

**Report of the Cabinet Member for
Services for Adults and Vulnerable People**

Cabinet - 18 June 2015

**WESTERN BAY REGIONAL AREA PLANNING BOARD FOR SUBSTANCE
MISUSE – LEGAL AGREEMENT**

Purpose:	To seek approval to enter into a legal agreement with Abertawe Bro Morgannwg University Health Board (ABMU), Bridgend County Borough Council (BCBC) and Neath Port Talbot County Borough Council (NPT) relating to regional arrangements for the funding and commissioning of substance misuse services.
Policy Framework:	Sustainable Social Services for Wales: A Framework for Action
Reason for Decision:	To seek approval to enter into a legal agreement with Western Bay partners regarding regional arrangements.
Consultation:	Legal, Finance and Access to Services.
Recommendation(s):	It is recommended that Cabinet: 1) Agree to delegate authority to the Chief Officer for Social Services to finalise and enter into the legal agreement, under the guidance of the Head of Legal, Democratic Services and Procurement 2) Agree to nominate the Chief Officer for Social Services to act as Swansea's representative on the 'Executive Group' and delegate authority to this post holder to exercise any functions under the legal agreement. 3) Note that Swansea's remaining financial commitment is £6,650 in 2015/16 which will contribute to the additional legal and procurement support needed.
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1.0 Background

- 1.1 In 2010 regional Area Planning Boards (APBs) were set up with the overall objective of improving and strengthening the arrangements for planning, commissioning and performance management of substance misuse services in Wales.

APBs assist Community Safety partner organisations and other relevant partners to discharge this responsibility by providing a mechanism for them to pool resources and share expertise in the delivery of the Welsh Government's Substance Misuse Strategy.

From April 2013, the Welsh Government stipulated that the Substance Misuse Action Fund (SMAF) would be managed as one regional allocation, with one of the Local Authorities acting as the grant recipient body. In the case of Western Bay, it was agreed that NPTCBC would act as grant recipient body. Welsh Government also required assurances that the commissioning support previously focused at Local Authority level would instead form a regional commissioning structure and one organisation would act as a Host Authority.

At the end of 2013, Western Bay Programme Board approval was given to progress the work of establishing regional arrangements required to support the substance misuse commissioning arrangements.

At a meeting of the APB in late 2014, discussions took place regarding which of the 4 lead partners (NPTCBC, ABMU, BCBC and CCS) were best placed to act as Host Authority on behalf of Western Bay. It was agreed that NPTCBC would be the Host Authority. The intention was for this arrangement to formally take effect as soon as practicable after 1st April 2015.

NPTCBC has recruited a small team to support the work of the APB and NPTCBC's role of Host Authority on behalf of the region. This team is now in place.

2015/16 is a transitional year in which existing local contracts in the Swansea, Bridgend and Neath Port Talbot areas have been rolled forward for one additional year. However, the intention is that, from 2016/17 onwards, services will be regionally commissioned.

Options are currently being explored into ways in which the region could commission services going forward so that the SMAF is fully utilised in as cost effective way as possible across Western Bay. Whereas currently each organisation may hold a number of individual contracts with service providers, it is envisaged that going forward there will be a smaller number of higher value regional contracts. This will inevitably entail a complex and lengthy procurement exercise during 2015/16 to ensure that

service providers are ready to deliver as soon as practicable after 1st April 2106.

To this end, a regional Commissioning Strategy is being drafted and it is anticipated that the final draft will be completed in the next couple of months and this will be the subject of a further report once it has been approved by the APB. Once this is approved, 2015/16 will be used to procure the services required going forward.

2.0 Equality and Engagement Implications

- 2.1 The proposed recommendations have been screened in relation to Equalities. The proposed decisions themselves will have no impact on protected groups, so it is judged that a full Equality Impact Assessment is not required. However, it is recognised that a full Equality Impact Assessment will be required in due course for activity/work that emerges from the APB which will have a direct impact on service users.

3.0 Financial Implications

- 3.1 The total revenue SMAF budget for 2015/16 has been confirmed by Welsh Government as £3,624,414. In their confirmation letter, Welsh Government has indicated that they are changing the formula relating to allocations to take effect in the 2016/17 financial year. This could lead to either a decrease or increase in future financial years, which presents a risk around long-term commissioning. Welsh Government has however given assurances that they will give as much notice as possible in relation to any change in allocations.

In addition to the SMAF, there is an agreed budget of £708,356 which match funds the SMAF and is jointly funded by ABMU, CCS, BCBC, NPTCBC and Bridgend YOS. This budget and the arrangements surrounding it will be reviewed as part of the development of the Commissioning Strategy.

Partners have negotiated to contribute an additional total of £55,000 in the 2015/16 financial year towards the legal and procurement costs surrounding the new commissioning arrangements. The agreed contributions are as follows:

- CCS £19,250
- NPTCBC £11,000
- BCBC £11,000
- ABMU £13,750

These contributions have been calculated on the basis of ABMU having a quarter share and the remaining three quarters split on the basis of population.

There was an underspend of £36,000 in 2014/15, which has been carried forward into a reserve. It has been agreed by the 'Executive Group' that this will be utilised to contribute to the above. Therefore the remaining contributions are as follows:

- CCS: £6,650
- NPTCBC: £3,800
- BCBC: £3,800
- ABMU: £4,750

4.0 Legal Implications

- 4.1 The APB itself is a large entity on which sit a number of representative organisations. It is also not a legal entity in its own right and as a consequence has no legal decision-making powers.

Following legal advice, it has therefore been agreed that a legal agreement needs to be drawn up between the 4 lead partners who will effectively act as the 'Executive Group' of the APB. These organisations are those statutory organisations that carry the financial and reputational risk linked to the work of the APB and the management of the SMAF. They are also those organisations that financially contribute to the services that are currently commissioned. This legal agreement allows for the 'Executive Group' to make decisions on behalf of the APB and also firms up NPTCBC's role as Host Authority as well as the distribution of financial and other risk amongst the 4 partners.

In time, a wider Memorandum of Understanding will be drafted for the APB as a whole, which will complement the legal agreement relating to the 'Executive Group'. Under this, it is envisaged that the APB will make recommendations to the 'Executive Group' for those areas of work where delegated authority is needed from the 4 organisations. In the future, the 'Executive Group' may be expanded to include other partners if they are mindful to financially contribute to services commissioned going forward.

In terms of the legal agreement itself, amongst other considerations provision is made for the following:

- Each organisation to nominate a representative and substitute to sit on the 'Executive Group' and have delegated authority to exercise all powers and duties required to provide services in accordance with the Agreement.
- The Executive Group to approve the annual budget, in line with the WG SMAF allocation and the associated match funding provided by partners for commissioned services.
- The allocation of a one-off contribution by each partner in 2015/16 to contribute to the additional legal and procurement costs that the APB will incur linked to the re-commissioning of services on a

regional basis. The detail of this is included in the Financial Implications section of this report.

At the time of writing this report, the legal agreement had not as yet been finalised. Therefore this report seeks approval to delegate authority to the Chief Officer for Social Services to finalise and enter into the Agreement under the guidance of the Head of Legal, Democratic Services and Procurement.

- 4.2 The intention to “roll over” contracts in the transistional period of 2015-2016 may carry a risk of challenge if those contracts do not include any provision to extend the term as proposed.
- 4.3 Any regional contracts entered into with providers will need to incorporate some flexibility in the event of a potential change in the level of WG funding as envisaged above.

Background Papers: None

Appendices: None