

Somerset County Council

Paper **A**

Cabinet

– 05 February 2014

Item No. 5

The future commissioning of services currently provided by the Learning Disabilities Provider Service

Cabinet Member(s): Mr W Wallace - Cabinet Member for Adult Social Care

Division and Local Member(s): All

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	Senior Manager	Clare Steel	14.01.14
	Cabinet Member	William Wallace	21.01.14
Forward Plan Reference:	FP/13/12/05		
Summary:	<p><u>Purpose</u></p> <p>This decision is about ensuring sustainable high quality services for people with a learning disability into the future, and the implications of this on the management and ownership of these services. It is not about the future of any specific service that the Council funds or provides, and there are no savings targets associated with this decision. This report provides an update on the results of the consultation and market engagement authorised by Cabinet on 11/09/2013, and seeks a decision on the preferred option for the future commissioning of the Learning Disabilities Provider Service following due consideration of the impact assessment.</p> <p><u>The Learning Disabilities Provider Service</u></p> <p>Services for adults with learning disabilities are jointly commissioned by the County Council and Somerset Clinical Commissioning Group. The Learning Disabilities Provider Service was established in the early 1990's following the closure of long stay hospitals.</p> <p>The Learning Disabilities Provider Service currently delivers just under half (by value) of the learning disability services funded directly by the Council. It supports approximately 900 customers with learning disabilities at any one time, has an annual turnover of approximately £29.3 million and employs 1,203 staff (or 975 full time equivalents) providing a range of learning disability related services across 73 locations including:</p>		

- Supported Living (39 properties – 237 places);
- Long Term Residential care (15 properties – 104 places);
- Somerset Assessment and Support Services for people in crisis (SASS) (one property – 9 places plus outreach work, effective space is often less than this due to compatibility issues);
- The Residential Short Break Service or RSB (3 properties – 26 places, effective capacity is often less than this due to compatibility issues);
- Shared Lives (1 location – county wide cover supporting 114 carers and 138 placements);
- Future 4 (including day services and domiciliary care, 15 resource bases – delivers a service to over 500 individuals);
- Aspire employment services (1 property – county wide cover).

Demographic estimates indicate that there are currently 2008 people aged 18 and over with a moderate to severe learning disability living in Somerset. Of these, 436 people aged between 18 and 64 years are estimated to have a severe learning disability. Not all people with a moderate to severe learning disability living in Somerset access health and social care services, and during the 2012/13 financial year 1714 adults with learning disabilities received services across all service providers.

By the end of 2016 the number of people with a learning disability living in Somerset is projected to increase by 2% for all age groups, and 13% for those aged 65 and over. By 2020 these increases are expected to be 3% and 16% respectively.

Customers who do not receive services from the Learning Disabilities Provider Service are supported through contracts with external providers, or manage their own care and support via Direct Payments. These customers and contracts are **out of scope** for the options considered in this paper.

The Council and Clinical Commissioning Group vision for customers with learning disabilities

The Council and Clinical Commissioning Group commissioning intentions for services for adults with learning disabilities living in Somerset have been included as Appendix 2C. These intentions contain our vision for these services which is:

- People with learning disabilities and their families will have more control over their services;
- People with learning disabilities and their families can make more day to day choices;
- People with learning disabilities are helped to have the same opportunities as everyone else;
- The buildings people live in are high quality and fit for purpose;
- Services are good value for money.

This vision received broad support from customer and carers when they were asked about their views as part of the public

consultation.

The outcomes that the Council and Clinical Commissioning Group want to achieve for these services

- Services that are sustainable – both now and in the foreseeable future;
- Services that actively engage and involve customers and carers at every level;
- Services that embed a person centred approach and ethos in everything they do;
- Services that people choose when using a Personal Budget;
- Services that can respond flexibly to meet current and future demand;
- Services that have the skills and capacity to support people in crisis.

The Options

Each option has been considered against:

- The Council and Clinical Commissioning Group vision for customers with learning disabilities;
- The outcomes that the Council and Clinical Commissioning Group want to achieve for these services;
- The results of the consultation;
- The results of the market analysis;
- An assessment of its viability and value for money;

Option 1

To retain the whole Learning Disabilities Provider Service within the Council with no change to its management and ownership.

Under this option the Learning Disabilities Provider Service would continue to be directly owned and managed by the Council, with no change to its ownership or management. However, this would not be a “no change” option as the Service would continue to need to change and develop over time in order to meet the challenges of demographic changes and the increased personalisation of services.

The benefits of this option are:

- The Learning Disabilities Provider Service is a good service. It has successfully remodelled elements of its provision, most notably employment support, over the last year. It has received positive feedback in a recent customer experience survey undertaken by the Council’s Customers and Communities team. Anonymous visitor questionnaires (offered to any visitor to a service) have also provided overwhelmingly positive feedback.
- A majority of customers and carers have told us that their preference is for the continued direct provision of the services they receive by the Council.
- It would have a low, or no short term impact on customers and carers.
- It would retain skills, expertise, knowledge and existing service

levels.

- There would be no additional or double funding of council-wide overheads, including Southwest One
- It would not incur any short term change costs
- Maintaining the in-house provision avoids the risk of market failure, with its consequent dangers for vulnerable people and the Council's ability to meet its statutory responsibilities, as well as cost and reputational implications.

The limitations of this option are:

- The service is supporting an aging population. For example, the median age of people using services is 52 across residential care and supported living services, and 42 across day services, against an average age at death of 57 nationally and 59 within services provided by the Learning Disabilities Provider Service. The result of this age imbalance is that, despite people living 2 years longer than the national average, the number of people who have died who were supported by the service has more than doubled in the last few years.
- The service is not attracting young people into its current provision due to the age profile of many of the people already using its services. Most of the buildings used by the service incorporate shared living rooms, kitchens and bathrooms which exacerbates this problem as younger people usually prefer to opt for self contained accommodation with en-suite facilities and minimal shared space. The result of this is vacancies that the Learning Disabilities Provider Service cannot fill, particularly in Supported Living and Residential Care services, as young people are not choosing to live with older customers. This impact of this is already being felt. For example, as at December 2013, there were 53 vacancies within Residential Care and Supported Living Services provided by the Learning Disabilities Provider Service.
- The service has difficulty setting up new services as the processes to raise money and make investment decisions within local government are not agile and flexible enough to respond to customer and market needs.
- The service is difficult to cost on the same basis as the rest of the sector as its overhead costs, for example for things like human resources and information technology, are spread across the Council. This make it both difficult to cost services for the purposes of supporting people who want to use a Personal Budget, and to compare value for money with the rest of the sector.
- The service cannot trade with the wider population

Option 2

To transfer all or some of the Learning Disabilities Provider Service to a new organisation that is legally independent from Somerset County Council.

Under this option the Council would create a new organisation that staff and services would then be transferred into. There are 3 ways that the Council could do this:

- a. As what is sometimes called a “Teckal company”. This is a special type of company that has to be owned by the Council, do at least 90% of its business with the Council and not have any private investment. The Council has to make sure that these conditions remain in place for as long these services are provided without being tendered.
- b. As an independent social enterprise. This would be set up to meet the Council’s requirements without undertaking a tender exercise. The problem with this is that other organisations that already provide these types of services could legally challenge this decision, and win if the council was seen to be unfairly aiding the organisation.
- c. As a social enterprise partnership. This would mean that the council would write a specification describing what it needed and how the organisation would work and then tender for a suitable partner in the social enterprise. The Council and the partner would then create the new organisation together, and agree how much they and the staff would own.

An independent evaluation of these three sub-options has been undertaken which uncovered significant failings in the first two sub-options regarding to the level of risk of legal challenge, and their ability to deliver on the Council aims of greater personalisation and service innovation. As a result of this assessment, the social enterprise partnership option (Option 2(c)) was considered to be most likely to deliver the desired outcomes for the Council and key stakeholders.

The benefits of this option, if delivered through a social enterprise partnership, are:

- Services can be built around customers, as Commissioners would be able to require the organisation to not only proactively communicate its social vision, but also be accountable to, and actively engage with, them in the design and delivery of its services. This would include customers and carers being represented on the Board of the company.
- A social enterprise partnership could trade with the wider population, including those who wish to arrange their own care and support using a direct payment
- Staff would not only be focused on delivering services, but also on achieving the wider social aims of the organisation that the Council sets it up to achieve. This could bring added value, in line with the Public Services (Social Value) Act 2012, as the new organisation would be able to deliver services not currently eligible for funding by the Council.
- It creates a genuine partnership with Commissioners as the organisation has been designed and established precisely to deliver the outcomes that they want to achieve.
- Market diversity is potentially greater than if a tender for this size of service, which represents nearly half the local market, is won by a purely commercial organisation. This would be achieved through Commissioners including a requirement for the social enterprise partnership to take a role in supporting smaller providers and promoting diversity in the sector.

- Outside investment could be secured, as the new organisation may be able to attract additional funds that are not available to the Council to invest in its services. A social enterprise partnership could potentially use the partner to access investment.
- There is access to wider networks of support for social enterprises as, with growing awareness of the potential for social enterprise delivery, it is a positive time to be exploring this. This includes support from the Cabinet Office Mutuals Information Service and associated funding, as well as a growing network of organisations that have already been set up as social enterprises to deliver public services.
- This is a lower risk option than creating a new organisation without a partner, as many of the risks associated with the creation of other types of new organisation are mitigated by tendering for a partner.

The limitations of this option, if delivered through a social enterprise partnership, are:

- There will be significant one-off costs in establishing the social enterprise partnership. These are estimated to be in the region of £750,000.
- The transfer to a social enterprise partnership will not in itself solve the impacts of demographic change that have been highlighted as weaknesses of Option1. In particular, if the social enterprise partnership is not able to, over time, rebalance the age profile of its service then it will ultimately fail. There would be likely to be considerable financial and reputational damage to the Council should this happen.
- The Council needs to secure a partner with the right skills and experience, otherwise there is a risk of the management team and or Board not having sufficient experience in running an organisation of this size and complexity as an independent entity in a commercial environment. For example, the enterprise could be distracted from the delivery of its core services by business development opportunities.
- Depending on the approach taken to securing support services currently provided by other parts of the Council, it could add to the financial pressure on the wider Council
- The social enterprise partnership may not be able to offset the additional financial costs that it will experience when compared to the Council, for example as the result of tax liabilities such as Value Added Tax (VAT), through efficiency gains
- Failure to adequately plan for the pensions deficit, both current and any that may occur in the future for the account of social enterprise partnership, or costs relating to Transfer of Undertakings (Protection of Employment) (TUPE) regulations when establishing the partnership would effect the viability of this option.
- There are risks associated with a loss of direct control for the Council, particularly in light of its responsibility to fulfil its continuing statutory obligations.

Option 3

To undertake a competitive tender for all or some of the Learning Disabilities Provider Service that would result in the transfer of services to one or more other organisations over a planned, phased, period.

Under this option the Council would look at each service and decide whether it could be put out to tender, or whether it should remain part of the Council. Organisations that could participate in such a tender would include charities, not for profit organisations and privately owned organisations. This option would not mean that every service would be tendered at the same time. For example services where there are a number of other providers that could meet the Council's requirements, including quality, could be tendered earlier whereas those where there is not currently a market could be retained by the Council until such time as the local market had developed.

The benefits of this option are:

- It would provide greater flexibility for the Council and a reduced risk of the local market being dominated by any single organisation. The Council could retain services where there is not currently considered to be a viable local market, allowing that market to develop, while competitively tendering those where the market is considered to be viable. If this type of phased tendering process is adopted any tenders would be of a smaller scale, potentially attracting more specialist, local organisations, further increasing choice for customers and reducing this risks associated with any single provider failing.
- As independent organisations the successful bidders would be free to trade commercially, including providing services to people who use direct payments, which could lead to an opportunity to spread overheads across a greater volume of activity.
- The ability to attract investment and funding from a wider range of sources has the potential to provide customers with access to improved facilities and increased opportunities, and to allow the service to modernise and attract younger customers, improving long term sustainability.
- It would reduce the risks that are inherent in attempting to implement a "one size fits all" approach for such a large and diverse range of services.
- This approach would continue to allow the Council to consider its options for any services retained in-house as the local market develops.

The limitations of this option are:

- There will be significant one-off costs in tendering the service. These are estimated to be £750,000.
- If the service were to be tendered as a whole or as a small number of large contracts, there is the potential for creating a single dominant provider which could stifle smaller providers, reduce customer choice and increase long term costs for the

Council. The impact of a provider failure would also be significant as this would be likely to result in considerable financial and reputational damage to the Council.

- If the service were to be “carved-up” into too many separate lots for the purposes of a phased process, there is a risk of fragmentation, customers needs “falling between the gaps”, providers blaming each other when things go wrong, overlapping provision leading to inefficiency and the loss of a single “provider of last resort”.
- There are risks associated with a loss of direct control for the Council, particularly in light of its responsibility to fulfil its continuing statutory obligations.
- There could be confusion if tenders take place in phases with different timescales for different services. This could also lengthen the period of uncertainty for customers, carers and staff and result in the double funding of some costs.
- There could be cost escalation. Whilst it is likely that a choice to pursue option 2 would lead (in basic terms) to a transfer of the Learning Disability Provider Services budget to the new provider, with a tender process such as this, bidders are likely to be asked to put forward their own pricing proposals, possibly resulting in all bids exceeding current budgets.
- Failure to adequately plan for the pensions deficit, both current and any that may occur in the future for the account of the new provide(s), or costs relating to Transfer of Undertakings (Protection of Employment) (TUPE) regulations when transferring services would effect the viability of this option.
- The potential for a service provider offering vacancies in supported living accommodation to people currently living outside of the County, ultimately leading to funding for those people becoming the Council’s responsibility under Ordinary Residency rules.

Consultation results

Work was undertaken in the autumn of 2012 with customers and carers, supported by the National Development Team for Inclusion, to think about and plan for how people with learning disabilities and their families are supported in the future. This work was considered by the Scrutiny Committee on 29/01/2013, and alongside feedback received from customers and carers from Somerset Advocacy and through the Learning Partnership Board, was used in the development of the consultation.

A public consultation was undertaken between 30/09/2013 and 09/12/2013. The results are:

- That there were broad levels of support for the Council and Clinical Commissioning Group vision for customers with learning disabilities
- That a majority of respondents (54.1%) indicated their preference for Option 1, with 33.8% indicating a preference for Option 2 and 12.1% for Option 3.
- That respondents supporting Option 1 believed that the

Council was currently doing a good job in delivering services.

- That, in relation to Options 2 and 3, respondents supporting Option 1 queried how it could represent better value for money for the Council to pay another organisation to deliver services, rather than spending this budget directly on the services themselves.
- That work undertaken by Somerset Advocacy through their Speaking Up groups identified that customers changed their preference from Option 1 to the partnership model of Option 2, as a result of the opportunity to discuss this option in greater depth. Discussions with parent/carers at the public meetings also suggested that Option 2 was considered a second choice by some, after Option 1 the “initial choice”.
- That it was the view of Somerset Advocacy that the partnership model of Option 2 should be considered the preferred choice for service users with profound and multiple learning disability.
- That, throughout the consultation, there was little support expressed for Option 3, with concerns focussing on the “profit” making motive of private sector providers, and concerns about abuses in private care homes publicised in the media
- That significant concerns were also raised about the impact that any change might have upon customers, particularly if the disruption caused by the transferring of staff or establishing new working practises affected day to day routines.

Market engagement results

- In general terms a number of respondents expressed an interest in working more formally with other organisations, either as a joint venture/consortium or through sub-contracting, but acknowledged that this could take time to establish and would rely on a shared ethos. A large proportion saw this as an opportunity to expand their current business into new service areas or across the range of needs they would look to support.
- Most respondents indicated that they would be able to respond to a tender for these services and identified that there would need to be adequate time allowed for due diligence, especially given the complexities and scale of potential Transfer of Undertakings (Protection of Employment) (TUPE) arrangements. The length and nature of the service contract would also have a bearing on financial sustainability for any organisation transferring in staff and taking on contractual responsibilities i.e. property and leasing arrangements and the risks associated with the condition of properties.
- This initial market engagement indicates a high level of interest from a mixed sector of providers across both a breadth of service areas and range of needs. Further engagement would inform the most robust approach, however this preliminary feedback would suggest that there would be interest if the potential to split contracts into ‘lots’

	<p>and the use of geographical zones were further explored.</p> <p><u>Service Quality</u></p> <p>The sustainable delivery of high quality, person centred, services to some of the most vulnerable people living in Somerset is a key consideration in this decision. In recent years a succession of national reports have shown that poor quality is not limited to any particular part of the health and social care sector, and that without appropriate safeguards and quality monitoring arrangements, a culture can exist that results in customers experiencing poor quality services and outcomes. It has not been possible to identify any quantitative analysis that indicates whether any of the models of management or ownership under consideration can themselves have a positive or negative on, for example, the outcomes of inspections undertaken by the Care Quality Commission. However, a positive impact on service quality is one of the key benefits that is emerging in the growing body of evidence in relation to mutual organisations. Whilst this benefit may be achievable in different ways in the other types of organisation under consideration, this does appear to be emerging as a specific cultural benefit of mutualisation rather than other factors, for example operational practice or any one individual's leadership style.</p>
<p>Recommendations:</p>	<p>The recommendations are that the Cabinet authorises:</p> <ol style="list-style-type: none">1. The creation of a social enterprise partnership, and to transfer all or some of the Learning Disabilities Provider Service to this, once they have paid due regard to the potential impact and mitigations set out in the Impact Assessment.2. The completion of the necessary work that is required to proceed with the creation of the organisation and selection of the partner.3. The development of a detailed implementation plan alongside an impact assessment in order to minimise the impact of any change processes on customers4. The discontinuation of all work in relation to the other options <p>Cabinet is also asked to agree that:</p> <ol style="list-style-type: none">5. Appendix 2F be treated as exempt information and to be treated in confidence, as the case for the public interest in maintaining the exemption outweighs the public interest in disclosing that information.6. Subject to the approval of recommendation 5 above, to agree to exclude the press and public from the meeting where there is any discussion at the meeting regarding Appendix 2F.

<p>Reasons for Recommendations:</p>	<p>The Council and Clinical Commissioning Group need to ensure that there are sustainable high quality services for adults with learning disabilities in Somerset for the future, and that these have customers and their carers at the heart of everything they do and are fully accountable to them.</p> <p>Having examined all three options in the Full Business Case it was concluded that the transfer of all or some of the Learning Disabilities Provider Service to a social enterprise partnership (Option 2(c)) is the option most likely to achieve this for the Council and Clinical Commissioning Group, and their customers.</p> <p>The Council and Clinical Commissioning Group are pleased that there was significant support from both customers and carers for the existing service, however, while the Full Business Case has looked closely at keeping services as they are it was concluded that Option 1 would not be viable because:</p> <ul style="list-style-type: none">• The Learning Disabilities Provider Service is supporting an ageing population, and when this is combined with the trend of younger people choosing alternative providers the result is that, without change, it will enter an inevitable and difficult to manage decline, with very little ability to mitigate the impacts other than by reactively shrinking the services it provides. This is likely to lead to the Service becoming increasingly unsustainable and unstable over the next 3 to 5 years. Managing this service would become increasingly difficult as staff would be made redundant, morale would plummet, staff could leave and Commissioners would be likely to start to see the types of quality concerns that come with a service in decline.• The Learning Disabilities Provider Service is struggling to meet new need and bid for new business. This is happening for a number of reasons. For example:<ul style="list-style-type: none">○ The service has difficulty setting up new services as the processes to raise money and make investment decisions within local government are not agile and flexible enough to respond to customer and market needs;○ Younger customers do not want placements with older people, and it will only get their business if it can reconfigure effectively and compete with the independent sector on an equal basis.• The impacts of demographic change and customer choice are likely to have the cumulative effect of making services unsustainable and unstable in the medium to long term. This would inevitably lead to changes having to be made to services in a reactive way rather than the sort of planned, gradual way that customers and carers said they would want. <p>The Full Business Case also closely examined Option 3, which would result in the services being run by the independent sector rather than the Council in the future. Many respondents to the consultation had significant concerns about this option focussed on the potential “profit making motive” of some privately owned</p>
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	<p>providers and the potential for significant medium to long-term impacts on customers and carers. The selection of Option 3 could also potentially lead to the double funding of corporate overheads and the risk of either creating an overly dominant provider in the market place or, as a result of efforts to avoid doing so, an overly fragmented market that results in duplication and inefficiency. The initial, non-recurring, resource requirements would be high and, unlike Option 2, there is no opportunity to seek funding for them from elsewhere. There would also be additional costs to the Council from the long term management of multiple contracts.</p> <p>Through the consultation, people told us that the things that are important to them are:</p> <ul style="list-style-type: none">• Customers and carers should be at the heart of decision making• That services should be value based• That private profit should not be made from the delivery of services• That change for customers and carers should be minimised• That services should be accountable to the people who use them and their carers and relatives• That they would like to try to put back some of the opportunities that have been reduced <p>The Council and Clinical Commissioning Group believe that the business case shows that the proposal for a social enterprise partnership would be the best way to achieve these things while ensuring sustainability and the continuation of the things that customers and carers have told us that the Learning Disabilities Provider Service is already doing well.</p> <p>Appendix 2F contains “exempt information” as defined by Section 100 of the Local Government Act 1972, by Schedule 12A to that Act.</p>
Links to Priorities and Impact on Service Plans:	<p>County Plan: Our priority is that Somerset is a safer and healthier place where:</p> <ul style="list-style-type: none">○ Our most vulnerable people have the care they need and the choices they want. Target: Help vulnerable and elderly people stay in their own homes for longer.
Consultations undertaken:	<p>A ten week public consultation was undertaken between 30/09/2013 and 09/12/2013. The results have been summarised above and in Section 4 of the report. A copy of the full consultation report is available in Appendix 2B.</p>
Financial Implications:	<p>Over the next four years (2014/15 - 2017/18), the Learning Disabilities Provider Service will be expected to make budget efficiencies as part of the Council setting a balanced budget. It</p>

must be noted that these expected budget reductions would apply regardless of which option was chosen as the preferred model of future service delivery.

The current hourly rate for Learning Disability Provider Service's supported living services, including an appropriate amount for corporate overheads and support services, is £15.22. This is broadly comparable to the rates currently paid to external providers for similar services. This indicates that while efficiencies could, for example, be achieved by reducing absenteeism (which is high compared to some of the social enterprise models considered under Option 2), it is expected that new service models' ability to reduce their expenditure on support services and overheads will be the most likely source of further efficiencies.

Indicative overall financial impact

Option 1: As is to be expected, because Option 1 will result in no change to the management or ownership of the Learning Disabilities Provider Service, there are not projected to be any additional annual costs or savings arising from this model. However, if the number of vacancies continues to rise, it could lead to the viability and sustainability of the Learning Disabilities Provider Service being threatened.

Option 2: For this option, the overall position, based on the financial modelling undertaken in the Full Business Case, suggests an increased cost to the Council in year one of around £475,000, due to the increased operating costs, and the time taken to deliver financial savings. However, in subsequent years, significant savings are possible, with the financial model showing that annual, ongoing, savings of £3,750,000 are projected to be made by year five.

It should be taken into account, however, that a robust financial modelling exercise would be needed as part of any business planning phase should the decision be taken to pursue Option 2, not least because of the sensitivities and assumptions that form part of the indicative modelling.

Option 3: For this option it is anticipated that, by year five, this service delivery model will be able to produce savings to the Council of £2,000,000, with year one showing an additional cost of £725,000, predominantly due to the assumed requirement for this model of service delivery to make a profit from year one onwards. However, at this stage, it is not possible to more accurately model the overall cost increases or savings resulting from a decision to pursue Option 3 due to the dependence upon as yet unknown bidders and their approach to pricing. This notwithstanding, due to the use of existing or established business(es) to deliver the services under a competitive tendering model, it is likely that gross savings can be realised more quickly than in the case of Option 2, which requires the input of substantial set-up costs. However, this will need to be balanced against the assumption of Option 3 requiring an

element of profit to be built into the financial model, as stated above, which may make it a less attractive Option, even in the first two years of operation.

Indicative set-up and transition costs

Depending on the Option chosen, set-up and transition costs are likely to vary considerably, although it is expected that there will be no transition and set-up costs should Option 1 be selected.

As an indicative guide of the types of costs that are likely to be experienced, the Council's Heritage Service has set-aside £150,000 as it moves towards Trust status; broken down as below:

	£
Legal advice	75,000
Other advice & consultancy	35,000
Staff costs	13,000
Systems and governance set-up	25,000
Communications/branding	2,000
TOTAL	150,000

However, it is anticipated that transition costs for the Learning Disabilities Provider Service under either Option 2 or 3 would be considerably greater than the above due to the size and complexity of the Service, the critical nature of its delivery, the demands of running a full, complaint procurement exercise and the potential for ongoing 'client function' costs.

Where other local authorities have undertaken similar exercises for social care services in the past, transition and set-up costs have ranged from £215,000 in Northamptonshire to around £600,000 in both Essex and Cheshire West and Chester.

Due to the complexity and high-profile nature of going forward with either Option 2 or 3, it would therefore seem prudent to assume set-up and transition costs of around £750,000.

Were Option 2 to be chosen, with a mutual as the type of organisation chosen, the Council may be eligible to apply to the Mutuels Support Programme (MSP) for funding for some or all of the professional costs involved in setting up a social enterprise partnership. The MSP provides professional support to new and developing mutuals so they can overcome barriers to growth, and is designed to help promising mutuals develop by providing the professional expertise and advice they do not have access to and are unable to fund themselves. It focuses on the 'pre-spin out' phase, where access to finance can be particularly restricted.

Legal Implications:

Somerset County Council is legally required to continue providing funding to those customers that meet or exceed the Council's eligibility threshold, formerly known as Fair Access to Care Services or FACS, following the completion of a community care assessment. As those customers currently in receipt of services from the Learning Disabilities Provider Service have

	<p>assessed eligible needs which meet or exceed this threshold the Council will need to maintain funding. It does not, however, have to provide the services directly.</p> <p>It is recommended that the press and public should be excluded during consideration of Appendix 2F because its discussion in public would be likely to lead to the disclosure to members of the press and public present of information in the following categories prescribed by Part 1 of Schedule 12A to the Local Government Act 1972 (as amended): paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information). Since it is considered that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that disclosure would be to the detriment of the Council's ability properly to discharge its fiduciary and other duties as a public authority.</p>
HR Implications:	<p><u>Impact on employees and staff costs</u></p> <p>Option 1: There is expected to be little or no change to employees' terms and conditions and staff costs overall arising from this option.</p> <p>Option 2: If this option is selected there would be an expectation that all staff currently involved in the provision of these services would transfer to the new organisation under Transfer of Undertakings (Protection of Employment) (also known as "TUPE") regulations. However, it is expected that those who join the social enterprise partnership after it is established are employed on terms and conditions that, whilst still being better than those generally seen in the market, are less favourable than those that transferred from the Council under TUPE regulations.</p> <p>One of the most widely recognised benefits of social enterprises is the impact that the cultural change brought about by, amongst other things, staff engagement in the company has on staff absenteeism. There are examples of social enterprises, such as Sandwell Community Care, where absenteeism has been reduced to less than two days per employee / year compared to an average of 15 days in the care sector as a whole. It is therefore anticipated that a new social enterprise partnership in Somerset could also see improvements of this nature due to staff regarding themselves as full stakeholders of the new social enterprise partnership.</p> <p>Within Option 2, it has been assumed that staff sickness can be reduced by 6 days per year over a five year period. Given that this represents less than a 50% improvement and considering the vast improvements seen in social enterprises elsewhere, this is a reasonably conservative assumption. Based on the experience of other similar social enterprises (such as Sandwell Community Care (created from Sandwell Metropolitan Borough Council), Care Plus (transferred out of North East Lincolnshire Council) and Pure Innovations (the result of a (the result of a</p>

transfer out of Stockport Metropolitan Borough Council), this is projected to reduce staff costs by over £125,000 in year one, with on-going savings expected to reach over £750,000 by year five.

Option 3: If this option is selected there would be an expectation that all staff currently involved in the provision of these services would transfer to the new organisation under Transfer of Undertakings (Protection of Employment) regulations. However, as a commercial organisation, the new provider(s) would have the ability to recruit new staff on less favourable terms than those enjoyed by the staff transferred from the Council, and it is therefore highly likely that Option 3 would reduce staff costs in the medium to long term. At this stage, it is not possible to specify the changes to new staff terms and conditions that might be implemented by a new external provider, which would use its existing terms and conditions. However, as Option 2 includes an assumption that the organisation will pay its staff at a higher-than-market rate, it could be expected that the resultant savings for Option 3 would be at least in line with those identified under the modelling of Option 2.

Pensions and related costs

Option 1: There is not expected to be any impact on pension costs or on the terms and conditions of pensions for employees arising directly from this option.

Options 2 and 3: For both Options 2 and 3, were the social enterprise partnership or other new provider to seek admission to the Local Government Pension Scheme as an admitted body, an actuarial valuation would need to be commissioned during the transition period to assess future pension costs and employer's contributions. At this stage, it is not possible to determine whether there would be a decrease in the current employer's contribution rate of 13.5% (as was the case with 1610, the former Somerset County Council leisure service), an increase or a continuation of the current rate. Given this uncertainty, a rate of 13.5% has been assumed which creates no additional costs from a Learning Disabilities Provider Service perspective, but which would be likely to represent a substantial increase in staffing costs for any new external provider.

However, even if it is assumed that the overall employer's contribution rate remains the same, experience from other social care start-ups has shown that actual employer's contributions show an increase in the first few years of operation. The financial impact of this, combined with changes in terms and conditions as described above, is projected to be an increase in costs in year one of over £300,000, but will result in ongoing savings of over £350,000 from year five onwards. This is projected to be the case for both Options 2 and 3.

A more detailed description of these Human Resource implications has been provided in Appendix 2.

Risk Implications:

The following risks have been identified in relation to the recommended option:

- There are inherent risks in any transfer of services out of the Council as this inevitably results in a loss of direct control while the Council continues to retain its statutory responsibilities regardless of provider performance. For example, it would be expected that the social enterprise partnership would be the “provider of last resort” for these services should another provider experience financial or operational difficulties. However, there will always be a risk that social enterprise partnership could itself experience difficulties.
- There would be likely to be considerable financial and reputational damage to the Council should the social enterprise partnership fail
- The management team and/or Board may not have sufficient experience in running an organisation of this size and complexity as an independent entity in a commercial environment. For example, the enterprise could be distracted from the delivery of its core services by business development opportunities.
- Lack of commissioning experience of this type of organisation on both on Council’s and social enterprise partnership’s part.
- The decision to create a social enterprise partnership is challenged through a Judicial Review or using Community Right to Challenge.
- The decision to award the tender to the successful bidder is legally challenged by other providers
- The social enterprise partnership is unable to achieve the savings that the Learning Disability Provider Service is already working towards
- The social enterprise partnership is unable to offset the additional financial costs that it will experience when compared to the Council through efficiency gains
- The approach taken to securing support services currently provided by other parts of the Council adds to the financial pressure on the wider Council
- A failure to adequately plan for the pensions deficit, both current and/or any that may occur in the future for the account of the social enterprise partnership, or costs relating to TUPE regulations, when establishing the partnership effects the viability of the organisation.
- The premises that the Learning Disabilities Provider Service currently utilises prove to be unsuitable and/or require an unanticipated level of investment
- The services that the social enterprise partnership offers are not competitive and/or attractive to prospective customers leading to them choosing alternative providers and an erosion of the partnership’s customer base.
- Unanticipated policy shifts undermine social enterprise partnership’s pricing and/or service strategy
- The social enterprise partnership does not adequately

	<p>engage with staff resulting in a failure to achieve the cultural shifts that have been highlighted as a benefit of this type of organisation</p> <p>A more detailed analysis of these risks and potential mitigations has been provided in Appendix 2.</p>
Other Implications (including due regard implications):	<p>It is essential that consideration is given to the Council's legal obligations and in particular to the need to exercise the equality duty under the Equality Act 2010 to have, due regard to the impacts based on sufficient evidence appropriately analysed.</p> <p>Duties placed on public bodies do not prevent difficult decisions being made such as, reorganisations and service reductions, nor does it stop decisions which may affect one group more than another. What the duty does do is require consideration of all of the information, including the potential impacts and mitigations, to ensure a fully informed decision is made.</p> <p>The Full Business Case is underpinned by an impact assessment, Appendix 2A of this report, which incorporates information gathered through the public consultation. It is essential that the Cabinet gives this due consideration when making a decision about the future of the Learning Disabilities Provider Service.</p>
Scrutiny comments / recommendation (if any):	<p>The Scrutiny Committee for Policy and People reviewed the proposals relating to the future Commissioning of the Learning Disabilities Provider Service and provided suggestions at their meeting on 31 January 2014.</p>

1. Background

- 1.1. Unlike all other types of Adult Social Care services commissioned in Somerset, Somerset County Council still has a large council owned and run provider of care and support services for adults with learning disabilities, the Learning Disability Provider Service. This service supports adults with learning disabilities who have a range of needs that meet the Council's eligibility criteria, formerly known as Fair Access to Care Services.
- 1.2. The Learning Disability Provider Service accounts for just over 46% of the total expenditure on adults with learning disabilities, and supports approximately 900 out of a total of approximately 1600 adults in receipt of support commissioned by the Council. The remaining 700 customers are supported through contracts with external providers, or via Direct Payments. These customers and contracts are **out of scope** for the options considered in this paper.
- 1.3. The Learning Disabilities Provider Service provides Care Quality Commission (CQC) regulated Residential Care, Supported Living, Shared Lives, Short Break, Crisis and Domiciliary services. It also provides Day and Employment Support services. The customers supported by the service are among the most vulnerable people in receipt of publicly funded health and social care support in Somerset, and include individuals with complex physical and/or behavioural needs and autistic spectrum conditions.

- 1.4.** On 11 September 2013 the Cabinet considered a paper which provided an update on progress so far and proposed undertaking a consultation and market engagement on the following three options for the future commissioning of services provided by the Learning Disabilities Provider Service:
1. To retain the whole Learning Disabilities Provider Service within the Council with no change to its management and ownership.
 2. To transfer **all or some** of the Learning Disabilities Provider Service to a new organisation that is legally independent from the Council.
 3. To undertake a competitive tender for **all or some** of the Learning Disabilities Provider Service that would result in the transfer of services to one or more other organisations over a planned, phased, period.

The Cabinet authorised:

- The undertaking of a 10 week public consultation on the three options set out in this report for the future commissioning of the services currently provided by the Learning Disabilities Provider Service.
 - The undertaking of market engagement in parallel to the consultation
 - The completion of a Full Business Case covering the options set out in this report for the future commissioning of services currently provided by the Council's Learning Disability Provider Service for consideration by Cabinet on 05 February 2014
 - Officers to continue to work with customers and carers to test the different ways in which customers with learning disabilities can be supported while the consultation and market engagement takes place
- 1.5.** The Consultation was launched on 30/09/2013 and closed on 09/12/2013, and the full report has been enclosed as Appendix 2B. The main findings are summarised in section 3.
- 1.6.** The market engagement was completed in parallel to the consultation, and the full report has been enclosed as Appendix 2G.
- 1.7.** The Full Business Case has now been completed, and the full report has been enclosed as Appendix 2.

2. Consultations undertaken

- 2.1.** A ten week public consultation was undertaken between 30/09/2013 and 09/12/2013. As part of the process:
- 3274 customers, carers and family members, including young people in transition to adult services, were contacted through an initial mailing. This was followed by a reminder sent by recorded delivery (via the Royal Mail Signed For services), and a further reminder to those whose recorded delivery reminders had been returned as uncollected as at 27/11/2013.
 - In addition to the above letters and reminders the consultation was widely publicised, including through Your Somerset, newsletters to carers and staff, press releases to the local media and use of Openstorytellers, video clips and the Council's Twitter account
 - Fourteen consultation events were held throughout Somerset
 - The consultation was also considered by 9 Speaking Up groups for adults with learning disabilities that are organised by Somerset Advocacy
 - Somerset Advocacy was also commissioned to provide a "best interest" view for those customers who did not have the capacity to participate in the

consultation

A copy of the full consultation report is available in Appendix 2B.

2.2. The members have been consulted about these proposals as follows:

- The Leader of The Council on 17/01/2014.
- The Cabinet Member for Adult Social Care on 21/01/2014.
- The Opposition Spokesperson on 20/01/2014.
- The Chair of the Health and Wellbeing board on 21/01/2014.

In addition a members workshop was held on 22/01/2014.

2.3. The Scrutiny Committee for Policy and People reviewed the proposals relating to the future Commissioning of the Learning Disabilities Provider Service and provided suggestions at their meeting on 31 January 2014.

2.4. Somerset Clinical Commissioning Group Clinical Operations Group considered the proposals relating to the future Commissioning of the Learning Disabilities Provider Service at their meeting on 31/01/2014.

2.5. Somerset Clinical Commissioning Group Governing Body will consider the proposals relating to the future Commissioning of the Learning Disabilities Provider Service at their meeting on 19/02/2014.

2.6. The Somerset Learning Disabilities Partnership Board was asked to comment on the proposals relating to the future Commissioning of the Learning Disabilities Provider Service and provided suggestions at their meeting on 29 January 2014.

3. Financial, Legal, HR and Risk Implications

3.1. Detailed information on the Financial, Legal, HR and Risk Implications of each option is contained in the Full Business Case which has been enclosed as Appendix 2.

4. Other Implications

4.1. A detailed impact assessment has been completed, which incorporates information gathered through the consultation process. This has been enclosed as Appendix 2A.

4.2. The Community Right to Challenge introduced in the Localism Act 2011 means that the Council may receive expressions of interest from voluntary agencies, community groups, charities, parish and town councils and groups of two or more council employees in bidding to run a particular, or “relevant”, council service. If the expression of interest is valid, a competitive procurement exercise will then take place involving all other interested organisations. The services that are provided by the Learning Disabilities Provider Service are jointly commissioned and funded by the NHS and the Council, and are therefore currently exempt from the Community Right to Challenge. However, this exemption is expected to cease on 01 April 2014 and without a decision on the future commissioning of these services should a Right to Challenge be received then it could trigger an open market procurement for these services.

5. Background papers

5.1. Appendix 1: Easy words summary

Appendix 2: Full Business case

Appendix 2A: Impact Assessment

Appendix 2B: Consultation Report

Appendix 2C: Somerset County Council and Somerset Clinical Commissioning Group Commissioning Intentions

Appendix 2D: Descriptions of Individual Service Areas

Appendix 2E: Learning Disabilities Provider Service Structure Chart

Appendix 2F: **IN CONFIDENCE – NOT FOR PUBLICATION**

Local Government Act 1972 – Schedule 12A

Information relating to the financial or business affairs of any particular person (including the Authority holding that information).

Appendix 3: Comparison of the Options

Supplementary Appendices

The following supplementary appendices in relation to the Impact Assessment are available on request:

- SAP Reports
- Adult Social Care Database (AIS) Reports

5.2 Cabinet meeting on 02/05/2012:

<http://www1.somerset.gov.uk/council/meetings/reports.asp?item=874>

Scrutiny Committee meeting on 29/01/2013:

<http://www1.somerset.gov.uk/council/meetings/reports.asp?item=992>

Cabinet meeting on 11/09/2014

<http://www1.somerset.gov.uk/council/meetings/reports.asp?item=982>