

Business Case



Learning Disabilities Provider Service

Full Business Case

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1. EXECUTIVE SUMMARY

1.1 Purpose

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 Somerset County Council (“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 (Appendix A).

1.2 The Learning Disabilities Provider Service

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.

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:

- 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.

The remaining 700 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.

1.3 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 B. 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.

1.4 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.

1.5 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; and
- An assessment of its viability and value for money.

1.5.1 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. The 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 too slow 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.
- It is difficult for people to use Direct Payments to purchase services from, as it is directly run by the Council
- The service cannot trade with the wider population.

1.5.2 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 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 requiring the social enterprise 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 £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 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 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 the social enterprise, or costs relating to Transfer of Undertakings (Protection of Employment) (TUPE) regulations, when establishing the partnership would affect 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.

1.5.3 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 the 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 provider(s), or costs relating to Transfer of Undertakings (Protection of Employment) (TUPE) regulations when transferring services would affect 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.

1.6 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 parents/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 customers 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.

Further details are included at Appendix C and in section 4.2 below.

1.7 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' and the use of geographical zones were further explored.

1.8 Service quality

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 impact 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.

1.9 Financial appraisal

Over the next four years (2014/15 - 2017/18), the Learning Disabilities Provider Service will be expected to make budget savings as part of the Council setting a balanced budget. It must be noted that these expected budget reductions would apply regardless of which option was chosen as the preferred model of future service delivery.

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, 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, which may make it a less attractive Option, even in the first two years of operation.

1.10 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 selected, 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-externalisation phase, where access to finance can be particularly restricted.

1.11 Impact on employees and staff costs

Option 1: There is expected to be little or no change to employees' terms and conditions and staff costs overall.

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) (TUPE) regulations. However, it is expected that those who join the social enterprise 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.

One of the most widely recognised benefits of a social enterprise 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 per year compared to an average of 15 days in the care sector as a whole. It is therefore anticipated that a new social enterprise in Somerset could also see improvements of this nature due to staff regarding themselves as full stakeholders of the new social enterprise.

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 (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 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) identified 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 is predicated on paying 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.

1.12 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.

Options 2 and 3: For both Options 2 and 3, were the social enterprise 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 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 employers' contribution rate remains the same, experience from other social care start ups has shown that actual employers' 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.

1.13 Conclusions

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.

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.

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:

- The Learning Disabilities Provider Service is supporting an ageing population, and when this is combined with the trend for younger people to choose 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:
 - 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.

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 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.

Through the consultation, people told us that the things that are important to them are:

- Customers and carers should be at the heart of decision making;
- Services should be value based;
- Private profit should not be made from the delivery of services;
- Change for customers and carers should be minimised;

- Services should be accountable to the people who use them and their carers and relatives; and
- They would like to try to put back some of the opportunities that have been reduced.

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.

1.14 Recommendations

It is recommended that the Cabinet and Clinical Commissioning Group authorises:

- The creation of a Social Enterprise Partnership, and the transfer of 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.
- The completion of the necessary work that is required to proceed with the creation of the organisation and selection of the partner.
- The development of a detailed implementation plan alongside an impact assessment in order to minimise the impact of any change processes on customers
- The discontinuation of all work in relation to the other options

2. BACKGROUND TO THE LEARNING DISABILITIES SERVICE

2.1. What is a learning disability?

The term 'learning disability' has a range of definitions, and covers a range of both social and health care needs. It includes people who need some day-to-day support to manage daily living to people with complex and profound learning and physical disabilities and complex healthcare needs.

The definition of a "learning disability" should not be confused with that of a "learning difficulty", which is a term that is mainly used in an educational context and which covers a much broader range of needs.

A learning disability is not a disease, is not an illness and is not acquired in adulthood or as a result of disease. A learning disability will be evident from childhood and, in many cases, the cause of learning disability will not be clear, while in others genetics, chromosomal abnormalities or environmental factors may be identified as the cause.

2.2. Statutory framework

Residential Care is provided under Part III of the National Assistance Act 1948. No other services are delivered as a direct result of statutes applying to the Council. However, under the NHS and Community Care Act 1990, Somerset County Council is legally required to provide funding, less any customer contribution, to those customers whose assessed needs 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. It currently provides just under half of the capacity (by value) to meet these needs directly from an "in-house" service, the Learning Disabilities Provider Service. However, whilst the Council is therefore required to continue to provide the necessary funding to meet these assessed eligible needs, it does not have to provide these services directly.

Descriptions of the individual service areas can be found at Appendix D.

2.3 Service components and locations

The Learning Disabilities Provider Service currently delivers just under half of the learning disability services (by value) funded directly by the Council. 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 Business Case.

The Learning Disabilities Provider Service supports approximately 900 customers with learning disabilities at any one time. It has an annual gross 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:

- 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 capacity 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 (one location – county wide cover);
- Future 4 (including day services and domiciliary care, 15 resource bases – delivers a service to over 500 individuals);
- Aspire employment services (one property – county wide cover).

The properties currently in use fall within the following categories of ownership:

- Council ownership – 17 properties;
- Joint ownership between the Council and the Clinical Commissioning Group through section 28a funding – 12 properties;
- Council owned properties leased to a Housing Association – 9 properties;
- Properties owned by the Council / Clinical Commissioning Group / Housing Associations (1999 three way agreement) - 6 properties;
- Directly owned by a Housing Association – 8 properties;
- Joint ownership with Clinical Commissioning Group (section 28a funding) and Housing Association – 14 properties
- Owned by the Council, Clinical Commissioning Group (Section 28a) and a Housing Corporation – one property;
- Properties leased by the Council – 5 properties.

Due to the way in which many of these property acquisitions were funded, it may not be possible to transfer properties to any new organisation or provider and therefore existing lease arrangements would need to be agreed or new arrangements put in place.

In addition, it is likely that investment will be required to ensure that these properties are fit for purpose in the future. A property reconfiguration plan is already being developed by the Learning Disabilities Provider Service, and the Council has already allocated a capital sum to support elements of this plan.

2.4 Current structure and staffing

As at 26th November 2013, the Learning Disabilities Provider Service employed 1,203 staff (or 975 full time equivalents (FTEs)) providing a range of learning disability-related services. The approximate breakdown by service is as follows:

- Future 4 services (170 staff, 129 FTEs);
- Aspire employment services (14 staff, 129 FTEs);
- Long term residential care (269 staff, 235 FTEs);
- Residential short breaks (55 staff, 43 FTEs);
- Shared lives (4 staff, 4 FTEs);
- Supported living and domiciliary care (636 staff, 527 FTEs); and
- SASS (14 staff, 11 FTEs).
- There are a further 14 staff (14 FTEs) in senior management roles (grade 9 and above).

The Learning Disabilities Provider Service structure chart is included as Appendix E.

2.5 Organisations that the Learning Disabilities Provider Service works with

The Learning Disabilities Provider Service works with various third party suppliers in relation to the premises and properties currently in use for the service, staff training, care sector engagement and best practice, the provision of agency staff and specialist health inputs as illustrated in Figure 1 below.

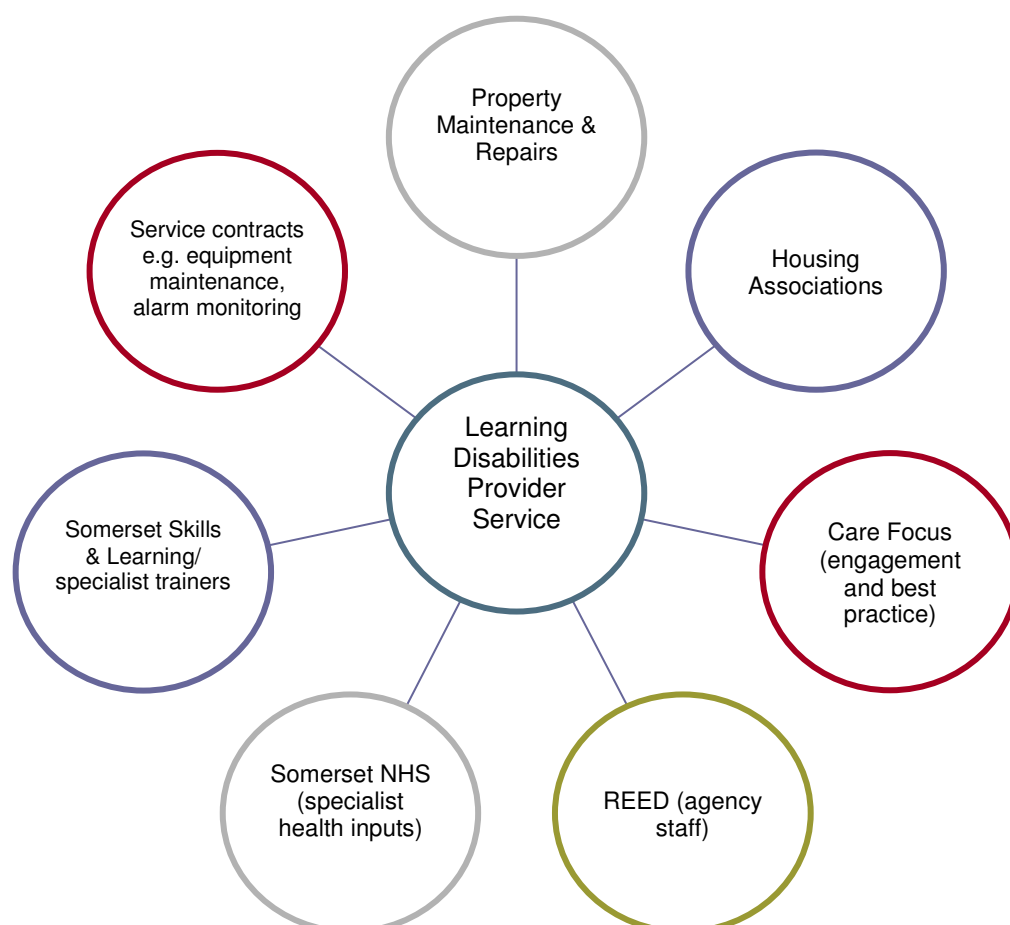


Figure 1: An illustration of the Learning Disabilities Provider Service supplier relationships.

3. STRATEGIC CONTEXT

3.1 National context

3.1.1 Demographic information

It is estimated that there are just over one million people aged 18 and over living in England who have some form of learning disability¹. While many have a relatively mild learning disability, approximately 208,000² people are

¹ Source: www.pansi.org.uk and www.poppi.org.uk (retrieved 21/10/2013).

² Source: www.pansi.org.uk and www.poppi.org.uk (retrieved 21/10/2013).

estimated to have a moderate to severe learning disability. Of these 48,500³ aged 18-64 are estimated to have the most complex and severe level of learning disability, and therefore are likely to be in contact with specialist health and social care services, for example those provided by the Council and Clinical Commissioning Group in Somerset.

National estimates⁴ suggest that the extent and pattern of need for health and social care services for adults with learning disabilities in England is likely to change over the next decade. These changes are driven by three main factors:

- Increased life expectancy of all adults with learning disabilities, including those with the most complex needs;
- Increased numbers of babies born with complex needs surviving into adulthood;
- The impact of changes in fertility over the past two decades in the general population;
- The ageing of people born in the 1950's and 60's, among whom there appears to be an increased incidence of learning disabilities.

3.1.2 Legislative and policy framework

Over the last decade there have been two major national policies that have shaped the development of health, care and support services for adults with learning disabilities – Valuing People (2001-2008) and Valuing People Now (2008-2013). While Valuing People Now has not been replaced with a further strategy, the direction of travel that it sets out has continued to be taken forward at both a national and local level. The 2012 Health and Social Care Act⁵ continues to promote the transformation of services to achieve greater choice, control and personalisation as set out in Valuing People Now and Putting People First⁶. This includes customers having a Personal Budget⁷ for which the Government's preferred mechanism of delivery, as outlined in its vision for Adult Social Care in 2010, is through a Direct Payment^{8,9}.

³ Source: www.pansi.org.uk (retrieved 21/10/2013). No estimates are available for the 65+ age group.

⁴ Emerson, E and Hatton, C Estimating Future Need for Adult Social Care Services for People with Learning Disabilities in England, Centre for Disability Research (CeDR)

⁵ <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

⁶

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_081118

⁷ A Personal Budget is money "that is allocated to you by your local council to pay for care or budget support to meet your assessed needs" Source: Social Care Institute for Excellence (SCIE), "Social Care Jargon Buster"

⁸ Source "A vision for adult social care: Capable communities and active citizens". Available from:

http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/publicationsandstatistics/Publications/PublicationsPolicyandGuidance/DH_121508 Page 8, section: The principles

⁹ A direct payment is money "that is paid to you (or someone acting on your behalf) on a regular basis by your local council so you can arrange your own support, instead of receiving social care services arranged by the council". They are not yet available for long term residential care Source: Social Care Institute for Excellence (SCIE), "Social Care Jargon Buster"

In addition the following two pieces of forthcoming legislation are expected to introduce further change:

- The Children and Families Bill¹⁰ is expected to extend the support that young people receive in relation to an Education Healthcare Plan from 18 to the end of the academic year in which the young person reaches 25.
- The Care Bill¹¹ is expected to set out a vision for social care moving towards forming a preventative system which helps people to maintain well-being through supporting more inclusive and effective communities, with less reliance on service-solutions. The Care Bill also seeks to provide a single statute for social care, replacing the existing complex framework of legislation.

In recent years a succession of national reports, including “Six Lives”¹² and the investigations into Winterbourne View¹³ and Budock Hospital¹⁴, have highlighted shortcomings in the ways both privately run and public sector health and social care services are sometimes provided to people with a learning disability. These unacceptable shortcomings have contributed to poorer health outcomes and avoidable suffering and death at a younger age than might be expected. These reports have shown that poor quality is not limited to any particular part of the health and social care sectors, and that without appropriate safeguards and quality monitoring arrangements, a culture can exist that results in customers experiencing poor quality services and outcomes. As a result, better health and social care services for people with learning disabilities, and taking a “whole life” approach to supporting them, is now a key priority for both the National Health Service and Local Authorities.

Nationally the trends are towards:

- People having more control over their own services through using a Personal Budget;
- Supporting people through services such as Supported Living instead of residential care;
- Supporting people to get employment paid at the national minimum wage or above;
- Local Authorities commissioning rather than directly providing services.

Guidance issued to all Local Authorities by the Department of Health in 2009 makes repeated reference to direct payments being an alternative to services directly provided by a council. For example, following assessment, customers can choose to “receive care and support directly from the council or to obtain their own support through direct payments”¹⁵. However, research has been

¹⁰ <http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

¹¹ <http://services.parliament.uk/bills/2013-14/care.html>

¹² <https://www.gov.uk/government/publications/six-lives-department-of-health-second-progress-report>

¹³ <https://www.gov.uk/government/publications/winterbourne-view-hospital-department-of-health-review-and-response>

¹⁴ http://webarchive.nationalarchives.gov.uk/20060502043818/http://healthcarecommission.org.uk/db/documents/cornwall_investigation_report.pdf

¹⁵ Department of Health and Department for children, schools and families “Guidance on Direct Payments For Community Care Services for Carers and Children’s Services” 03/09/2009, updated 29/10/2010. Gateway reference: 12447.

unable to identify any specific restriction contained in primary legislation that prevents Direct Payments from being used to purchase in-house services, such as those provided by the Learning Disabilities Provider Service, all Local Authorities are required to have due regard to guidance issued by government departments, and any departure from such guidance must be justified¹⁶. There is a risk that this guidance could be challenged, however if any such challenge were successful it would impact both on the authorities concerned and Government policy.

3.2 Local context

3.2.1 Demographic information

Demographic estimates indicate that there are currently 2008¹⁷ people aged 18 and over with a moderate to severe learning disability living in Somerset. Of these, 436¹⁸ 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 social care services, with activity data for the 2012/13 financial year showing that a total of 1564 people aged between 18 and 64 and 150 aged 65 and over received a social care service¹⁹. Of the group who are not accessing specialist social care services, some will be in contact with the Council's preventative services, and some will be known to the NHS through contact with their General Practitioner (GP). Others will be living independently and not in contact with, or known to, services.

It is projected that demographic changes seen nationally will result in a significant increase in the numbers of older people with learning disabilities and young people with complex needs and learning disabilities requiring support, usually from birth. The effect of this is that the Council and Clinical Commissioning Group are likely to be supporting more people, with more complex needs, for longer.

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 over²⁰. By 2020 these increases are expected to be 3% and 16% respectively²¹. The increase in those aged over 65 is particularly significant as, not only are people in this group likely to have parents who

services for carers and children's services" 2009, updated

¹⁶ This proposition was confirmed by Lord Justice Moses in R (Kaur) v London Borough of Ealing [2008] EWHC 2062 Admin which was quoted with approval by His Honour Judge Raynor QC in R (Sefton Care Association) v Sefton Council [2011] EWHC 2676 (Admin) as follows: "Formal guidance issued under section 7(1) of the 1970 Act is to be distinguished from general practice guidance issued by the Secretary of State (see Cross on Local Government Law, paragraphs 21-02, 03). However a local authority is obliged to have due regard to non-statutory guidance and would have to justify any departure from it (see R (Kaur) v Ealing LBC [2008] EWHC 2062 (Admin) at paragraph 22 per Moses LJ.)"

¹⁷ Source: www.pansi.org.uk and www.poppi.org.uk (retrieved 21/10/2013).

¹⁸ Source: www.pansi.org.uk (retrieved 21/10/2013). No estimates are available for the 65+ age group.

¹⁹ Source: Somerset County Council 2012/13 Referrals Assessments and Packages of Care Return (RAP Return) to Department of Health: Total number of people with LD aged 18+ supported during 2012/13 by age band

²⁰ Source: www.pansi.org.uk and www.poppi.org.uk (retrieved 21/10/2013).

²¹ Source: www.pansi.org.uk and www.poppi.org.uk (retrieved 21/10/2013).

have died or are themselves frail, they are also likely to be suffering from other conditions associated with old age, including dementia.

Increases in local demand for services come from the following main sources:

- People who had not previously accessed adult services. The most frequent and greatest source of pressure on services from new customers is when young people move from Children's Services. This is because they frequently have severe and complex disabilities that may have made them less likely to survive into adulthood in the past.
- Somerset has had a long history of seeing more people with learning disabilities who need services move into Somerset than ever move out.
- People who have not been previously known to the authority.
- People whose needs have increased or who require a significant increase in the level or type of service they receive. Although the needs of some people already in receipt of services will increase each year, thereby necessitating sometimes very significant increases in the care they receive, the most frequent pressure on services from existing customers is where a carer experiences a crisis and is unable to continue to provide the level of support for a customer that they have in the past. This is because, as many people with learning disabilities are living longer, the age profile of carers is also changing. Together with the changing expectations of a younger generation of carers, who are less likely to see caring full time for their disabled child as a lifelong commitment, this is one of the main factors influencing the growth in the number of people with a learning disability requiring publicly funded care and support.

3.3 Strategic direction

3.3.1 Current strategic position

3.3.1.2 Vision and key strategic priorities

To meet future demand and to develop services in line with the national and local agendas, the Council and Clinical Commissioning Group's commissioning intentions for the next 3 years are set out in detail in the Commissioning Intentions document at Appendix A, but in summary they are:

- **People with learning disabilities and their families will have more control over their services**
 - All customers and/or those who represent them, will know how much money they can have to support them and what their services cost;
 - Customers will have more say on who provides their services, how their services are organised and how the money is spent;
 - Customers will be able to choose a Direct Payment, Individual Service Fund or Council Managed Account to pay for their services;
 - There will be increased involvement from customers and carers in designing and developing services;
 - Customers are effectively supported to have improved health and wellbeing;
 - Carers and their families are supported to continue caring for their loved ones.

Key target: 70% of customers to have a Personal Budget by 31/12/2014. Delivered through a mix of Direct Payments, Individual Service Funds and Managed Accounts.

- **People with learning disabilities and their families can make more day to day choices**
 - Customers will be able to make more choices about who supports them, when they are supported, and the things that they do;
 - We always try to support people in the community and through services like Supported Living rather than Residential Care.

Key target: A 50% reduction in the volume of residential care commissioned by 2020 with corresponding increases in alternative services, in particular Supported Living and Shared Lives.

- **People with learning disabilities are helped to have the same opportunities as everyone else**
 - We help people be part of the communities where they live, build and keep friendships and family ties, and have opportunities for working, volunteering or joining community groups;
 - We encourage opportunities for people to do things without paid staff.

Key target: 40 additional people into paid employment at the National Minimum Wage or above by 31/12/2014, 20% of people with learning disabilities to be in paid employment or self-employment by 2025.

- **The buildings people live in are high quality and fit for purpose**
 - People have the private living space they need, and more say over who lives with them;
 - Investment in new properties and adaptations to existing properties;
 - There is enough suitable accommodation for everyone who needs it in the future.

Key target: A vulnerable persons' property strategy, including a costed, time limited, plan for any remodelling required, to be completed and signed-off by 30/09/2014.

- **Services are good value for money**
 - People using Direct Payments choose services because they consider them to be high quality and good value;
 - We make sure that the public money spent on people goes further because it is spent wisely;
 - We avoid making unnecessary placements outside of Somerset.

Key target: We will avoid making any new specialist placements outside of Somerset unless there is a clear, evidence based rationale for doing so, that must demonstrate that all options for supporting the customer within Somerset have been exhausted.

3.3.2 Future strategic context

The following impacts on our strategy are expected over the coming years:

- Continued public sector austerity;
- A continued drive from Central Government to increase the personalisation of services, including significant increases in the number of people managing their own care and support through a Direct Payment;
- A continuation of trends for young people with very complex needs surviving childhood and older people surviving into older age; thereby increasing both the number of recipients of publicly funded services in general and those with complex needs in particular ;
- A continued trend for older people currently placed in the Learning Disabilities Provider Service to reach the end of their natural lives;
- A continuation of the trend for young people to remain at home and personalise their own care and support, potentially resulting in an accelerating age imbalance in services provided by the Learning Disabilities Provider Service;
- A continuation in the trend for young people to wish to seek employment or access community activities rather than attend day services.

3.4 Key outcomes

The key outcomes that the Council and Clinical Commissioning Group wish to achieve for the services currently provided by the Learning Disabilities Provider Service are:

- 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 can evidence good value for money 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.

3.5 How these services are commissioned by other Local Authorities

Customers and carers have previously asked about how similar services are commissioned in other areas of the country. There is no single source of information that the Council has been able to identify that details how services are commissioned by different local authorities. Previous attempts to obtain this information have had limited success as frequently this information is

either not publicly available, out of date or not presented in a way that facilitates comparison.

However, data reported in annual statutory returns²², which identifies the ten County Councils that spend most on directly provided residential care and day services, does provide an indication. Follow up research indicates that, whilst no two Councils are the same and there is both constant and rapid change in the sector, all of those that still have significant in-house services are either considering, or are in the process of implementing, a range of changes, many of which are similar to those being considered in Somerset. Although there are variations between individual Councils, independent sector provision is present across most, if not all. A number are pursuing, or already have pursued the establishment of social enterprises in a similar way to the models considered under Option 2²³. These Councils include:

- Leeds;
- Cheshire West and Chester;
- Northamptonshire;
- Essex;
- Suffolk;
- Sandwell Borough;
- North-East Lincolnshire;
- Stockport;
- Newcastle, Manchester and North Tyneside;
- Oldham Borough Council;
- Rochdale Council;
- Wandsworth Borough;
- Staffordshire.

Where areas have retained services, they are usually where the local market is poor, for example day services for people with complex needs. However, as long ago as 2008, 88%²⁴ of residential care in England for adults with learning disabilities was already being provided by the private and voluntary sectors.

Regionally, Somerset is unusual in maintaining an in-house service that incorporates such a breadth of activity. In other local authorities this range of activities is commissioned from external providers. These range from small, very local organisations, to large charities, social enterprises and for private profit organisations. This is a similar pattern of purchasing, however, to that which exists in relation to those services already purchased from external providers in Somerset.

²² Source: PSS-EX1 (2012/13 financial year) Calculated by adding columns AI and DX and then sorting by resulting total. Available from:

²³ It must be noted that each Councils will be considering different mixes of services depending on their individual circumstances, for example they may be looking at setting up an organisation to provide day services to a range of client groups not just adults with learning disabilities.

²⁴ Care Management Matters "The Future of Adult Learning Disabilities Care Provision" July 2008 page 9

However, Somerset is not unique in retaining services such as crisis support (although this is sometimes provided through an NHS organisation in other areas), day services for people with the most complex needs, and to some extent respite care and employment support. Where the Council is unique in the region, is in the continued direct provision of approximately 29%²⁵ of the commissioned capacity for residential care and a very large supported living service, which dominates the local market.

In terms of the direction of travel there are significant similarities with the position in Somerset to other areas; particularly in relation to the following broad themes:

- Increasing the personalisation of services;
- Increasing paid employment; and
- Reducing the commissioning of Residential Care.

4. BACKGROUND TO THE OPTIONS AND WIDER ENGAGEMENT

4.1 Background to work so far, including Outline Business Case recommendations

4.1.1 History

In October 2010 the Council's Cabinet and the Board of NHS Somerset (now superseded by Somerset Clinical Commissioning Group) considered a detailed paper on the future of the Learning Disabilities Provider Service, resolving to retain services in-house, but to begin a process of service redesign and changes in governance with the aim of increasing its accountability to customers and carers before any decision was taken on the long term future of the service.

In May 2012 the Council's Cabinet and the Board of NHS Somerset considered an Outline Business Case proposing potential changes to the Learning Disabilities Provider Service²⁶. At the meeting the Cabinet agreed:

To endorse the proposed direction of travel and to request officers to take forward the development of a Full Business Case on the basis of the following options:

- *Services to remain in the County Council while we continue to redesign, deliver efficiencies and explore options for service delivery that may include the potential for a management buy-out.*
- *Whole service open market tender.*

To authorise the Chief Executive, Lead Commissioner Adults & Health and Adults & Health Operations Director to develop the Full Business Case, take forward the necessary actions arising from the above

²⁵ The Learning Disabilities Provider Service was supporting 97 out of a total of 340 residential care placements as at 30/09/2013.

²⁶ Papers available from:

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

recommendation and to present the Full Business Case to Cabinet for approval.

Following the Cabinet meeting it was decided that further work was needed to enable stakeholders to know more about the potential range of services and to make sure the Council fully understood what customers and carers want/need over the next 10 -15 years. The National Development Team for Inclusion (NDTi) was commissioned to support this 'involvement' work, which included:

- Sessions across the County to gather feedback from parents and carers.
- Smaller group sessions with parents, families and customers.

The outcome of this work was reported to the Scrutiny Committee on 29/01/2013²⁷ and has since been taken forward through the establishment of "Planning for the Future Together" sites. At this Scrutiny meeting, a commitment was given to a full consultation being undertaken before any decisions were made about the future style and shape of services to be provided.

After considering an update on 11/09/2013²⁸ the Council's Cabinet agreed to:

- The undertaking of a 10 week public consultation on three options. These are set out at section 4.1.2.1 below.
- The undertaking of market engagement to research what services are available at present in parallel with the consultation.
- The completion of a Full Business Case covering the options for consideration by Cabinet on 05/02/2014.
- The continuance of 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.

4.1.2 The Options

4.1.2.1 Options under consideration

The options taken forward for consultation, incorporating amendments to their wording to provide greater clarity, were²⁹:

1. To retain the whole Learning Disabilities Provider Service within the Council with no change to its management and ownership.
2. The Council to create a new separate organisation, for example a publicly owned trust or not for profit organisation, and transfer all or some of the Learning Disabilities Provider Service to that new organisation.
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.

²⁷ Papers available from:

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

²⁸ Papers available from:

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

²⁹ The options were reworded for the purposes of clarity following the Cabinet Meeting

Option 2 was then further expanded for the purposes of increasing clarity for the consultation, to include the following sub-options:

- **Setting up a business that at first only delivers learning disability services for the Council.** The Council would be giving the services to this new organisation and would still have a say in how the organisation runs to start with. However, at some stage other providers would need to be given the chance to bid to provide the services.
- **Setting up a not for profit social enterprise and transferring some or all staff and services to it.** The Council would have to explain why it had not given other organisations the chance to bid to provide these services at this point, and at some stage other providers would need to be given the chance to bid to provide the services.
- **Setting up a partnership arrangement with another organisation, and transferring some or all staff and services over to them.** The Council would choose a partner through a fair and open process on the basis of the skills, quality and resources the partner would bring. It could decide what services it asks the company to provide.

4.1.2.2 What is not included in the options?

The options are about the management and ownership of the Learning Disabilities Provider Service, not changes to individual services. Regardless of the option selected, if a significant change was proposed for an individual service, for example the closure of a day service, the Council would need to consult with the customers and carers potentially affected and impact assess the change before a decision was made.

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 Business Case.

4.2 Engagement with stakeholders, partners and staff

4.2.1 Background

Following the decision by Cabinet on 11/09/2012³⁰ a specification was finalised with the Council's Research and Consultations Manager for a consultation to be undertaken by an independent organisation. The organisation selected was Cognisant Research, who had previously undertaken a number of consultations on behalf of the Council. .

The following extract has been included from the brief³¹:

“2 Objective

2.1 *The overarching business objective is to provide Somerset County Council with an independently administered, robust, public*

³⁰

<http://www1.somerset.gov.uk/council/board3d/2013%20September%2011%20Summary%20of%20Decisions.pdf>

³¹ Section 1, background, has been omitted to avoid repeating section 4.1 of the Business case

consultation that will meet the communication needs of customers and which will withstand close scrutiny.

2.2 *The research objectives are to:*

1. *Deliver a robust, accessible, consultation involving Customers, Carers and other interested stakeholders*
2. *Capture detailed and relevant information about their views on the future commissioning of the services currently provided by the Learning Disabilities Provider Service to inform the full business case and identify any issues that need to be considered in Impact Assessments*
3. *Capture information about their current use of services*

3 Methodology

- 3.1 *We would like the successful organisation to develop a proposal to undertake a questionnaire plus a series of paired discussions and workshop sessions to maximise the feedback gathered from customers and carers.*
- 3.2 *The successful organisation will be required to access specialist support to assist in the development of the questionnaires and facilitation of paired discussions. This will include developing “easy words” versions of all relevant material and questionnaires to ensure it is accessible to customers and that it meets a wide range of communication needs. Opportunities will be provided for paired discussion facilitators to ensure that they have an appropriate level of knowledge in advance, and commissioners will be available at each paired discussion venue to answer any detailed technical questions if required.*
- 3.3 *The questionnaire needs to reflect that people may be accessing multiple services provided by both the Learning Disabilities Provider Service and other providers so that the subject of the feedback can be pinpointed*
- 3.4 *The scope of the consultation is limited to the options under consideration relating to the management, ownership and commissioning of the Learning Disabilities Provider Service and needs to consider:*
 - *What is good about services*
 - *What could be better*
 - *What do people think about the 3 options*

4 Deliverables

- 4.1 *We require a full, written report following analysis in an accessible “easy words” format appropriate for publication alongside the Full Business Case. The report must provide an analysis on feedback received from all stakeholders on the three options described in section 1.3, plus any other significant issues raised”*

4.2.2 Consultation results

The summary results of the consultation 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 participants (54.1%) indicated their preference for Option 1, with 33.8% indicating a preference for Option 2 and 12.1% for Option 3. A preference for one of the three consultation options was identified from 636 out of the 777 responses received during the consultation.
- That parents/carers supporting Option 1 believed that the Council was currently doing a good job in delivering services. The bureaucracy within the Council was seen as a safeguard against malpractice, for example the effective vetting of employees. The Council was also considered to be more readily accountable than any other potential provider organisation.
- That, in relation to Options 2 and 3, participants 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 parents/carers also had significant concerns about the impact that any change might have upon customers, particularly if the disruption caused by the transferring of staff or establishing new working practices affected day to day routines.

However, 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 parents/carers at the public meetings also suggested that Option 2 was considered a second choice by some, after Option 1, the “initial choice”.

It was also the view of Somerset Advocacy that the partnership model of Option 2 should be considered the preferred choice for customers with profound and multiple learning disability.

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

The full report can be found in Appendix C.

Members of staff were able to complete a survey and/or attend a consultation event in the same way as any other member of the public. In addition to this, an area staff forum was held on 07/10/2013 and the Learning Disabilities Provider Service Joint Consultative Committee with recognised unions met on 08/10/2013 and 12/11/ 2013.

4.3 Market appraisal

4.3.1 Introduction

In order to explore the potential roles of the market, test some of the commercial principles being considered and understand the likely interest

from the market, providers were invited to participate in a market engagement exercise. This aimed to provide an opportunity for the Council to gain insight into how service providers and suppliers might approach the delivery of the service and how they might address particular issues that may impact on the services or proposals more generally. It has also raised the profile of the potential opportunity to the market, should there be a decision to go to tender. However, it was emphasised that undertaking market engagement indicates the Council's intention to engage with the market, but is not a commitment to enter into a formal procurement as the preferred option.

4.3.2 Engagement approach

This was advertised via a Prior Information Notice (PIN) on the 19/09/2013 to enable providers to express an interest in participating. The issuing of a PIN indicates the local authority's intention to engage with the market, but is not a commitment to enter into a formal procurement. An event was held on 07/10/2013, where commissioners shared the Council's overall vision for learning disabilities services, regardless of market provider, and ideas around the business models and approach being considered, to seek initial feedback in an open environment. Subsequently, questionnaires were sent to all providers who attended the initial event and those who had expressed an interest in participating in the market engagement. The questionnaires sought to understand how the market would respond to the Council's general vision, as well as to any potential externalisation of some or all of the services currently provided by the Learning Disabilities Provider Service.

A total of 79 organisations were represented at the event and 19 responses to the questionnaire were received. These included both providers currently delivering services in Somerset and those that do not. A mixture of national, local, private and voluntary sector organisations were represented.

4.3.3 Feedback

It should be noted that the feedback is merely indicative at this stage, as the information made available to providers upon which to base any response was not to the level of detail that would be provided as part of any tender process. Providers were also not committed at this stage.

Notwithstanding these provisos, there was a positive response to the opportunity presented to organisations.

Figure 2 below shows a breakdown of the interest identified from the questionnaire responses across the service areas.

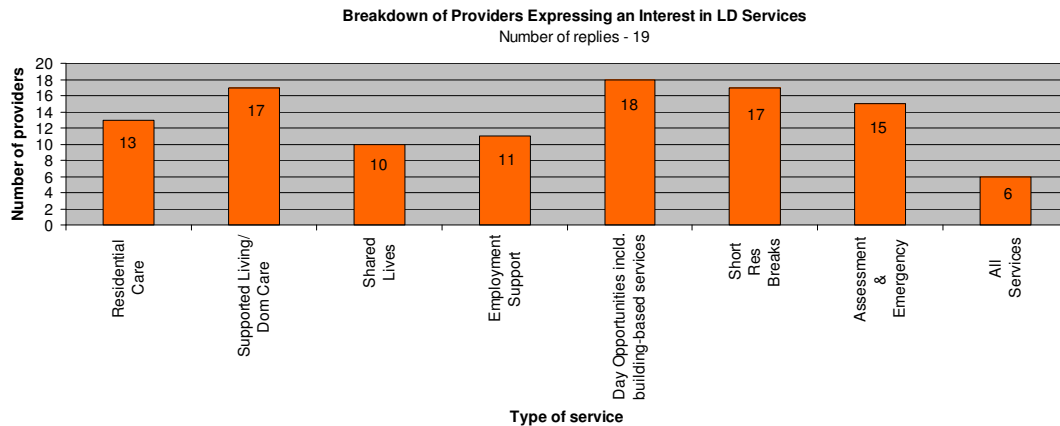


Figure 2: Breakdown of Provider Responses

In general terms a number of providers 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 organisations indicated that they would be able to respond and identified that there would need to be adequate time allowed for due diligence, especially given the complexities and scale of potential 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.

Alongside the split in service areas a number of providers suggested that a locality approach could be desirable. This was not just limited to smaller, more locally based providers, but also larger providers acknowledging the way in which health and social care teams are currently configured, but also the importance of networking within the community.

This initial market engagement indicates a high level of interest from a mixed sector of providers across the breadth of service areas and across a range of needs. Further engagement would be needed before any firm procurement plans could be pursued, however this preliminary feedback would suggest that this could further explore the potential to split contracts into 'lots' and the use of geographical zones.

5. FINANCIAL APPRAISAL

5.1 Introduction

This section sets out details of the current cost of running the service, and considers the projected financial impact of all three options.

5.2 Analysis of current service costs

5.2.1 2013/14 Budget

The 2013/14 budget for the Learning Disabilities Provider Service is as follows:

	£	£
<u>Employee-Related Costs</u>		
Salary	21,246,600	
NI	979,500	
Pensions	3,603,200	
Other	17,700	
TOTAL EMPLOYEE-RELATED COSTS		25,847,000
Premises-Related Costs		856,500
Transport-Related Costs		484,000
<u>Supplies & Services</u>		
Equipment	863,600	
Office Expenses	75,500	
ICT	131,500	
Insurance	60,300	
Food & Drink	325,000	
Cleaning	151,600	
Other	73,400	
TOTAL SUPPLIES & SERVICES		1,680,900
Third Party Payments		28,100
GROSS BUDGET		28,896,500
<u>Income</u>		
Client Contributions	-2,425,200	
NHS Contributions	-462,700	
Transport Income	-249,000	
Shared Lives Registration Fees	-23,000	
TOTAL INCOME		-3,159,900
NET BUDGET		25,736,600

Please note that the above figures include 2013/14 MTFP savings agreed by Councillors in February 2013.

5.2.2 Future savings

Over the next four years (2014/15 - 2017/18), the Learning Disabilities Provider Service will be expected to make budget savings as part of the Council's statutory requirement to set a balanced budget. It 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 the Learning Disabilities 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.

5.2.3 Support services and overhead costs

The element of costs relating to support services and overheads, such as finance, Information and Communication Technology, Human Resources (HR) and property services, is of course relevant to the Learning Disabilities Provider service, but these costs are currently held elsewhere in the County Council. Some of these costs relate to services currently provided to the Council by Southwest One as part of the Unitary Charge for services.

The Council's corporate apportionment process (the method used to assign these support services and overhead costs to frontline services, such as the Learning Disabilities Provider Service) is in the process of being redesigned, and, as a result, a formal apportionment process has not yet been undertaken for the 2013/14 financial year.

In 2012/13, support services and overhead costs incurred by the Learning Disabilities Provider Service that would be relevant to this business case were in the region of £2.1m. This figure should, however, only be considered indicative, for the reasons set out in paragraph 5.3.2, below.

5.3 Indicative financial models for the three options

5.3.1 Summary of indicative financial models

For Option 1, the financial model is likely to remain essentially unchanged, subject to ongoing development by the Council as a whole to achieve efficiency savings where possible and appropriate. However, with the service facing a continuing decrease in the number of customers it supports, it is likely to come under greater financial pressures in future in relation to the critical mass of the service.

In relation to Option 2, the financial impact of externalising Council services typically sees the cost of services increase in the short term, as the new organisation meets its obligations as a standalone business and establishes its commercial capabilities. These additional costs reduce after the first two years of its operation as the organisation matures and is able to generate savings from the usual benefits associated with being a social enterprise, such as reduced support service costs and increased productivity.

The financial model for the service under Option 3 will be determined by the provider(s) based on their existing structures and pricing policies. For any bidder already active in the market, it would be expected that economies of scale will be realised by adding the service (or part of it) to their existing operations. As with Option 2, it is to be expected that the financial impact of externalisation will initially see the total cost of the service to the Council increase as a result of both the resource requirements of the procurement processes and some duplication of costs during transition. However, competition and economies of scale, along with the other benefits of this

option identified previously, would be expected to reduce the costs of delivery, and therefore the price of services to the Council in the medium and long term, as demonstrated in the soft market testing exercise, detailed in section 4.3 above.

5.3.2 Impact on employees and staff costs

For Option 1, there is expected to be little or no change to employees' terms and conditions and staff costs overall.

Option 2 - 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, 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 per year compared to an average of 15 days in the care sector as a whole. It is therefore anticipated that a new social enterprise in Somerset could also see improvements of this nature, due to staff regarding themselves as full stakeholders in the new social enterprise.

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 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.

It is expected that those who join the social enterprise 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.

As a commercial organisation, the provider(s) identified under Option 3 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 this option 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.

5.3.3 Pensions and related costs

For Option 1, there is not expected to be any impact on pension costs or on the terms and conditions of pensions for employees.

For both Options 2 and 3, were the social enterprise 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 mentioned in paragraph 5.3.2 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.

5.3.4 Premises-related costs

The Learning Disabilities Provider Service utilises a large and complex property estate, and changes will need to be made to this estate regardless of which option is chosen. A key factor to recognise is those properties that are part of a 'Section 256 Agreement' with the NHS, following transfer of customers from hospital settings as part of the Mental Health Strategy, completed in 1993. These properties are subject to a legal charge held by the NHS. The function of the charge is to give the NHS a continued say in the use of what was NHS property, and to ensure that it cannot be disposed of subsequently without the NHS's consent. This will safeguard their interest in ensuring that the capital value of the properties is not adversely affected by actions that the Council may take in the future, if properties are sold, or services are not provided as planned, and to ensure that capital receipts shall be reinvested within services for adults with learning disabilities.

Detailed analysis of this estate and the potential for savings will need to be completed at a later stage, as this level of detail is beyond the scope of this business case. Therefore, for the purposes of this business case, the premises costs are assumed to remain constant for **all options**.

5.3.5 VAT

Under Option 1, there would be no impact on the level of the Learning Disabilities Provider Service's VAT liability.

However, under Options 2 and 3, the social or private enterprise would be required to pay Value Added Tax (VAT) on the goods and services it buys, including any provided by the Council, and charge VAT on the services it provides, with the net position payable to or from Her Majesty's Revenue and Customs.

Some services are VAT exempt, however. This means VAT is not added to the price charged to customers, and input VAT paid on goods and services consumed in providing the service is not reclaimable. Exempt services include those that require Care Quality Commission (CQC) registration.

Several services that would be undertaken by the social enterprise are CQC registered (such as Residential Care and Supported Living/Domiciliary care). This means that the input VAT paid for goods and services used in the delivery of these care services, as well as the costs of agency staff and support services such as finance, Human Resources and Information and Communication Technology cannot be reclaimed. This would therefore add 20% to the cost of these goods and services in comparison to the current provision.

It has been estimated that 53.5% of supplies and services expenditure is on CQC-registered services and therefore incurring irrecoverable VAT. This would incur additional annual costs of around £175,000.

In addition, irrecoverable VAT on overheads and support services would have a financial impact on both Options 2 and 3, with the additional liability having the potential to be up to £400,000 a year. However, for the reasons set out in paragraphs 5.2.3 and 5.3.6, this figure should only be considered as indicative at this stage.

5.3.6 Overheads and support services

The cost of support services and overheads currently undertaken by the Council (and by Southwest One for the Council) has been considered in the financial work that has been undertaken for each of the three options. The impact on these costs will depend on which option is chosen, as this will dictate the degree of control and influence any new or existing organisation would have over its support costs.

It should also be noted that as the shape of the local authority changes, the level of overhead charge and the way in which it is allocated will also change. For example, if the authority shrinks the current Learning Disabilities Provider Service's share of costs will increase, although the overall overhead cost will of course reduce. As a result, a cautious and prudent approach has been taken in relation to levels of savings that could be generated in relation to overheads across the three options as the authority changes.

For Option 1, as this involves no change to the model of service delivery, there would be no impact on the cost of overheads and support services over and above any changes implemented across the authority.

In relation to Option 2, it is likely that there exists the opportunity to generate savings from the added ownership and control over the procurement of support services. However, the savings a social enterprise can achieve in this area are offset by the cost of additional services it now requires as an independent, commercial business operating in a competitive market. These additional costs include those associated with securing sufficient commercial expertise for the fledgling organisation, business development costs, such as marketing and public relations, potentially higher insurance and legal costs, and the costs of governance.

At this stage the exact details of the organisation structure have not been identified, and so it is not possible to put an exact figure on these additional costs. However, what can be done is an assessment of other similar start-up organisations in the adult social care sector, using these results to make a

reasonable assumption. The experience of start-up organisations varies from those where the additional costs exceed the savings available from support services, to those that still make large savings even when these costs are taken into account. Given that the current cost of the Council's support services is perceived to be higher than could be acquired in the open market, it would follow that the savings available here are in the mid to upper range of what has been seen in other similar organisations. Therefore, the use of the average of adult social care start-up organisations is a conservative assumption.

For Option 2, the financial modelling suggests that in year one the expected cost of the additional support services and infrastructure required by the social enterprise is similar to the value of savings available, with an overall saving of only £75,000 being made, but significant savings are rapidly achieved, with ongoing annual savings of over £1,000,000 projected from year four onwards. Further savings would be possible by directly employing support staff rather than buying in these services from the Council or elsewhere – assuming that the net cost is broadly similar – as, as mentioned in paragraph 5.3.5 above, VAT has to be paid on bought-in services.

As with Option 2, there are savings to be had under Option 3 from greater control and ownership over the procurement of support services and, additionally in this case, from the potential to utilise and gain economies of scale from the existing support services of any successful bidder(s). As a result, it seems reasonable for the savings identified in Option 2 to be applied here, although, unlike Option 2, there should not be significant additional operating costs related to the service moving to a competitive business model, as successful bidders are likely to already possess the infrastructure and expertise required from day one. However, it should be noted that this could have an impact on the wider Council, as providers with existing infrastructure would be unlikely to want to utilise Council support services.

For both Options 2 and 3, the Council will be required to be flexible and responsive to the plans and needs of the new provider in relation to support services and overheads to ensure that it is not, in effect, “paying twice” for these costs due to its existing employment and contractual obligations. The Council will therefore need to undertake negotiations with relevant staff and suppliers (including Southwest One) at an early stage, given the size of service being considered in this Business Case.

5.3.7 Income and opportunities for growth

Since 2010, the level of vacancies in residential care and supported living services, including those that the Learning Disabilities Provider Service has identified as being unfillable, has been increasing by an average of five additional vacancies per year, and it is assumed that this trend will continue under Option 1. Indeed, if the decommissioning of six beds in August 2012 is included in the above figures, the average since 2010 rises to seven additional vacancies per year.

Vacancies in the properties are considered as unfillable predominantly due to the suitability of the property, while potentially fillable vacancies remain available due to the age profile of existing customers making them

unattractive to younger people who might otherwise choose this type of service. In addition, the suitability and design of some current accommodation (such as lack of en-suite facilities and the existence of communal bathrooms) leads to this becoming increasingly unattractive to potential customers. Limited communal space and, in some locations, limited private space also leads to problems of compatibility due to an emphasis on close group living, which may not best meet the needs of all customers.

There is no indication that the rate of new vacancies will change over the short to medium term, which could lead, at some stage, to the viability and sustainability of the Learning Disabilities Provider Service being threatened. However, at this time, it is not possible to quantify the financial impact of this, or to give a timescale as to when the Learning Disabilities Provider Service, as it is currently constituted, would become unviable.

In relation to Option 2, one of the main advantages that a social enterprise has over the current mode of provision is that, as an independent organisation, it has the freedom to innovate, take risks and access sources of funding specifically positioned to support this type of enterprise. By utilising these freedoms, the social enterprise is able to expand its current service provision and portfolio to include those for which there is unmet demand in Somerset as well as being able to enter the market for services provided by others in which financial benefits are attainable.

This service expansion will deliver benefits to the social enterprise itself, the County Council and the wider community. This growth will help to secure the social enterprise's own future by using the surpluses generated to become more competitive across its entire service portfolio, whilst enhancing the opportunities and services available for local customers. It is expected that this growth will provide employment opportunities within Somerset while also reducing the overall cost of adult social care to the Council as the social enterprise helps to drive down the price that the Council pays for certain services.

At a business planning stage, a full market analysis and financial modelling would be completed to identify and quantify growth opportunities. At this current stage, an assumption of the level of growth based on the experience with three other social care start-up organisations has been used. This experience suggests that growth of £200,000 could be generated in year one, rising to around £2,000,000 by year five.

As with Option 2, the advantages of the model under Option 3 are that it will have the freedom to innovate, take risks and access additional sources of funding, which could include the form of capital investment. By utilising these freedoms, the service can take up opportunities for expansion and growth, with the growth helping to secure the service's profitability and thereby its future sustainability and competitiveness, enhancing the opportunities and services available for customers.

The extent to which, and the manner in which, the benefits of growth are manifested in savings to the Council will depend upon the terms of the negotiated agreement with providers. Therefore, it is not possible to quantify the benefit to the Council of growth from Option 3, although, solely for the

purposes of this comparison, it has been assumed that the financial benefits of opportunities for growth and income will be the same for Options 2 and 3.

5.3.8 Profit margin

As a Council run service under Option 1, there will be no need to build a profit margin into the indicative financial model.

For Option 2, as a social enterprise, the new company would expect to make a surplus in order to be sustainable. However, any surplus would be reinvested in the business rather than being diverted to owners or shareholders, as would be the case under Option 3. As a result of these surpluses being reinvested into the business, there is projected to be no impact of the social enterprise making a surplus.

However, as a private enterprise, there will be an expectation for Option 3 to include a profit margin as part of its financial model. Although the national average for care homes is an EBITDAR (earnings before interest, taxation, depreciation, amortisation and rent) ratio of around 30% of income, the south-west England average is around 20-25%. Therefore, using a prudent 20% of income figure, it is expected that an annual profit of around £650,000 in year one, rising to around £1,000,000 in year five, would need to be built into this service model. The exact nature of the enterprise (e.g. not-for-profit, charitable status, etc.) would influence how any surplus may be utilised and/or reinvested in the company.

5.3.9 Indicative overall financial impact

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.

For Option 2, the overall position, based on the financial modelling undertaken, 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.

For Option 3, it is anticipated that, by year five, this option will be able to produce savings to the Council of £2,000,000 with year one showing an additional cost of £725,000, 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.

5.4 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.

5.5 Sources of additional funding

Were Option 2 to be 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 mutuels so they can overcome barriers to growth, and is designed to help promising mutuels 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-externalisation phase, where access to finance can be particularly restricted.

Examples of Councils that have received funding from MSP include:

- Three Borough Mutual (3BM), seeking to establish itself out of Hammersmith and Fulham London Borough Council, in conjunction with the City of Westminster and the Royal Borough of Kensington & Chelsea

in order to focus on providing support services to schools. The money received from MPS helped 3BM receive dedicated legal support on the process of tendering for a joint venture partner.

- Oldham Metropolitan Borough Council was awarded funding to provide it with support for business planning and market assessment, in order to explore the option of mutualising its adult social care services.
- Rochdale Metropolitan Borough Council received funding to externalise a similar set of services to those currently being considered by Somerset County Council, namely Learning Disability Day Services, Supported Employment, Supported Living, Home Care, Respite Care, Older People's Day Services and Shared Lives.

6. OPTIONS APPRAISAL

6.1 Option 1: To retain the whole Learning Disabilities Provider Service in-house with no change to its management and ownership.

6.1.1 Overview

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 Learning Disabilities Provider 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. Managers running these services would need to agree a plan as to how they would change services to meet the vision and key objectives identified in the Commissioning Intentions at section 3.3, above.

Although this does mean that services would have to change over time, the Council would still need to involve, engage and consult with customers and carers of any service that it was thinking about changing.

6.1.2 The impacts of demographic changes and customer choice on the Learning Disabilities Provider Service

As a Council owned and run service, the Learning Disabilities Provider Service is unable to market itself to, or trade with, the wider population. This means that it is unable to spread its overheads across a broader volume of activity, thereby helping it to operate as efficiently as some external providers.

A recent report by Improving Health and Lives³², now part of Public Health England, shows that 4.3% of people with a learning disability in Somerset have a personal budget compared to 38% in the rest of England. While there has been a comparatively low take up of Personal Budgets in Somerset across all customer groups to date, in relation to services for customers with learning disabilities, this appears to be largely because the Learning Disabilities Provider Service has, by its very size, constrained opportunities for the local market to develop. However, this appears to be changing as young people in transition to adult services are bringing with them different

³² Available from: <http://www.improvinghealthandlives.org.uk/projects/pbr201112home>

expectations and aspirations, resulting in over 54%³³ of customers aged under 25 choosing to use a direct payment to arrange some or all of their services³⁴ with alternative providers. In addition, and because it is supporting an ageing group of customers, the Learning Disabilities Provider Service has experienced an increased number of customer deaths in recent years.

When combined with the trend for younger people to choose alternative providers, the result of the demographic changes and customer choices is that, without change, the Learning Disabilities Provider Service 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 Learning Disabilities Provider Service becoming increasingly unsustainable and unstable over the next 3 to 5 years, despite a trend for growth in demand across Learning Disabilities, both nationally and locally, as its customer base shrinks and overheads are spread over increasingly smaller volumes of activity. While the council would need to do everything it could to support those customers who choose to remain with the Learning Disabilities Provider Service, the service would find it increasingly challenging to maintain the quality of services in the face of a single entry route, a declining customer base and an inability to obtain funding from any source other than the Council. The Learning Disabilities Provider Service can only provide the quality of services it does, at the cost it does, because of the number of people it supports. As this is eroded by people choosing other providers the Learning Disabilities Provider Service is likely to become increasingly unviable. The following information helps to illustrate this point.

- Although it is necessary to treat current year figures with caution, since 2010/11 17 people opted for residential care placements provided by the Learning Disabilities Provider Service, of which only 2 were aged under 36 (there have been no placements for people aged under 46 since December 2010). In the same period 99 people opted for residential care placements with external providers of which 45 were aged under 36.³⁵
- During the 2012/13 financial year, 20 people opted for supported living placements provided by the Learning Disabilities Provider Service, of which only 3 were aged under 36. In the same year 19 people opted for supported living placements with external providers of which 10 were aged under 36. This is despite the external market for supported living being more limited in capacity. Although it is necessary to treat current year figures with caution, so far in 2013/14 13 people aged under 36 have opted for external providers compared to 5 people in the same age group choosing the Learning Disabilities Provider Service. However, significantly more people aged 36 and over have chosen the Learning Disabilities Provider Service when compared with external providers with 22 people (eight of whom were aged 56 and over) in this age group

³³ 163 out of 301 customers aged under 25 are using a Direct Payment to arrange their own services

³⁴ As at 01/12/2013

³⁵ Data supplied by Somerset County Council Information Management Team as at November 2013

choosing the Learning Disabilities Provider Service and only 1 choosing an external provider.³⁶

- The Learning Disabilities Provider Service is providing for an increasingly elderly population (in the context of people with a learning disability) with associated rates of mortality and end of life care. Historically, the long term average number of deaths across the Learning Disabilities Provider Service has been approximately 6 each year, with 8³⁷ people in receipt of a service provided by the Learning Disabilities Provider Service dying in 2011. However, during 2012 this rose to 19³⁸, and in 2013 there were 21³⁹ deaths of customers using Learning Disabilities Provider Service services. The median age at death was 59 across all 3 years, compared to 57 nationally in 2011⁴⁰. The median age of people using services is 52 across residential care and supported living services and 42 across day services.

The result of these trends is over capacity in the Learning Disabilities Provider Service. Since 2010 the number of vacancies in the Learning Disabilities Provider Service's residential care and supported living services, including those that the Learning Disabilities Provider Service has identified as unfillable, has been steadily increasing by an average of 5 vacancies per year (from May 2010 to March 2013) based on the information below:

May 2010	32
April 2011	39
May 2012	39
March 2013	49
December 2013	53

It should be noted that the figures for March 2013 and December 2013 exclude 6 beds that were decommissioned in August 2012. If these beds had continued to be available and unfilled then the number of vacancies as at December 2013 would have potentially risen to 59, with the average increase per year rising to 7.

6.1.3 Challenges that the Learning Disabilities Provider Service faces in responding to these changes

Although the Learning Disabilities Provider Service has made every effort to evolve to meet these challenges, resulting from demographic changes and customer choice, it is limited in the ways it can respond. This is because:

³⁶ Data supplied by Somerset County Council Information Management Team as at November 2013

³⁷ 5 people accessing residential care or supported living services and 3 person accessing respite, day or employment services only. This is the first year for which an analysis by service type is available.

³⁸ 12 people accessing residential care or supported living services and 7 people accessing respite, day or employment services only

³⁹ 13 people accessing residential care or supported living services and 8 people accessing respite, day or employment services only

⁴⁰ Eric Emerson, Chris Hatton, Janet Robertson, Susannah Baines, Anna Christie and Gyles Glover "People with Learning Disabilities in England 2012", Version 3, published by Improving Health and Lives, 02/07/2013. Available from: www.improvinghealthandlives.org.uk/projects/annualreport

- The service has difficulty setting up new services as the processes to raise money and make investment decisions within local government are too slow 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 are disaggregated across the Council. This makes 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.
- Department of Health Guidance states that customers cannot use Direct Payments to purchase services from the Learning Disabilities Provider Service.
- The Learning Disabilities Provider Service is, in effect, wholly dependent on one customer – the Council – and is unable to market itself or trade with anyone other than the Council, for example people who are not eligible for support from the Council.

6.1.4 Benefits

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 Customers and Communities, and anonymous visitor questionnaires (offered to any visitor to a service) have also provided overwhelmingly positive feedback. Both formal and informal feedback from customers and carers has repeatedly highlighted the values of the service and the commitment of its staff as strengths, and over recent years it has built up particular expertise in end of life care.

Inspections undertaken by the Care Quality Commission over the past 18 months have been overwhelmingly positive⁴¹. Whilst highlighting areas for property improvement at two locations where services are provided, the Care Quality Commission have not highlighted any concerns about the quality of care and support for the Learning Disabilities Provider Service as a whole.

Other benefits of this option are:

- Low or no short term impact on customers, low short term risk to the Council.
- No additional short term change costs beyond existing work programmes.
- The ability to manage service level agreements and performance from within existing resources, without the establishment of any form of “client function” to manage the Council’s relationship with an external organisation.
- The retention of skills, expertise, knowledge and capacity levels within the Council.
- No additional or double funding of corporate overheads, including Southwest One.
- The retention of direct provision within the Council, which 54.1% of respondents to the consultation indicated was their preferred option.

⁴¹ Reports available from: <http://www.cqc.org.uk/directory/1-101663801>

- Avoiding the risk of market failure, with its consequent dangers for vulnerable people and for the Council's ability to meet its statutory responsibilities.
- Allowing the Council to retain the skills and experience necessary to tackle struggling providers in-house to ensure it meets its statutory responsibilities, and giving it more control, making it easier to respond to emergencies.

6.1.4 Limitations

The Learning Disabilities Provider Service has a steadily aging population. The median age of people using residential care and supported living services is 52, and 42 for day services. The number of people who have died who were supported by the service has trebled in the last few years from a historic average of approximately 8 per year to 19 in 2012 and 21 so far this year. This higher number of deaths is expected to continue year on year, and is set against a service that:

- Is not attracting young people into the current provision due to the age of the population.
- Has vacancies that cannot be filled as young people are not choosing to live with older customers.
- Has difficulty setting up new services as the processes to raise money and make investment decisions within local government are too slow to respond to market needs.
- Is difficult to cost on the same bases as the rest of the sector as its overhead cost are disaggregated across the Council.
- Is difficult to compare in value for money terms with the rest of the sector.
- Cannot trade with the wider population.

6.1.5 Meeting key outcomes

The above analysis indicates that retaining the current arrangements for the management and ownership of the Learning Disabilities Provider Service would not be able to meet all of the key outcomes identified by the Council and Clinical Commissioning Group for the following reasons:

- **Services that are sustainable.** This outcome could not be achieved through Option 1. The sustainability of the Learning Disabilities Provider Service over the medium to long term has been identified as a key weakness of this option.
- **Services that actively engage and involve customers and carers at every level.** This outcome could be achieved through Option 1. If selected, the consultation indicated that customer communication is an area that needs to be strengthened.
- **Services that embed a person centred approach and ethos in everything they do.** This outcome could be achieved through Option 1. Work has started in this area, but is at too early a stage for its effectiveness to be assessed.
- **Services that people choose when using a Personal Budget.** This outcome could be achieved to some extent through Option 1 as people could use an Individual Service Fund or Managed Account. However, Department of Health guidance says that customers are not allowed to use

a Direct Payment to buy services from Council providers like the Learning Disabilities Provider Service.

- **Services that can respond flexibly to meet current and future demand.** It would be unlikely that this outcome could be achieved through Option 1. The Learning Disabilities Provider 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.
- **Services that have the skills and capacity to support people in crisis.** This outcome could be achieved through Option 1. The Learning Disabilities Provider Service currently provides both a crisis service and acts as a provider of last resort for the Council.

The expected difficulty in meeting the key outcomes for the service identified above, and in particular the likely difficulty in maintaining sustainable services, is one of the primary driving forces behind this review of the current delivery model.

6.1.6 Management, relationship with the Council, governance

The management of the service would remain essentially unchanged with a Service Director managing the service as part of the Council. The management structure of the service would be likely to evolve, in the same way it always has, but it is impossible to predict what any changes might be at this time.

No changes to the governance of the service or its relationship with the Council are anticipated as a result of this option being selected.

6.1.7 Implications for staff

No change is anticipated to staff terms and conditions as a result of this Option being selected, nor would any transfers of staff be necessary.

6.1.8 Impacts and risks

6.1.8.1 Impact assessment

An impact assessment of all three options has been completed and has been included as Appendix A. It is essential that due consideration is given to this assessment when considering each option.

6.1.8.2 Risk assessment

Risk	Likelihood	Impact	Mitigation
<p>The Learning Disabilities Provider Service experiences a significant erosion of its customer base as a result of personalisation. This leads to</p> <ul style="list-style-type: none"> • Significant quality issues as services attempt to 	High	High	There are limited opportunities to mitigate this – the Council is legally required to offer people the opportunity to have Personal Budgets and external providers will position themselves to offer an alternative. The

reconfigure to meet reduced demand; <ul style="list-style-type: none"> • Service instability; • Significant increases in unit costs. 			commissioning strategy could help the Learning Disabilities Provider Service to offer services suitable for younger adults, but the challenges outlined in the report show this would have limited impact. If sufficient customers choose the external providers then this risk will steadily increase.
Limited capital investment in the residential care property portfolio leads to poor inspection outcomes.	Medium	Medium	£1.2m of capital identified for 2014 – 17 needs to be targeted on the key risk properties. Further bids are likely to be required in the future. This sum covers repairs and maintenance as well.
Continued public sector austerity and the Learning Disabilities Provider Service's position of effectively having only one source of customers leads to a decline in quality and whole service safeguarding issues.	Low	High	Current evidence from Care Quality Commission inspections indicates that this is unlikely and the clear separation of commissioning, care management and provider functions helps to promote the internal checks and balances that reduce this risk.
Any significant drive from Central Government to either increase the number of people using direct payments, or include residential care in their scope, would be likely to lead to acceleration in the erosion of the Learning Disabilities Provider Service customer base.	Medium	High	There are no opportunities for the Council to mitigate this, the Council can only react if this risk crystallises.

6.1.9 Conclusion

While this option may initially appear to be the lowest risk over the medium to long term there is a significant risk around the viability of the Council continuing to directly provide services, which would impact on all aspects of service delivery. While some respondents to the consultation have expressed concern about for-profit providers of services following the Winterbourne View

scandal, poor care and abuse is not limited to any sector, and it is not recommended that the default position should be to retain the service in-house on the basis of this concern alone. Whilst the Learning Disabilities Provider Service is a good service, when combining all the weaknesses described above with the trend for younger people to choose alternative providers the result is that, without change, the Learning Disabilities Provider Service 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 Learning Disabilities Provider Service becoming increasingly unsustainable and unstable over the next 3 to 5 years. Managing this service would become increasingly difficult in an environment of unpredictable vacancies, redundancies, low morale, staff leaving and the associated quality concerns that come with a service in decline. A move away from direct provision of these services has the potential to allow the Learning Disabilities Provider Service to directly compete with other providers in the areas in which it excels rather than be subject to a possible future of long term decline, which would neither benefit its customers, its staff nor the Council.

6.2 Option 2: To create a new organisation (in the form of a social enterprise partnership) that is separate from the Council and transfer all or some of the Learning Disabilities Provider Service to that new organisation.

6.2.1 Overview

Under this option the Council would create a new organisation that staff and services would then be transferred into. There are three 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.

A social enterprise is a business that trades for a social and/or environmental purpose. It will have a clear sense of its ‘social mission’, which means it will know what difference it is trying to make, who it aims to help, and how it plans to do it. It will bring in most or all of its income through selling goods or

services. It will also have clear rules about what it does with its profits, reinvesting these to further the 'social mission'⁴²

Social enterprises come in many shapes and sizes from large national and international businesses to small community based enterprises, but they all:

- Are businesses that aim to generate their income by selling goods and services, rather than through grants and donations;
- Are set up to specifically make a difference; and
- Reinvest the profits they make in their social mission.

An independent evaluation of the 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.

Under this option, the Council would continue to run the Learning Disabilities Provider Service for approximately 18 months from 05/02/2014, during which time it would undertake the work required to create a new organisation. This timescale is subject to any project dependencies identified as a result of the detailed transition planning that would be required following any decision to proceed with this option.

The Council would no longer directly own or provide the services run by the new organisation, and services would be able to evolve over time in the same way they could in any independent organisation. However, the Council and the new organisation would still need to involve, engage and consult with the customers and carers of any service that they were thinking about changing, as in the case of Option 1.

The attributes of a social enterprise partnership organisation are essentially the same as an independent social enterprise. The distinction of this option is that a partner organisation would be procured in order to bring in additional skill sets, and mitigate some of the weaknesses and threats inherent in the independent social enterprise option. This alternative was explored as part of the independent preparatory work carried out prior to the development of this Business Case. See Appendix F for details of the sub-options appraisal.

Social enterprise partnerships are emerging around the UK in a number of sectors. Three London Borough Councils have established 3BM⁴³, an employee owned mutual organisation, in partnership with Prospects. In the criminal justice sector, the charities Turning Point and Catch 22 are working with SERCO, the private services company, around provision in prisons. Newcastle, Manchester and North Tyneside Councils are now partnering with Care and Share Associates in new ventures to deliver domiciliary care for their older and disabled populations.

⁴² <http://www.socialenterprise.org.uk/about/about-social-enterprise>

⁴³ www.3bm.co.uk

6.2.2 Benefits

The benefits associated with this option are:

- Staff and community ownership lends itself to greater responsiveness to the changing needs of customers and shares the responsibility for good services with them. It also has the benefit of the organisation being able to add additional value, in line with the Public Services (Social Value) Act 2012, to customers through its “social mission” in addition to what it is contracted to provide.
- A clear role for customers and their carers in the governance of the organisation: There is potential for customers and carers to be involved in the design of services, the monitoring of service quality, and decisions about services (see section 6.2.5 below) and an opportunity for them to support the organisation in the delivery of these through volunteering and fund raising. Similarly, there are opportunities for increased staff engagement. It is intended that staff should have a voice in the organisation, and see their jobs in terms of embodying the values of the service and delivering wider social outcomes for individuals and the sector as a whole.
- The ability to attract inward investment into services, raise funds and attract volunteers, in ways which wouldn't be open to other options. Being outside the Council and operating as a social enterprise will allow the Learning Disabilities Provider Service to attract additional funds to invest in its services. A wide array of funds is currently available, focused on increasing the role of social enterprises in the provision of public sector services. These sources of funding are simply not available to a Local Authority or private sector service.
- The freedom to pursue opportunities for growth inside and beyond Somerset.
- Responsibility for meeting need and making savings can be given to the new organisation as part of its contract with the Council.
- A partner may bring with it investment resources and economies of scale, thus reducing and sharing the costs of setting up and running the business. Investment can also be drawn in from Government and other sources to develop the business.
- Generated surpluses are retained for public/community benefit.
- Improved prospects of sustainability of services can be gained through investment and diversification of income sources.
- Ongoing development of high quality jobs for Somerset, with opportunities to provide a diverse workforce and promote the rights of disabled people through providing career paths and employment initiatives.

- Close collaboration with local voluntary and community sector organisations in order to nurture a diverse market place and reduce high cost placements.
- A not for private profit organisation is likely to be more acceptable to certain key stakeholders as is the retention of public sector care values.
- Greater retention of elements of control as the enterprise works in direct partnership with the Council and capitalises on established relationships with Commissioners within the Council with whom there is a shared understanding of the outcomes sought.
- The opportunity to increase and support plurality of provision in the market by adding a new player to the Somerset marketplace, which could be a supporting force within that market. If requested by commissioners, the new organisation could take a role in supporting smaller providers and promoting diversity in the sector.
- This option should reduce the Council's cost base and therefore help sustain the services for the longer term. There is a growing body of evidence of the financial benefits of a social enterprise. Even taking additional costs into account, over a five year period these are expected to outstrip anything achievable in-house.
- This is a solution with a manageable impact on Council support services in that any moves away from using the Council support services can be phased.
- This option offers the flexibility to innovate and to provide the services that customers want, thereby providing the right response to Personalised Budgets and Direct Payments. It is clear that the status quo cannot deliver the Personalisation Agenda, whereas a social enterprise partnership could deliver true personalisation of services in Somerset.
- To set up the Learning Disabilities Provider Service as a social enterprise partnership demonstrates a practical response to the propositions put forward by the Commission on the Future of Local Government – becoming a civic entrepreneur and stimulating jobs and good growth. It supports the Council's priorities with regards to its stated aim to become a contracting, commissioning council.
- Establishing community-based social enterprises in order to bring innovative solutions to public sector challenges is strongly supported by Central Government (as well as most opposition parties). This has been substantiated through the adoption of the Localism Act 2011; the Public Services (Social Value) Act 2012; the Right to Provide policy adopted by the Department of Health; and the creation of Big Society Capital, established to provide access to new sources of finance to organisations that tackle major social issues to help them thrive and grow. There is also support in the shape of the Cabinet Office Mutuals Information Service and associated funding streams.

6.2.3 Limitations

The limitations associated with this option are:

- The Council could retain a share in the partnership for a period of time, but would not have overall control. It would essentially operate through two contracts – one between the social enterprise and its partner (which the social enterprise would need to manage), and another between the Council and the social enterprise for the services being purchased that the Council would need to establish a “client function” to manage.
- This option carries the highest up-front costs involving the setting up of a new business as well as the procurement of a partner.
- Pensions’ contributions may be higher than if staff remain in the Council which could impact upon the financial sustainability of the service. In addition, tax liabilities are more burdensome than for a Council-run service
- Growth of the business is subject to success in the market and in securing additional sources of funding, neither of which can be guaranteed.
- There is a risk of failure if the organisation doesn't create efficiencies sufficient to be competitive. Like any business, it can ‘fail’ and may need to be rescued by the Council, but having a partner with an established record of commercial success on board from the outset reduces this risk significantly. As the social enterprise would be the Council’s chosen provider of last resort, the impact of failure would be significant and contingency measures would need to be put in place from the outset.
- A poor choice of partner could lead to tensions, skills deficits and inefficiencies in the new organisation.

6.2.4 Meeting key outcomes

The above analysis indicates that a social enterprise partnership would be able to meet all of the key outcomes identified by the Council and Clinical Commissioning Group as follows:

- **Services that are sustainable.** Whilst the social enterprise partnership model will not, in itself, result in the Learning Disabilities Provider Service becoming sustainable, it will remove the barriers that exist in the current model of delivery that have been identified against Option 1.
- **Services that actively engage and involve customers and carers at every level.** The proposed model for the social enterprise partnership would allow commissioners to build this into the organisation when setting it up in a way that it could not currently do if tendering for these services under the approach described in Option 3.
- **Services that embed a person centred approach and ethos in everything they do.** The proposed model for the social enterprise partnership would allow commissioners to build this into the organisation when setting it up. Although this could be achieved through, for example, service specifications in relation to other options, the difference with this option is the potential for it to become part of the culture of the organisation.

- **Services that people choose when using a Personal Budget.** Whilst the social enterprise partnership model will not, in itself, result in customers choosing the Learning Disabilities Provider Service to provide their services, it will allow it to compete for their custom in the same way as any other provider.
- **Services that can respond flexibly to meet current and future demand.** Whilst the social enterprise partnership model will not, in itself, result in the Learning Disabilities Provider Service being able to meet this outcome, it will remove the barriers that exists in the current model of delivery that have been identified against Option 1.
- **Services that have the skills and capacity to support people in crisis.** Whilst the social enterprise partnership model will not, in itself, result in the Learning Disabilities Provider Service being able to meet this outcome, it will result in the skills and experience that currently exists in the Learning Disabilities Provider Service being transferred to the new organisation.

6.2.5 Management

It is intended that a social enterprise partnership would be designed to ensure that strong links between staff, customers, and the organisation would be built into the formal governance structure. A key aim would also be to ensure a motivated, energised and skilled workforce. An outline of the structure of possible organisational governance is shown in Figure 3 below.

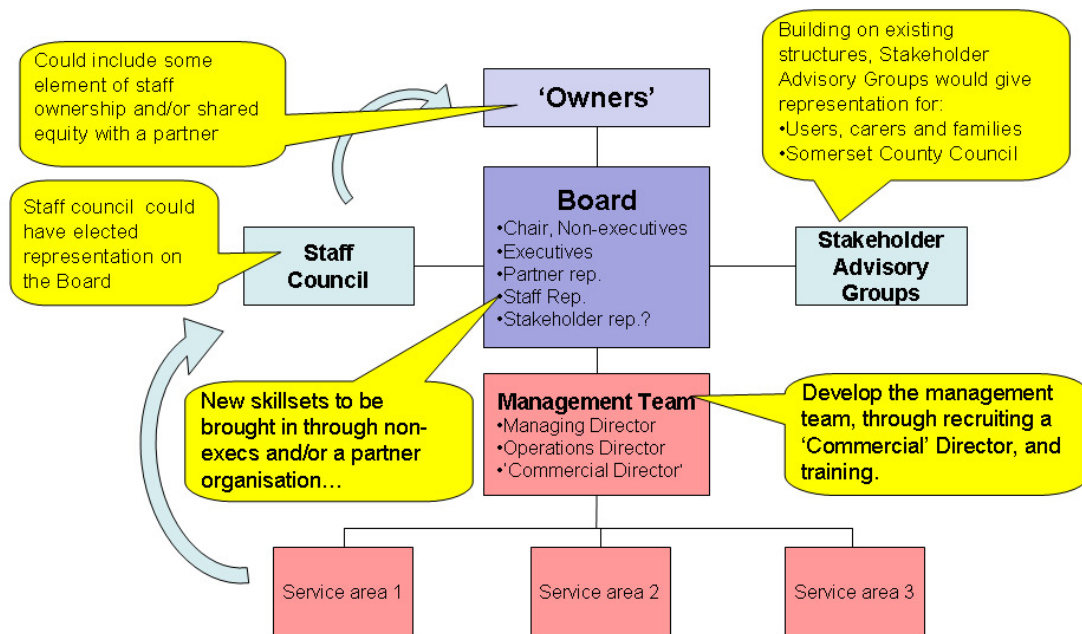


Figure 3: Outline of a possible organisational governance structure

6.2.5.1 Ownership

A social enterprise partnership could include an element of employee ownership. A key motivator for establishing a social enterprise from a public sector service is the potential to increase the involvement of staff in the running of the business.

There is ample evidence for the productivity benefits of employee ownership. Staff do not gain financially – it is about being a part of the successful running of the company, and the responsibilities this brings.

The model could also include an element of ownership by a partner organisation. This equity could potentially be given up in return for investment in services.

The issue of ownership and the implications of employee or partner shares needs far more detailed consideration at a future stage.

6.2.5.2 The Board of Directors

The organisation will require a Board of Directors, the make-up of which should seek to achieve a balance of control of the social enterprise across stakeholders. Directors take full legal and financial responsibility for the organisation. The Board sets the strategic direction of the organisation, monitoring its performance and development. A governance model for a social enterprise could ensure key groups are represented on the board, for example: the management team, staff groups, a county councillor, any partner organisation, customers, carers and families. The Board can be supplemented by non-executive directors, to bring new skill sets into the organisation such as commercial and business development and business transformation.

6.2.5.3 Leadership and Management

The Council and Clinical Commissioning Group believe that current staff within the organisation would bring valuable experience to the running of a social enterprise. Direct experience of running a business is often limited in externalised public sector organisations. However, it is not in itself a barrier to being able to lead the business. Drive and commitment are vital, and in this case there is plenty of experience in running services, managing large budgets, contract management, restructuring services and delivering high quality across the organisation.

To bring the necessary leadership and business skills, a number of reconfigured senior roles have been identified that would be necessary in a new social enterprise. In the next phase of the project, this structure would require further detailed work.

- **Managing Director:** Responsible for the day-to-day performance management of the organisation, the devising of the strategy, business development and general representation of the organisation.
- **Operations Director:** To ensure that the internal operations and governance are managed tightly, and to ensure continued focus on high quality care and support, this is especially relevant while the organisation is getting used to its new existence as a social enterprise
- **Commercial Director:** Responsible for all corporate services, including financial management and business development. He/she ensures that financial and non-financial performance reporting processes are in place and has an important role in supporting the Managing Director and Board in making strategic and investment decisions.

6.2.5.4 Partnering strategy and the market for a delivery partner

Primarily, a partner would be required who shares the values of the Learning Disabilities Provider Service and will work positively with them to deliver their vision. Areas where it is felt that a delivery partner or partners could complement and enhance the organisation are:

- Business development skills and a track record of commercial success;
- Infrastructure (e.g. back office and support services);
- A track record of service transformation; and
- Experience in delivering improvements in the use of property.

In particular, an established partner would be sought in order to mitigate the risk of service failure. The Council might also seek a partner willing and able to make an investment in services.

In order to test the feasibility of such a proposal it was necessary to test the market appetite for such a partnership. A simple questionnaire was sent to 12 potential partner organisations to give a cross-section of the market.

Eight responses were received from organisations who answered “Yes” to the question: Might you be interested in exploring a possible social enterprise partnership at some point in the future? 2 further organisations indicated that they would be willing to enter such a partnership, but Somerset was outside their geographical reach.

When asked what potential barriers there were for such an organisation, as might be expected, most were fairly bullish of the chances of success, but saw barriers in getting the right leadership and negotiating a contract with the Council which gave the partnership security and would allow it to grow.

The number and positivity of responses received and the breadth of type of organisations represented suggests that there is sufficient market appetite to form a social enterprise partnership.

6.2.6 Basis of on-going relationship with the council

It is vital when developing any approach to consider the perspectives both of commissioners and of the future social enterprise. Whilst it is of course imperative for Council commissioners to ensure that they achieve their objectives, it is also essential that any organisation is not set up to fail and has the security of a contract with the council.

There is potentially considerable common ground in the objectives of the Council’s commissioners and a social enterprise partnership, for example:

- Duration;
- Flexibility;
- Market development;
- Services and transformation;
- Valuation and cost reductions; and
- Personalisation.

Any approach to contracting will therefore need to reflect these objectives.

From any social enterprise’s perspective a longer term block contract would be an ideal scenario. However, the Council will want to see Personalised

Budgets reflected one way or another and a shift towards a “tariff-based” contractual arrangement.

These competing interests may need to be balanced in order to secure an ongoing relationship which meets the Council’s objectives while acknowledging the need to establish a sustainable model and potentially to assist the new entity during the transition phases, subject of course to relevant procurement and state aid considerations. It will also be necessary to consider different approaches for different services.

6.2.7 Establishing a governance model

There are a number of legal models available to a social enterprise partnership of this kind. The model that is eventually selected should follow a detailed understanding of the vision, purpose and values of the proposed organisation. Therefore, until this work is done, a legal model will not be recommended.

6.2.8 Implications for staff

6.2.8.1 Terms and conditions (including pensions)

At the point of transfer, staff terms and conditions will be protected by Transfer of Undertakings (Protection of Employment) (TUPE) regulations. This includes the requirement to provide a comparable pension scheme. Whilst it is not a requirement, should the new provider seek Admitted Body Status into the Local Government Pension scheme, there are considerable cost implications for that organisation in doing so.

For the service to become competitive in the long term and deliver the financial savings required by the Council, any future provider will need to make efficiency improvements.

The vast majority of the current total costs of the organisation are staff costs, which might be expected to rise as a result of externalisation due to pensions’ requirements, so it is likely that the required level of improved efficiency cannot be achieved without adjusting terms and conditions for new staff at some stage.

6.2.8.2 Transfer of staff

The transfer of each service to a new entity would require the transfer of all staff associated with that service into the new provider organisation. This would, by necessity, follow the requirements of TUPE regulations, including consultation. Any transition plan developed will need to identify these requirements in full, and factor them into the project plan.

Further analysis is also required to assess if TUPE would apply to any staff outside of the service, for example in corporate support services.

There are a number of services which support the Learning Disabilities Provider Service, where TUPE will need to be considered. The staff involved in this group include:

- Business Support attached solely to the Learning Disabilities Provider Service - 2 x Grade 11 managers, 4 x Grade 13 finance officers, a team of

Grade 15 administrators and finance assistants, 4 x secretarial posts split between the service and Adult Social Care.

- Finance attached solely to the service - 1 x Grade 10 and 1 x Grade 12.
- Human Resources partial attachment - 0.2 x Grade 8 and 0.25 x 2 Grade 10 posts.

There will be others who fulfil a role which has direct involvement with the Learning Disabilities Provider Service as well as other services. Further investigation will be needed to establish the detail.

6.2.9 Insurance

A number of insurance arrangements would be required by a social enterprise partnership. In considering the appropriate risk profile for the social enterprise, it would need to be mindful of its fiduciary responsibilities, as well as its duty of care to staff and to the reputation of the Council. This is to be balanced with its potential financial resources. The major items of cover would most likely be as follows:

- Indemnity cover;
- Employer’s Liability cover;
- Public Liability cover;
- Legal Expenses cover;
- Business Interruption cover; and
- Directors and Officers cover.

6.2.10 Impacts and risks

6.2.10.1 Impact assessment

An impact assessment of all three options has been completed and is been included as Appendix A. It is essential that due consideration is given to this assessment when considering the options,

6.2.10.2 Risk assessment

When considering the risks inherent in a proposal such as this it is important to consider the dual aspect of risks to the council and risks to the social enterprise. These risks are set out below.

Risk	Likeli- hood	Impact	Mitigation
There would be likely to be considerable financial and reputational damage to the Council should the social enterprise partnership fail.	Low	High	<ul style="list-style-type: none"> • Develop a realistic business plan demonstrating viability. • Structure the contract with the sustainability of the social enterprise in mind. • It is likely to be necessary for the Council to provide tapered support to

<p>Lack of commissioning experience of this type of organisation on both on the Council's and social enterprise's part.</p>	<p>Medium</p>	<p>Medium</p>	<p>enable the social enterprise to develop as a player in the market.</p> <ul style="list-style-type: none"> • Appropriate contract performance management and governance arrangements should provide early warning signs for the Council to act upon. • Procure an established partner with the skill sets and attributes to mitigate this risk. • Foster a commissioning/provider relationship built on partnership working and joint learning. • Build on positive elements of the Council brand.
<p>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.</p>	<p>Low</p>	<p>Medium</p>	<ul style="list-style-type: none"> • Build assurance into the contract that core services/outcomes are not affected by new developments. • Strengthen the team through careful selection of partner organisation, and leadership development. • Attract additional Non-Executive Directors with valid, commercial - experience.
<p>The decision to award the tender to the social enterprise partner is legally challenged by other providers.</p>	<p>Medium</p>	<p>Low</p>	<ul style="list-style-type: none"> • Undertake an open procurement process for a social enterprise partner. • The social enterprise's values of inclusivity should mitigate this. • Contract should not infringe any State Aid or procurement rules; legal advice will be taken to ensure this is the case.

<p>The decision to create a social enterprise partnership is challenged through a Judicial Review or using the Community Right to Challenge.</p>	<p>Low</p>	<p>Medium</p>	<ul style="list-style-type: none"> • The service contract and any other arrangements involving Council support should be of a temporary nature. • An open tender process for a partner minimises the risk of procurement challenge. • Current advice is that Learning Disabilities services are currently exempt from the Community Right to Challenge, as they are jointly funded with Health.
<p>The social enterprise partnership is unable to achieve the savings that the Learning Disability Provider Service is already working towards.</p>	<p>Low</p>	<p>Low</p>	<p>The service contract should reflect realistic expectations and allow the social enterprise the flexibility to grow and develop its business.</p>
<p>The approach taken to securing support services currently provided by other parts of the Council adds to the financial pressure on the wider Council.</p>	<p>Medium</p>	<p>Medium</p>	<ul style="list-style-type: none"> • An approach can be negotiated to allow a phased reduction in the buy-back of services, enabling the Council to mitigate risks here. • Identify key services which should / should not be obtained from the Council. • Agree, where possible, tapering over time. • Design safeguards in the contract. • Agree Service Level Agreements and build in efficiency targets where services are obtained from Council.
<p>The social enterprise partnership is unable to offset the additional financial costs that it will experience when compared to the Council through</p>	<p>Medium</p>	<p>Low</p>	<p>A robust business plan should be developed which takes account of the need to offset additional costs.</p>

<p>efficiency gains</p> <p>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, or costs relating to TUPE regulations, when establishing the partnership affects the viability of the organisation.</p>	Medium -High	High	<p>Possible options for mitigating this risk include:</p> <ul style="list-style-type: none"> Investigating the feasibility of a Council indemnity, Obtaining and providing a bond, or Obtaining an alternative pension scheme.
<p>The premises that the Learning Disabilities Provider Service currently utilises prove to be unsuitable and/or require an unanticipated level of investment.</p>	Medium	High	<ul style="list-style-type: none"> Negotiate appropriate arrangements as part of the contract with the Council.
<p>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.</p>	Medium	Medium	<ul style="list-style-type: none"> Transform the service offering. Re-brand, re-launch and actively promote the service lines. Improve communication and perception with care managers. Adopt appropriate pricing strategy / reduce unit costs. Negotiate the transfer of risk from the Council to the social enterprise over time rather than from day-1.
<p>Unanticipated policy shifts undermine the social enterprise's pricing and/or service strategy.</p>	Medium	Medium	<ul style="list-style-type: none"> Appropriate controls should be built into the service contract. Aim for a mutually beneficial arrangement between the Council and the social enterprise.
<p>The social enterprise partnership does not adequately 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>	Low	Medium	<ul style="list-style-type: none"> Extensive engagement has already taken place and will continue. Staff will be given a strong say in the organisation through ownership and Board representation.

6.2.11 Transition arrangements

In order to set up a social enterprise partnership, two further stages would be required:

- A business planning phase involving detailed business planning, securing a partner/investor, finance planning, drawing up an operating model, staff engagement, stakeholder engagement, infrastructure work and legal support.
- A transition and launch phase involving marketing and communications, the drawing up of governance arrangements, organisational policies and procedures, HR and TUPE considerations and property and contract negotiations.

It is estimated that the first business planning phase could be completed in 3 to 6 months, with a further 6 to 9 months required for transition and launch, although a contingency for dealing with any issues arising along the way should be anticipated.

Experience elsewhere has shown that these phases could be completed in a minimum of 9 months. However, this would require quick decision making on the Council's part and rapid mobilisation of staff and resources.

6.2.12 Conclusion

Whilst this option has its limitations, specifically in the areas of set up costs and the implications of market failure, it is the most viable option currently able to meet customer and carer preferences for a not-for-profit delivery model, although it should be noted that the restriction on limiting our procurement process to not-for-profit organisations may be removed as a result of new public procurement rules expected to become effective towards the end of 2014.

This option is most likely to ensure sustainable, high quality services for adults with learning disabilities in Somerset for the future, that have customers and their carers at the heart of everything they do and are fully accountable to them.

6.3 Option 3: To ask other care providers to bid to take over some or all of the Learning Disabilities Provider Service

6.3.1 Overview

Under this option, the Council would continue to run the Learning Disabilities Provider Service for approximately 18 months, during which time each service would be looked at individually to decide whether it could be put out to tender, or whether it should remain part of the Council. This timescale would be subject to any project dependencies identified as a result of the detailed transition planning that would be required following any decision to proceed with this option.

Under this option the Council would no longer directly own or provide the services, which had successfully been put out to tender and services would continue to evolve in the same way they always have. However, as with previous options, the Council and the new providers would still need to

involve, engage and consult with the customers and carers of any service that they were thinking about changing.

Organisations that could participate in such a tender could 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 working in Somerset that could meet the Council's requirements, including quality, could be tendered earlier whereas those where there is not currently a mature market could be retained until such time as the local market had developed.

This option will involve a flexible approach where the services are competitively tendered either as a whole or in lots (service based or possibly geographical) dependent upon market appetite and the best option for each service. This could include extending the retention of those services in-house where there is not currently a viable market, while others are tendered more quickly. This will need to be further researched through detailed market engagement.

Regardless of whether services are retained or tendered, the Council needs to continue to shape the market to both develop the flexibility, capacity and expertise to support new customers, and to enable those already in receipt of services to progress, develop new skills and maximise their independence.

6.3.2 Benefits

The benefits associated with this option are set out below.

- A greater degree of flexibility for the Council and a reduced risk of the local market being dominated by any single organisation. The Council would retain services where there is not currently considered to be a viable local market while competitively tendering those where the market is considered to be viable.
- The best chance of encouraging a vibrant mixed market for learning disabilities services, offering more choice to customers, thereby supporting the move towards personalisation. This is made more likely by the fact that a single whole service tender is unlikely to be preferred due to not all service areas having a fully developed market. For example, although enthusiasm was expressed through the initial market engagement exercise (referred to at section 4.3 above) for providing all types of service, there is not currently a fully developed market for day services in Somerset, especially for customers with profound or multiple learning disabilities.
- Whilst this option would introduce additional complexity in terms of different approaches for individual services, 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, particularly where the provider has a profit making objective. For example if, following feedback from customers, commissioners were seeking to decrease the capacity of a service that had a higher profit margin than the service that they were looking to move this capacity into then there would be an inevitable tension.
- The ability to trade commercially with the wider population leads to an opportunity to spread overheads across a greater volume of activity,

thereby helping the service to operate efficiently and respond positively to market competition.

- 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 sustainability.
- The ability to provide services funded by Direct Payments in a way that the service is unable to do while it remains in-house, thus meeting customer demand and helping to deliver the personalisation agenda.
- The potential to maximise long-term efficiency savings and drive down costs to the authority through reduced contract prices.
- Increased dynamism in decision-making, allowing the service to be more responsive to changes in the marketplace and customer needs. The increased competition in the marketplace, which should flow from the personalisation agenda and Direct Payments, can be expected to drive an interest in meeting customer needs and providing quality services, notwithstanding any concerns regarding a move away from a “public service ethos”.
- The freedom to pursue opportunities for growth, both within Somerset and beyond. This freedom increases the potential sustainability of this model and the opportunity for economies of scale to be realised.
- The service should benefit from the injection of commercial skills and experience into its strategic and operational management, bringing with it an improved ability to succeed in a more competitive market (such as is likely to emerge from measures to improve customer choice) and driving innovation.
- The market experience of those likely to bid under this option should enable the service to benefit from the implementation of innovative and/or best practice ways of working with the potential for reduced costs leading to greater sustainability.
- If a 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 supporting a move towards greater personalisation.
- Such a phased approach would also lower the risk of whole organisation performance issues as any issues encountered are likely to be service or provider specific rather than organisation-wide.
- Furthermore, this approach would continue to allow the Council to consider its options for any services retained in-house, affording maximum flexibility and responsiveness for the Council.

6.3.3 Limitations

The limitations associated with this option are:

- The initial, non-recurring, resource requirements may be high and an estimate of the cost and likely timescale needs to be developed prior to commencement. No external funds have been identified that would be available to help with set up costs incurred under this option.
- There would be significant costs involved in managing multiple competitive tender processes, although these could be reduced through a phased

approach and they would be subject to a “Part B” procurement process or the new regulations relating to social, health and education services, which are expected to take effect from the end of 2014.

- The treatment and protection of employees’ pension benefits following a transfer to the private sector are key considerations when outsourcing local authority services. In addition, the impact of the current deficit in the pension scheme would also need further analysis to determine any detrimental impacts, both on the Council and any new private sector provision.
- In the short-term there would be double funding of overheads, including some of those associated with Southwest One where they relate to activity that is not releasable.
- Any potential savings resulting from this option, for example in support services that are currently provided by other parts of the Council, are unlikely to benefit the Learning Disabilities Provider Service budgets as they are likely to be achieved in other parts of the Council.
- There are likely to be additional liabilities in relation to any warranties and indemnities provided by the Council to the provider in relation to staff, assets and other resources. These would need to be considered during the tender process, and could be significant.
- Robust monitoring arrangements, in the form of a “client function” will need to be resourced, and put in place to monitor performance and manage the Council’s relationships with multiple organisations. The client function would also provide reassurance to customers and carers that the Council is monitoring the performance of the provider.
- The Council will need to ensure that it is able to commission sufficient ‘provider of last resort’ capacity from providers operating in the local market in order to step in and support failing providers or complex placement breakdowns at short notice.
- There is a possibility that successful bidders could be “for private profit” companies. Because of carers’ stated fears through the consultation process, choosing Option 3 would undoubtedly, therefore, be unacceptable to a range of customers and carers.

6.3.4 Meeting key outcomes

The above analysis indicates that pursuing Option 3 would not be able to meet all aspects of the key outcomes identified by the Council and Clinical Commissioning Group for the following reasons:

- **Services that are sustainable.** This outcome could be achieved through Option 3. While tendering these services will not, in itself, result in them becoming sustainable it will remove the barriers that exist in the current model of delivery as have been identified against Option 1.
- **Services that actively engage and involve customers and carers at every level.** This outcome could be achieved to some extent through Option 3. This requirement would be built into contracts and would be monitored, although this option may not be as effective in achieving this as Option 2, which provides the opportunity to build this into the organisation, and there is potential for variations across different providers.

- **Services that embed a person centred approach and ethos in everything they do.** This outcome could be achieved through Option 3. This requirement would be built into contracts and would be monitored, although how this was built into the culture of the organisation would potentially vary between providers. However, market forces (in a sector moving towards personal budgets and more choice) would also be expected to produce providers keen to understand and meet customers' and carers' needs and to demonstrate value for money in the provision of services.
- **Services that people choose when using a Personal Budget.** This outcome could be achieved through Option 3. While tendering these services will not, in itself, result in customers choosing to use any particular provider they would be free to compete for their custom.
- **Services that can respond flexibly to meet current and future demand.** While tendering these services will not, in itself, lead to providers being able to meet this outcome, it will remove the barriers that exist in the current model of delivery as have been identified against Option 1.
- **Services that have the skills and capacity to support people in crisis.** This outcome might not be achieved through Option 3. If the service is transferred to a number of organisations the provision of crisis support and the function of "provider of last resort" would be likely to be fragmented or need to be retained by the Council.

6.3.5 Management

The structure under which the Learning Disabilities Provider Service might be managed under this option is likely to be determined by the successful bidder(s) in any procurement process to fit into and take maximum advantage of their existing infrastructure.

However, it is open to the Council to build certain requirements regarding management structures and governance into service delivery contracts and such requirements could include, for example:

- The establishment and/or maintenance of certain key roles with responsibility for such matters as service quality monitoring and performance reporting;
- Accountability to/consultation with customers, carers and staff in certain defined decision-making processes; and
- Representation on the management board (or similar decision-making body) for the Council.
- It would be important to ensure that such requirements achieve a balance between mitigating the potential risks of externalisation (such as loss of control) and maintaining opportunities to realise the benefits associated with this option (such as flexibility and dynamic decision making).

6.3.6 Basis of on-going relationship with the council

The success of this option would be greatly affected by the terms of the contract between the Council and the successful bidder(s). In particular, as with Option 2, the duration of any contract is key. In this case it must:

- Be sufficiently long to attract a reasonable group of bidders who may need to invest considerable sums, both in preparing their bids and in taking on the service;
- Be sufficiently long to justify the cost to the council of carrying out a robust and compliant tender process;
- Not be so long as to encourage complacency on the part of providers in relation to on-going delivery; and
- Not be so long as to negate the benefits of flexibility otherwise afforded by this option.

In other respects, the closeness of the ongoing relationship with the Council can to a certain extent be determined by the Council through those drawing up tender documents.

6.3.7 Establishing a governance model

The legal model adopted by any successful bidder(s) is likely to have been established prior to the tender process and the Council's ability to influence internal governance will therefore be limited. However, it is also likely that the contract for the provision of the relevant services would contain governance arrangements for the relationship between the provider and the Council.

6.3.8 Implications for staff

6.3.8.1 Terms and conditions (including pensions)

At the point of transfer, staff terms and conditions will be protected by Transfer of Undertakings (Protection of Employment) (TUPE) regulations. This includes the requirement to provide a comparable pension scheme. Whilst it is not a requirement, should the provider seek Admitted Body Status into the Local Government Pension scheme, there are considerable cost implications for that organisation in doing so and in respect of this option it is possible that such costs may prove prohibitive for some providers.

For the service to become competitive in the long term and deliver the financial savings required by the Council, any future provider will need to make efficiency improvements.

The vast majority of the current total costs of the organisation are staff costs, which might be expected to rise as a result of externalisation due to pensions' requirements, so it is likely that the required level of improved efficiency cannot be achieved without adjusting terms and conditions for new staff at some stage.

6.3.8.2 Transfer of staff

The transfer of each service would require the transfer of all staff associated with that service into the new provider organisation. This would, by necessity, follow the requirements of TUPE regulations, including consultation. Any transition plan developed will need to identify these requirements in full, and factor them into the project plan.

Further analysis is also required to assess if TUPE would apply to any staff outside of the service, for example in corporate support services.

There are a number of services which support the Learning Disabilities Provider Service, where TUPE will need to be considered. The staff involved in this group are listed in section 6.2.8.2 above.

There will be others who fulfil a role which has direct involvement with the Learning Disabilities Provider Service as well as other services. Further investigation will be needed to establish the detail.

6.3.9 Insurance

As part of any tender process it would be expected that the successful bidder(s) would have appropriate insurance arrangements in place similar to those set out in relation to Option 2 above.

6.3.10 Impact assessment and risks

6.3.10.1 Impact assessment

An impact assessment of all three options has been completed and is been included as Appendix A . It is essential that due consideration is given to this assessment when considering the options.

6.3.10.2 Risks

Risk	Likelihood	Impact	Comment/Mitigation
Confusion if outsourcing takes place in phases with different timescales for different services. This could also lengthen the period of uncertainty for customers, carers and other staff.	Medium	Medium	A careful coordinated approach to communication to all stakeholders and a consideration of this risk when taking decisions about the scope and timing of each tender process.
Cost escalation. Whilst it is likely that a choice to pursue Option 2 would lead (in basic terms) to a transfer of the Learning Disabilities Provider Service budget to the new provider, albeit with cost reduction expectations attached, 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.	Low	High	Given the previous comments regarding market competition and opportunities for introducing economies of scale and innovation in service delivery, this may not be thought likely to occur and should in any event be mitigated by medium to long term cost savings for all the reasons previously outlined.
Market failure. If manifested, this risk would	Medium	High	A phased approach to procurement allowing the

create serious negative impacts for vulnerable people, affect the Council's ability to meet its statutory responsibilities and have cost and reputational impacts for the Council should it need to bring the relevant service(s) back in-house.

This risk is contributed to by the impact of TUPE and pension costs on the financial viability of any externalisation as well as the introduction of taxation overheads to which the Learning Disabilities Provider Service is not currently subject.

Related to the above risk, the implications of the TUPE regulations and, in particular, the requirement to transfer existing staff on their current terms and conditions could restrict possible bidders. This may be especially true of smaller providers without the resources or appetite to offer a pension scheme with benefits that are equal to or greater than the LGPS.

The potential for a service provider offering vacancies in supported living accommodation to people currently living outside of the County, ultimately

Medium Medium

Medium Medium

Council to spread the risks across multiple providers and avoid tendering too soon in areas where the market is not yet ready or sufficiently stable.

A robust procurement process designed with financial stability in mind.

Careful drafting of service contracts allowing for financial reporting, robust governance and early warning mechanisms to alert the Council of and enable it to prepare for potential failure of any provider.

The resourcing of providers of last resort on an on-going basis providing robust contingency planning for the service(s).

This is not an insurmountable problem as can be seen from the fact that this would by no means be the first externalisation carried out by a local authority or even by the Council.

Careful consideration of the lots to be tendered ensuring that commercial attractiveness is taken into account. Expectations of the level of realisable short term savings should be managed with this risk in mind.

Mitigation of this risk could be built into the contractual arrangements for the provision of services and potentially also through maintaining

leading to funding becoming the Council's responsibility under Ordinary Residency rules.

the Council's interest in many of the properties in which people live. However, this approach would carry increased risks associated with the ongoing management of/responsibility for these properties.

The approach taken to securing support services currently provided by other parts of the Council adds to the financial pressure on the wider Council.

High

Medium

The Council's ability to mitigate this risk is limited as successful providers are likely to have this infrastructure in place and would therefore be unlikely to wish to use existing Council support services.

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. Concerns here would centre on the quality of service delivery.

Low

Medium

Mitigation could be built into service contracts and potentially also through maintaining the Council's interest in many of the properties in which people live. These would continue to be managed by housing partners, but the Council would continue to carry the risk of increased costs relating to these tenancies in order to avoid them being offered to people whose care and support costs would become the Council's responsibility should they become resident in Somerset.

Successful legal challenge by unsuccessful bidders, customers or other interested parties.

Low

High

The decision-making process should be appropriate and transparent.

The tender process should not infringe the procurement rules; legal advice will be taken to ensure this is the case.

The resulting contract should be properly drafted

Lack of staff and or customer support for the change makes it more difficult to deliver services and potentially affects quality and perception of service.	High	Medium	following legal advice. Continue to properly consult with and inform stakeholders at every important stage and take feedback into account.
If the service were to be tendered as a whole, there is the potential for creating a single dominant provider which could stifle smaller providers.	Low	Medium	This could be mitigated through careful design of the procurement process and a well thought out division of the service into "lots". Ongoing market engagement could be used to encourage smaller providers to take part in the process and improve the chances of a diverse pool of bidders being involved.
Alternatively, if the service were to be "carved-up" into too many separate lots for the purposes of a phased externalisation, there is a risk of fragmentation leading to the potential for some customers needs "falling between the gaps" or alternatively for there to be overlapping provision leading to inefficiency, reducing the Council's ability to realise cost savings.	Medium	Medium	Again, this should be mitigated through well thought out service specifications produced involving and engaging with those who know the service and the customer base well and can avoid gaps and overlap.

6.3.11 Transition arrangements

A competitive tender will need to be carried out for any services that are to be transferred to other organisations. This would involve the following stages:

- Planning phase involving the development of a procurement strategy – identifying services to be tendered out, evaluating flexible options such as "payment by actual vs block contracting" arrangements and the possibility of splitting service areas geographically.
- Transition and launch phase involving,

- The procurement process - stages will depend upon the procurement procedure chosen, but examples would be
 - Supplier evaluation,
 - Financial risk assessment, and
 - Market engagement;
- Transition planning including considerations in areas such as
 - Governance,
 - Human Resources & Transfer of Undertakings (Protection of Employment) regulations,
 - Property, and
 - Marketing and Communications.

Timescales and resource requirements for this option are largely dependent upon whether all the services are tendered at the same time or a phased approach is taken. It is estimated that the planning phase could be completed in 3 to 6 months with a further 9 to 12 months for the Transition and Launch phase, although a contingency for dealing with any issues arising along the way should be anticipated.

6.3.12 Conclusion

There are considerable benefits to this option, not least the ability to trade commercially, attract investment in the future of the service, innovate more freely in service delivery methods and take advantage of more dynamic decision-making processes.

However, this option raises concerns for carers, customers and other stakeholders focussing on the “profit making motive” of private sector providers, the potential for significant medium to long-term impact on customers and carers, the potential for 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 mitigate this, 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 potentially significant costs involved in managing multiple competitive tender processes.

7 MOVING TO A NEW MODEL

7.1 Legal issues

7.1.1 Statutory duties and powers

The Localism Bill, published on 13/12/2010, introduced a new general power of competence for local authorities. This marked a potentially radical shift in the capacity of councils to do things which, historically, would have been unlawful. Under the doctrine of ultra-vires, given that local authorities are creations of statute, it has always been necessary to find a statutory power to authorise a course of action.

Clause 1 of the Bill expresses the general power of competence in simple terms – “a local authority has power to do anything that individuals generally may do.” The new general power of competence will enable councils to

pursue radical ideas and rise to the challenge of the decentralisation and localism agenda. This new power comes at a time when council budgets are under severe pressure – which in many ways will foster a search for more diverse methods of service delivery, relying on the new general power.

It would be legitimate, therefore, for the Council to enter into an agreement with a social enterprise partnership (Option 2), or other organisation (Option 3), to provide services to meet the needs of those assessed by the Council as being entitled to such services.

In the context of adult social care, there is currently a wide range of primary legislation, secondary legislation, and binding guidance and directions.

Under options 2 or 3, as part of the contract, it would be expected that the provider would take responsibility for regulatory compliance, such as the requirements of the Care Quality Commission (CQC) and the terms of reference of the local adult safeguarding board. The provider would need to demonstrate compliance to the Council, so that the latter can discharge its on-going statutory duties.

It would also be prudent for the Council to have a fall back plan if, for any reason, the provider were unable to provide the services required of it, since the Council's duties would still remain.

A step-in clause can be included in the contract so that, in certain circumstances, the service may be taken back in-house or alternatively, in the case of Option 2, the service remains with the company but the company comes back into the Council. Should the former occur, TUPE is likely to apply.

7.1.2 Procurement law

Detailed advice would need to be taken on the necessary steps to comply with procurement law should Option 2 or Option 3 be selected. However, in general terms, in relation to Option 2, the implications are determined by the type of legal structure chosen and in relation to Option 3, standard public procurement rules would apply.

In either case, since the procurement legislation will be changing next year, and is currently anticipated to be brought into UK law in the autumn of 2014, the Council should exercise caution about using previous approaches to procurement for any project likely to be completing after perhaps June next year. There are a number of points of the new legislation which require further interpretation in order to define a clearer procurement strategy. One example is the expected ability to limit a competition to not-for-profit bodies and whether this means that (for instance) a Community Interest Company limited by shares would or would not be allowed to take part in that competition. In turn, this could have an impact on advice on appropriate legal structures for a social enterprise.

7.1.3 Other considerations

There are other considerations for the Council should it decide to establish a social enterprise partnership or carry out a procurement exercise under Option 3. Most notably, they include treatment of assets, the concept of "best consideration", equalities legislation and considerations of due diligence. It is

recommended that, should the Council progress to a next stage for either of these two options, specific legal advice is sought.

7.1.4 Legal and establishment documentation

For Options 2 or 3 the following documentation may be required:

- A new contractual agreement between the Council and the new provider, including a full financial payment schedule;
- Property transfers/leases/licenses and related documents such as condition surveys and inventories;
- Documentation required in respect of admitted body status for the Local Government Pension Scheme;
- Any documentation required through the TUPE process;
- Asset schedules;
- Equipment leases;
- Operational policies and procedures; and
- For Option 2, a full Business plan, approved by the Council.

The new provider may need to renegotiate or novate existing agreements with any external supplier of goods or services.

The full requirements for documentation would be assessed in the next phase of the project should Options 2 or 3 be preferred.

7.1.5 State Aid

This is a particular concern in relation to Option 2, although the factors set out in this section should also be borne in mind in relation to Option 3.

There is the potential for State Aid in each of the following situations:

- Any sale of land at an undervalue to the social enterprise;
- Any grant provided by the Council to the social enterprise;
- Any services offered by the Council to the social enterprise at no cost or at below market rates; and
- Any assets transferred from the Council to the social enterprise at no cost or at below market rates.

The best way to avoid the risk of State Aid is to ensure that the social enterprise is paying a market rent for its use of the premises or, if there is to be a freehold disposal, that it is paying the market price. While the Council might choose to charge market rates, it would be legitimate for the social enterprise to take account of these kinds of costs in assessing the price it should be paid for its services to the Council. The overall effect could therefore be 'cost neutral', or at least close to it. Specific advice on the situation regarding premises would be required at a later stage.

To the extent that the Council were to provide (even on a temporary basis) support to the social enterprise by way of back-office functions, such as HR, payroll, and IT, then the social enterprise should pay an appropriate rate for these services. This is for the same reasons as set out above in relation to market rents. However, it would be appropriate for the social enterprise to take account of these overheads when agreeing the fee for its services, again as set out above in relation to rents. Again, this issue will need further, more detailed analysis at the next stage.

7.3 Back office and corporate support services

One means of cost reduction brought about by either Option 2 or 3 arises from the new provider's ability to purchase support services from where it chooses rather than having to pay for Council or Southwest One provided services through recharges. Part of this saving comes from the provider no longer having to pay for functions of the local authority and centrally provided services that are not directly relevant to its service provision.

Further savings are generated because the social enterprise can buy the service and levels it requires under market conditions, rather than having to pay for given levels of given services at a given cost.

As well as reducing the overall cost of the service, purchasing support services in this manner gives management greater control over what is a significant proportion of the organisation's non-staff costs, nearly 38%. This control together with the potential to increase the variability of the cost base, through the buying-in of services as opposed to employing staff to deliver, contribute to improved financial agility.

Whilst the ability for the provider to make quick cost savings by procuring support services from elsewhere (or indeed making use of its own existing infrastructure in the case of Option 3) is undeniable, to do so entirely and immediately, risks leaving the Council with a significant and predominantly fixed cost to be absorbed by the other council services.

In the case of Option 2, it would be possible for a solution to be designed to lessen the impact of this change to the Council. As part of any contractual arrangement with the Council, a social enterprise could continue to purchase a proportion of its support services from the Council for a fixed period, albeit in reducing volumes, allowing the Council time to make the necessary reductions to its back office costs.

An element of the savings a social enterprise can achieve in this area is offset by the cost of additional services it now requires as an independent, commercial business operating in a competitive market. These additional costs include those associated with securing sufficient commercial expertise for the fledgling organisation, business development costs, such as marketing and public relations, potentially higher insurance and legal costs and the costs of governance.

In relation to Option 3, it is anticipated that any potential bidder which currently operates in this market would have such support, expertise and infrastructure already in place, and may therefore gain economies of scale through taking on the service, which could translate into more favourable pricing.

7.3 Property Assets

7.3.1 Leases/ownership matters

A separate project group is currently reviewing property assets for the Learning Disabilities Provider Service and is taking into account matters arising from the consideration of options for future delivery.

It is not anticipated that the outcome of this review will affect the balance of potential outcomes between the three options being considered.

7.3.2 Repairs and maintenance

Given the fact that the detailed arrangements for leasing and ownership of assets are under separate review, it is recommended that a detailed consideration of repairs and maintenance issues is built into the next phase of the project as necessary.

7.4 Other assets

Any other assets to be transferred to the social enterprise, for example ICT, vehicles and equipment, would require proper identification and valuation in order to ensure compliance with State Aid rules (see more detailed section on State Aid above).

7.5 Information and Communication Technology (ICT)

An assessment of detailed ICT requirements would need to follow any decision regarding externalisation.

The service currently has limited access to the AIS (the Adult Social Care care management system). Core data is held in AIS, but a large percentage of this is focused on care managers/commissioners requirements; the Learning Disabilities Provider Service customer's support plans, supporting documents, reviews of packages and team quality/performance reports are held outside AIS, predominantly maintained as office documents. It would be necessary to consider the suitability of AIS for the Learning Disabilities Provider Service only were the service to be separated from the Council. Other considerations would include licensing costs, hosting costs, initial setup costs including, application infrastructure and installation, data extraction and transformation, data validation and verification and application training.

In addition, the Learning Disabilities Provider Service utilises SAP for Human Resources Administration, Payroll and Finance. In the case of both this and AIS, consideration would need to be given to how the relevant processes could be supported in future and how data might be transferred in a safe and compliant manner.

EEC (an external Application / Service) is used for Health and Safety matters. This could continue as is but may need to be arranged as a separate contract.

A full audit of hardware and software will need to be performed to determine the current position and to provide information of the most appropriate "reuse or replace" approach if one of the externalisation options is selected.

Issues will include the current value of ICT Assets and the separation from the current shared hosting, support and maintenance arrangements.

A detailed analysis of the current service delivery structure and recommendations on the detail of a future structure will be required to be carried out in the next stage of this project.

For the purposes of this exercise, it has been assumed that the ICT requirements will remain constant.

7.8 Data management

Further work is required to identify how the Council would discharge its responsibilities around Data Protection and Freedom of Information should either Option or Option 3 be preferred. However, it has been assumed that the provider would not be treated any differently to any other supplier organisation in this regard.

Matters for consideration at a later date will include:

- Who will be the Data Controller/Data Processor in any new model?
- Data types.
- Further work or information required and agreements needed.
- Data Protection, Data Subject Access Request, Freedom of Information and Data Security Contract clauses if any of the services go out to tender
- Consider the implementation of a secure data transfer process if an external organisation is formed or an external contractor engaged.
- Consider if any integration will be required with current Adult Social Care systems if an external organisation is formed or an external contractor engaged.
- If electronic data transfer is not used, will there be a need to use paper records and what are the risks entailed here?

7.7 Change management, communications, and engagement with staff, partners and stakeholders

Somerset Learning Disabilities Provider Service employs in excess of 1,200 individuals. Staff engagement and consultation is an on-going process, and consultations should be initiated at the earliest opportunity and continue throughout the transition process.

This activity should include:

- Issuing frequent communiqués to all staff to keep them abreast of developments;
- Regular briefing meetings with staff and consultation opportunities for staff to meet with Human Resource staff confidentially;
- Keeping the unions informed throughout and seeking their advice; and
- Somerset County Council will need to conduct a full TUPE consultation and transfer process.

Continued engagement with all stakeholders will also be essential, to secure buy-in for the plans from customers, carers/families and other relevant stakeholders and minimise the risk of challenges.

7.9 Impact assessment and risk analysis

7.9.1 Impact assessment

It is essential that consideration is given to the Council's legal obligations and in particular the need to exercise the equality duty under the Equality Act 2010 to have, due regard to the potential impacts. The following detailed impact assessments: Equality / Sustainability / Community Safety / Health and Safety/Business Risk/Privacy have been carried out and details are set out for consideration at Appendix A.

Information on impacts specific to each individual option are set out in Appendix A

7.11.2 Risks

A register of key risks has been compiled and will continue to be updated in the light of decisions made on the preferred option.

Information on risks specific to each individual option are set out in sections 6.1.8, 6.2.10 and 6.3.10.

8. COMPARISON, CONCLUSIONS AND RECOMMENDATIONS

8.1 Indicative overall financial comparison

The below table shows only the **additional** annual indicative costs and **savings** arising from the three Options.

	Option 1		Option 2		Option 3	
	Year 1	By Year 5	Year 1	By Year 5	Year 1	By Year 5
Productivity			-£125,000	-£750,000		
Pensions and terms and conditions			£300,000	-£350,000	£300,000	-£350,000
VAT on supplies and services			£175,000	£175,000	£175,000	£175,000
VAT on overheads and support services			£400,000	£175,000	£300,000	£175,000
Overheads and support services			-£75,000	-£1,000,000	-£500,000	-£1,000,000
Income and opportunities for growth			-£200,000	-£2,000,000	-£200,000	-£2,000,000
Profit margin					£650,000	£1,000,000
TOTAL ADDITIONAL ANNUAL INDICATIVE COSTS/SAVINGS	£0	£0	£475,000	-£3,750,000	£725,000	-£2,000,000

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, as stated in paragraph 5.3.7, the number of vacancies in the existing service continues to rise, which could lead, at some stage, to the viability and sustainability of the Learning Disabilities Provider Service being threatened.

For Option 2, the overall position, based on the financial modelling undertaken, 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.

For Option 3, 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, 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.

8.2 Conclusions

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.

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.

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:

- The Learning Disabilities Provider Service is supporting an ageing population, and when this is combined with the trend of younger people towards 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:
 - 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.

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 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.

Through the consultation, people told us that the things that are important to them are:

- Customers and carers should be at the heart of decision making;
- Services should be value based;
- Private profit should not be made from the delivery of services;
- Change for customers and carers should be minimised;
- Services should be accountable to the people who use them and their carers and relatives; and
- They would like to try to put back some of the opportunities that have been reduced.

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.

8.3 Recommendations

It is recommended that the Somerset County Council Cabinet and Governing Body of the Clinical Commissioning Group authorises:

- 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.
- The completion of the necessary work that is required to proceed with the creation of the organisation and selection of the partner.

- The development of a detailed implementation plan alongside an impact assessment in order to minimise the impact of any change processes on customers
- The discontinuation of all work in relation to the other options