract is for a single package or placement exceeding the said levels and the specialist nature of the service is such that no market of suitable providers exist. In any case of such Social Care or Education package utilising the procedure at paragraph 39(g)(i)(b), the following provisions will apply, (i) the contract must have prior approval, following proper assessment or review of arrangements for care management by the Executive Director of the Community Health and Care Partnership and/ or the Executive Director of Educational Services, (ii) the contract must be reported to the next appropriate meeting of the relevant Committee and (iii) the contracting department must record its reasons for determining that a proposed contract is exempt from the requirement to tender and must be able to evidence those reasons as well as providing all details required to enable the publication of any necessary contract award notice after the award of the

contract. Nothing herein will permit the avoidance of the application of any National or European Procurement rule.

(ii) In the case of a Social Care or Education package or placement, where by reason of an ongoing or extended requirement for care, which was not foreseeable at the time of the original contract being put in place, a contract will exceed the threshold of £150,000, the Executive Director of the Community Health and Care Partnership and/ or the Executive Director of Educational Services, as the case may be, may approve such additional package provided they are satisfied that, having regard to the service user's needs and the requirement for value, the existing contractor / supplier continues to provide the most appropriate solution."

Justification:

Packages of care and support, or placement with specialist social care or education providers, where the annual cost of that package or placement are well above current tendering thresholds are often required under circumstances where the need for that placement or package is urgent or where the nature of the needs of the individual require a specialist provider and/ or where the package or placement represents an increase in support by an existing provider which best meets the needs of the individual in terms of continuity of care and/or where there is no market of suitable providers.

4. People Implications

4.1 There are no personnel issues.

5. Financial Implications

5.1 The Executive Director of the Community Health and Care Partnership and the Executive Director of Educational Services will each have delegated authority to incur expenditure in relation to relevant social care and residential placement packages, without prior recourse to Tendering Committee or other appropriate committee, increased from £50,000, to £150,000, and exceptionally above £150,000.

6. Risk Analysis

6.1 Good governance helps to deliver better decisions. The Standing Orders are a key component of the Council's Governance arrangements. Failure to regularly review them will produce uncertainty over procedures and result in decisions more open to challenge (e.g. contracts). It may also result in the Council failing to show good practice when self-assessing its governance arrangements.

- 6.2** The inclusion of a specific provision within the standing orders covering such contracts, reduces the risk of challenge to the processes on the basis that contracts were awarded outwith the framework of the Council's own standing orders.

7. Equalities, Health & Human Rights Impact Assessment (EIA)

- 7.1** In September 2010 when changes to Standing Orders to accommodate the creation of the Community Health and Care Partnership were accepted by Council it was reported that the creation of the CHCP had been subject to an Equalities Impact Assessment. No negative issues were identified in a subsequent screening for the potential equality impact of these proposed changes but they are likely to improve access to a Social Care or Education package or placement for those in need of them.

8. Strategic Assessment

- 8.1** Of the four main strategic priorities for 2011/2012, identified by the Council, it is considered that the changes to the Standing Orders will contribute to the priorities-Financial Strategy, and Fit for Purpose Services namely:-

8.2 How will this help make best use of our money?

It is considered that the amendments to the Standing Orders recommended contain appropriate provisions for scrutiny of expenditure utilising the proposed exception from normal tendering requirements.

8.3 How does it change / impact on service provision?

The amendments proposed will assist the Executive Director of the Community Health and Care Partnership and/ or the Executive Director of Educational Services in improving service provision in the areas of social care and residential packages.

9. Conclusions and Recommendations

- 9.1** The recommendations are that:-

- i) Members agree the recommended changes to Standing Orders detailed in paragraph 3.5.
- ii) That the new Standing Orders would take effect from the August 2011 Ordinary Council Meeting.

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Appendices: None.

Background Papers: Council Report “Standing Orders – review”, before Council on 24 March 2010.

Scottish Government’s guidance on the procurement of care and support service, dated 11 September 2010.

Wards Affected: All wards.