

# Executive Decision taken under Cabinet Delegated Authority

<b>Subject:</b>	ASC 090 Employer Liability Insurance and Support Service – Enactment to Award Contract
<b>Decision to be taken by:</b>	Interim Director – Adult Social Care, Katharine Willmette
<b>Lead Director:</b>	Interim Director – Adult Social Care, Katharine Willmette
<b>Date of Decision:</b>	4 February 2021
<b>Reason for Urgency:</b>	The decision is to enact the Cabinet decision to procure and award a contract to the successful Original recommendations and approval documentation from Cabinet (Key Decision on 26 June 2019) are attached with this report as appendix 1.
<b>Lead Officer:</b>	Commissioning Officer, Beverley Stevens

## 1 Recommendations

- 1.1 That approval be given to: The Interim Director – Adult Social Care, in consultation with the Cabinet Member for Healthy Lives, to enact the decision of Cabinet on 26 June 2019 to procure an Employer Liability Insurance and Support Service, and award the contract to Mark Bates Ltd. This provider was successful in the procurement process for this Service. The Contract will be for a maximum period of 3 years from 6 April 2021 to 5 April 2023, with the option to extend for a further year.


## 2 Reasons for Recommendations

- 2.1 This report seeks approval to enact and award the contract in relation to the recent retender for the ASC090 Employer Liability Insurance and Support Service, to the current contractor, to replace the existing



contract which expires in March 2021, with no option to extend. Cabinet approved the procurement of the contract on 26 June 2019.

### 3 How does this deliver objectives of the Corporate Plan?

	<p>People live well and age well - Employer Liability Insurance and Support Services deliver support to service users who receive a Direct Payment and use it to employ one or more Personal Assistants. It also indemnifies or protects them against court action by Personal Assistant employees who may be injured during their duties, and against other crises. This supports our service users as employers and offers reassurance that they can take on employer responsibilities for Personal Assistants to provide care and support for their vulnerable family members or friends.</p>
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### 4 Context and Key Issues

- 4.1 Direct Payments provide independence, choice and control by enabling service users to commission their own care and support. The Council is committed to promoting their use, in line with the national Personalisation agenda. Services which support these service users are statutory.
- 4.2 On 26<sup>th</sup> June 2019, Cabinet approved the re-procurement exercise via competitive tender for Direct Payment Support Services for a contract period of three years, with an option to extend for two further periods of one year and to approve the procurement using a quotation exercise for Employer Liability Insurance. Before this, service users received a sum of money for Employer Liability Insurance to commission their own service, but the take up of this was variable, despite this being a legal requirement for all employers
- 4.3 The Direct Payment Support Services contract delivers Payroll to ensure Personal Assistants are paid on time, Managed Accounts to manage the direct payment of those who are unable to, and Recruitment Support for Direct Payment Recipients who need to find one or more new Personal Assistants. All services are related to the Employer Liability Insurance and Support Service and share the same service users.
- 4.4 The Employer Liability Insurance and Support Service delivers an annual Insurance Policy to protect the direct payment recipient from any liability



(including legal costs) if their Personal Assistant is injured during their duties – which is a legal requirement for all employers. Included within this Policy is the offer of enhanced insurance covering theft, sickness etc, telephone based legal information and advice, and training on their legal rights and responsibilities as employers – which is online currently due to COVID restrictions.

- 4.5 The Employer Liability Insurance and Support Services contract was awarded to Mark Bates Ltd following an open tender of the service in Spring 2020 for the period 6 April 2020 to 5 April 2021 and at a value of £52,000. Cabinet approved that both contracts would be for a period of three years with an option to extend for two periods of one year. However, it was later agreed to quote for the new service for one year only.
- 4.6 Commissioning Board accepted the recommendation on 7 August 2020 to approve the retender of Employer Liability Insurance Service for a 2-year contract with the option to extend for 1 further year and coming into effect from 6th April 2021 to 5th April 2024, on similar terms and conditions to the current 12-month contract. The Service Manager was also consulted. The report and minute are attached below.
- 4.7 The Interim Director – Adult Social Care is requested to approve award of the contract to the successful bidder, Mark Bates Ltd. If approved, the new contract will commence from 1 April 2021 and will run for 2 years with the option to extend for a further 1 year, unless terminated in accordance with the Conditions of the Contract. This will ensure a value for money service over the next two years. It also brings the duration of the contract into alignment with that of the Direct Payment Support Services contract, so both contracts could expire 5 April 2023. This alignment would enable planning around how all services to support Direct Payment Recipients are commissioned for services to start in 2022.
- 4.8 Legal services approved the ITT on 19 October 2020. ASC090 Employer Liability Insurance and Support Service was advertised on Sandwell's e-procurement portal on 26 October 2020 to 23 November 2020. There were four expressions of interest, but only one tender was submitted by Mark Bates Ltd, and following the procurement process, which involved evaluation of the ITT submission and interview on 7- 11 December 2020, Mark Bates Ltd scored 85%, combining 60% for pricing and 25% for quality. Details relating to the procurement are listed in



contract sign off document – appendix 1. As less than three bids were received, and the Employer Liability Insurance and Support Services is of a specialist nature and there is a limited market of providers at local and national level, so an exemption to the Council’s Procurement and Contract Procedure Rules 2018-2019 was sought and approved 29 January 2021 to enable the contract to be awarded to the successful bidder. The Report and approvals are attached below.

- 4.9 The annual cost of the contract is a maximum of £52k. The Contract Value over the potential maximum three-year period is £156,000. The contract is activity based – the value of each policy set up or renewed is £130 per year.
- 4.10 Council officers have met regularly with the current contractor (Mark Bates Ltd) to monitor performance data and evaluate the service throughout the current contract. Since the start of the contract, the numbers of new and renewed policies have increased and Mark Bates Ltd maintain high quality service delivery and offers good levels of customer service. They have a current excellent rating on the Trust pilot online rating tool <https://uk.trustpilot.com/review/markbatesltd.com> and are ranked highly amongst insurance providers.
- 4.11 Approximately 400 Direct Payment recipients in Sandwell employ a Personal Assistant, and there are currently 203 people listed on the Mark Bates Ltd portal, as holding an Employer Liability Insurance Policy, which started or was renewed since the contract started 6 April 2020. Some of these are parents acting for their children and in these cases, Mark Bates Ltd Invoices Children’s Trust for this support. The other 200 will be service users of another Employer Liability Insurance company, as service users can choose their provider for this Insurance.
- 4.12 An analysis of data on current trends since the start of the contract in April 2020, has shown that demand for this service is increasing as the Council have written to service users in Spring 2020 to inform them of the enhanced offer of information, advice and training that is included in the Employer Liability Insurance Policy.

## 5 Alternative Options

- 5.1 Options concerning retendering the existing contract were considered – including the option to extend this contract. However, this was



discounted because the existing contract was procured using a quotation exercise, and because it has no option to extend

## 6 Implications

<b>Resources:</b>	The new contract will cost up to £52k per year – the cost of each new or amended Employer Liability Policy is £130, and the final cost will depend on the number set up or renewed each year. Expenditure will come from existing programme budgets. There are no staffing or land use implications.
<b>Legal:</b>	The service was tendered under the Public Contracts Regulations 2015 and in accordance with Sandwell’s Procurement and Contract Procedure Rules. In relation to the procurement exercise a contract notice was published in the Official Journal of the European Union (OJEU) and on In-tend – the Council’s e-procurement portal - and on the Government’s Contract Finder website. The service plays a fundamental role in ensuring our Direct Payment Recipients hold Employer Liability Insurance, which is a legal requirement as part of the <u>Employers’ Liability (Compulsory Insurance) Act 1969</u> .
<b>Equality:</b>	For the cabinet report an Equality Impact Assessment was completed, which identified that, should there be no further reductions in funding from other parts of the Council or its strategic partners, then there is likely to be no adverse impact on protected groups because of the new contract. Service users of Employer Liability and Support Services have a higher representation of older adults, disabilities and women compared to the Sandwell population. They will benefit from the procurement of the service.
<b>Risk:</b>	The service plays a fundamental role in preventing and dealing with employment issues and disputes between employers and Personal Assistants, and protecting employers from the risk of court costs if the Personal Assistants are injured in course of duties. If the contract is not awarded the service users may need to purchase their own employer liability insurance themselves, leading to lower take up of a legally required policy.



<b>Health and Wellbeing:</b>	The Service will provide legally based information, advice, training and legal protection for service users who employ Personal Assistants, and thus provide reassurance about carrying out their employer responsibilities, leading to a lessening of stress and improved wellbeing.
<b>Social Value:</b>	The service supports the Council's Social Value agenda as it supports Sandwell direct payment recipients to achieve their full potential: The service encourages reliance on a legally based information and advice service, and attendance on training courses/use of eLearning courses.

In accordance with the authority delegated to Chief Officers to act on matters within the authority delegated to them under Part 3 of the Council's Constitution, I intend to take the action(s) recommended above.

I ~~do~~/do not have an interest to declare in this matter

[Redacted Signature]

**Katharine Willmette**  
**Interim Director of Adult Social Care**

**Date** 21 April 2021

If the Constitution requires the decision to be taken in consultation with a Cabinet Member, the following signature box should also be included

I confirm that I have been consulted on the above proposals and have no objection to their proceeding.

[Redacted Signature]

**Cabinet Member for Living Healthy Lives**

**Date** 14 May 2021



## 7. Appendices

### 7.1 Cabinet Report



10 - Approval to  
retender Direct Payme

### 7.2 Cabinet Minutes



03 - Cabinet Minutes  
26062019.pdf

### 7.3 Commissioning Board paper to retender - 7 August 2020 – see page 5.



Commissioning  
Board Breifing Paper -

### 7.4 Commissioning Board Minutes



Item 17a - Minutes of  
Meeting 7.8.2020 (JH)

### 7.5 Exemption Report



16 - Exemption  
Report ELISS ASC90-

## 8. Background Papers – See above

