



Leicester  
City Council

**WARDS AFFECTED**  
All Wards

**COUNCIL**

**14<sup>th</sup> July 2016**

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**PETITIONS FOR DEBATE BY FULL COUNCIL – LEEAP's FUNDING**

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**REPORT OF THE MONITORING OFFICER**

**1. INTRODUCTION**

A petition has been received which asks the City Council to reconsider and continue funding for the Leicestershire Ethnic Elderly Advocacy Project.

The Council's petitions scheme adopted in May 2010, states that any petition that receives over 1,500 signatures must be subject to a full debate at Full Council (unless it is a petition asking for a senior council officer to give evidence at a public meeting).

**2. RECOMMENDATIONS**

Council is recommended to consider the petition and make any recommendations to the Executive in accordance with the Petitions Scheme.

**3. REPORT**

The petition has been received in the following terms:

1. Petition received by Mr N S Sarang with 2,022 validated signatures submitted in the following terms:

*"We the undersigned, service users and residents of Leicester City Council. Leicestershire Ethnic Elderly Advocacy project for BME elderly/disabled communities in Leicester, whose advocates see their clients, without appointments. LEEAP was supported by scrutiny committee (Labour Control) of Adult and Social Care department of Leicester City Council. The Labour control council had previously, recommended tender process in year 2014-15, which was abandoned. The Leicester City Council have started the tender process again. We would like to request Adult Social Care department to re-consider and continue LEEAP's funding."*

The lead petitioner has been invited to speak on their petition for five minutes to be followed by a Councillor debate for a maximum of 15 minutes.

Following the debate, the Council can decide how to respond to the petitions and may decide to:

- Recommend to the Executive to either take or not take the action the petition requests.
- Recommend to the Executive a different course of action as a result of the debate.
- Commission further investigation into the matter, for example by a relevant committee.

Following the Council meeting the petition organisers will receive written confirmation of this decision.

### Background Information

In 2014 Adult Social Care undertook a strategic review of all of its 62 preventative services from the local VCS. The review resulted in a re-procurement exercise of provision of services for Advocacy; Information Advice and Guidance; Mental Health; Physical and Sensory Disability; HIV/ AIDS; Carers; and Older People and Dementia.

Advocacy is taking action to help people to understand and say what they want; secure their rights, represent their views, wishes and interests, and obtain services they need. The re-procurement of advocacy services was abandoned in February 2015, in anticipation of the implementation of the Care Act (April 2015), which places a statutory duty on the Local Authority to arrange independent advocacy to facilitate the involvement of a person in their assessment, in the preparation of their care and support plan, and in the review of their care plan, if the person has substantial difficulty in being fully involved in these processes or there is no one appropriate available to support and represent the persons wishes.

A further review followed that entailed data analysis, and demand forecasting, to ensure that Advocacy services to be procured would be able to provide the necessary capacity and capability to meet our Care Act obligations and predicted future demand.

Following consultation with the sector, the exercise to procure advocacy services was re- advertised in October 2015. The value of all the advocacy contracts was £280,600 p.a. Tenders were evaluated November 2015, with bidders notified of the outcome in December 2015, and new services commencing in April 2016.

The advocacy procurement exercise had 4 Lots:

**Lot 1: Combined Service for Older People, Physical Disability, other Vulnerable Adult Groups and the Independent Complaints Advocacy Service (ICAS) NHS Complaints**

Three organisations submitted bids for Lot 1. Two of the bidders were existing providers of advocacy, LEEAP and Mosaic.

In assessing quality, the tender evaluation required bidders to submit responses against a series of questions in the following areas:

Service Delivery (3 questions)  
Workforce (2 questions)  
User and Carer Focus (3 questions)  
Service Monitoring (1 question)  
Partnership (1 question)  
Social Value (1 question)  
Questions specific to the delivery of Advocacy (2 questions)  
TUPE (3 questions)

Following a fully compliant EU procurement exercise the contract was awarded to Leicestershire Communities Projects Trust (LCPT). The final scores, measured against the published Award Criteria of 20% price and 80% quality, were as follows:

Tender name	Price (%)	Quality (%)	Total (%)
Successful Tenderer	18.27	69.60	<b>87.87</b>
LEEAP	19.02	36.00	<b>55.02</b>

During the standstill period Solicitors acting on behalf of LEEAP notified the Council they had issued a claim against the council to the High Court in respect of the tender. During the same period LEEAP requested to have their concerns included on the agenda of the Adult Social Care Scrutiny Commission, due to possible pending court action it was not possible to meet this request. On provision of the tender information to the solicitors the claim was withdrawn.

The existing contracts for LEEAP and Mosaic ended on the 31<sup>st</sup> March 2016.

The remaining lots were awarded as follows:

**Lot 2: Advocacy Services for People with Mental Health Needs - LAMP**  
**Lot 3: Advocacy Services for People with Learning Disabilities and Group Advocacy to support the Partnership Arrangements - Mosaic**  
**Lot 4: Carers Advocacy Service - CLASP**

It should be noted that all of the awards went to local VCS organisations.

#### **4. FINANCIAL, LEGAL AND OTHER IMPLICATIONS**

##### **4.1. Financial Implications**

The budgets for advocacy have been allocated to pay the new providers and there is no additional budget available to pay for a further provider.  
*Martin Judson, Head of Finance*

## **4.2 Legal Implications**

### **4.2.1 Constitutional Considerations:**

As the recommendation to Council suggests the function as to allocation and spending of the budget is, ultimately, a function of the Executive. Should the Executive decide any action is required as a result of Council's recommendation it will be a matter for the relevant Executive Member to take any decision in accordance with the Constitution and City Mayor Scheme of Delegation.

### **4.2.1 The request:**

The petitioner asks that the authority continue to fund LEEAP however it must be noted that the authority approached the market to secure a provider to deliver services to the authority rather than using a funded model.

There is a distinction between a procured and funded model. The funded model will generally be provision of money to a body to meet general aims, whereas here we have required the body to deliver a very specific, and statutory based service for the authority.

Our new providers are contractually obliged to deliver the service and the authority is contractually obliged to do various things, including make payment for the services in line with the contract.

LEEAP were also previously a contracted provider, they were not funded but contracted to provide services for payment. The future payment of monies to them by the authority was dependent upon their success in the procurement process and, as above, they were unsuccessful. By requesting funding LEEAP is seeking to secure monies from the authority outside of any procurement or grant funding cycle.

Legal advice is that the prayer is seeking something that LEEAP were never receiving or entitled to as they were never funded by the authority but procured for service delivery. It is seeking to secure funding as a result of a failed tender submission and legally complaint procurement process.

### **4.2.2 The request and the status of the Procured Service**

The contract with the new provider was entered in to on the 7 April 2016 and will run until the 31<sup>st</sup> March 2019, with an option to extend for a further two years. As such the authority is contractually committed to use the services of the provider during this period.

The authority, when awarding the contract, has done so on the basis of an 80% quality and 20% pricing split on the scoring weighting. This means that the authority placed greater emphasis on the quality of the service to be provided. As can be seen from the body of the report LEEAP did not score as well as the successful bidder on quality. Statutory Best Value guidance supports the authority taking this approach with regards to the weighting split

LEEAP did, as the report details, issue a challenge in the High Court against the procurement process and award however they took the decision to withdraw proceedings. The authority's position was and remains that the procurement process and outcome fully complied with all legal requirements.

It is advised that the authority could not look to terminate the agreement with the new provider or act in a way as to divert the services without significant risk of successful challenge. Although all potential risks cannot be foreseen or advised upon in full some of the matters to consider are:

- The proper route of challenge to the authority's decision on the procurement for LEEAP was via a challenge to the procurement process. As detailed above this was pursued by LEEAP but ultimately withdrawn.
- The authority is contractually bound to allow and pay for the delivery of service by the new provider until 31 March 2019. Termination, for any other reason than an evidenced breach of contract, would be a breach of the contract by the authority and the authority would be open to challenge, which would be likely to be successful and result in the payment of significant sums to the new provider.
- Were authority to decide to fund LEEAP to provide the services concurrently with the new providers this would also potentially give rise to the risk of successful challenge from the new providers. The new providers have tendered and entered in to the contract for the provisions of services which intend that it will provide the services to the council and there will be an identified income for it. There are also out-put requirements in the contract which it is required to achieve. We would not be able to run the two service providers concurrently without risk of referrals and payment to the new provider falling. The risk arising from this is that the authority could be seen to be in breach of contract and would be open to challenge and financial implications in the event challenge was successful.
- By agreeing to now fund them it would be potentially undermining the authority's procurement process and setting a precedent as to continuing to pay organisations where they have not been successful in a tendering process. As the report outlines an OJEU procurement process was undertaken for various VCS Services. Though LEEAP did tender they were not the successful tender.
- There are issues of state aid that may arise as a result of any decision to fund outside of there being a detailed and properly justified funding or procurement exercise. At present it is understood that the ASC budget for

the provision of the services in relation to EIP has been utilised for secure the providers under the 4 lots, as such there is no scope for LEEAP to deliver services.

- In the event there was a decision to have both the current provider and to retain LEEAP, having two providers providing the same services contemporaneously could cause confusion amongst service users. It should also be noted that if it had the effect of reducing the budget available to the current provider it may potentially trigger the need for consultation.

Emma Horton, Head of Law (Commercial, Property & Planning)

#### 4.3 Climate Change

### 5. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph References Within the Report
Equal Opportunities	N	
Policy	N	
Sustainable and Environmental	N	
Crime and Disorder	N	
Human Rights Act	N	
Elderly/People on Low Income	Y	Throughout – the petitions relate solely to older people.
Corporate Parenting	N	
Health Inequalities Impact	N	

### 6. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

None

### 7. CONSULTATIONS

None.

### 8. REPORT AUTHOR

Francis Connolly  
Senior Democratic Services Officer.