

**NAME OF MEETING: Adults Commissioning Committee**

**DATE OF MEETING: 08/09/2021**

**AGENDA ITEM NO & PAPER NAME: Item 6 Aspire (CIC) Contract – VAT impact and options**

**Item for:** Decision

<b>Report of:</b>	Lead Member for Adults Health and Wellbeing	
<b>Date of Paper:</b>	08/09/2021	
<b>In case of query, please contact:</b>	Paul Walsh, paul.walsh@salford.gov.uk	
<b>Strategic Priorities:</b> (Please tick as appropriate)	Quality, Safety, Innovation and Research	
	Adult Services	Y
	Children's and Maternity Services	
	All Age Mental Health	
	Primary Care	
<b>Mayoral Priorities:</b> (Please tick as appropriate)	Enabling Transformation	
	Tackling poverty and inequality	Y
	Reducing Health Inequalities	Y
	Skills and Education (A Learning City)	
	Affordable Housing	
	Transport and Digital Connectivity	
	Tackling the Climate Change Emergency	
Vibrant Place and Spaces		
Creating an Economy for All		
<b>Purpose of Paper:</b>	<p><b>To set out matters relating to the VAT pressure on the contract between Salford Royal Foundation Trust as the contracting organisation and Aspire (CIC) as the provider organisation. To offer options and to make a recommendation to mitigate the VAT risk by novating the contract to Salford City Council as the contracting organisation</b></p>	

### Further information

How will this benefit the health and wellbeing of Salford residents, or the CCG or City Council?	Maintain service for vulnerable adults whilst removing a VAT risk to the contract
How does this paper address health inequalities and promote inclusion?	Maintain service for vulnerable adults
What risks may arise as a result of this paper and how will they be mitigated?	The paper seeks to mitigate the VAT risk of the current contracting arrangement
Does this address any existing high risks facing the organisation and how does it reduce them?	No
Are there any possible conflicts of interest associated with this paper?	No
Will any current services or roles be affected by issues within this paper and what are they?	No

Note: Where appropriate, please ensure detail is provided.

### Document Development

Has there been Public Engagement?	No
Has there been Clinical Engagement?	No
Has the impact on Salford socially, economically and environmentally been considered?	Yes, the budget impact of the VAT risk to the contract
Has there been an analysis of any impacts on equality?	No
Has legal advice been obtained?	Yes – included in the body of the report
Has this been to any groups or committees for engagement, comments, or approval?	<p>Directorate Management Group, Thursday 22<sup>nd</sup> July 2021</p> <p>Service &amp; Finance Group, Tuesday 7<sup>th</sup> September 2021</p>

	Lead Member Briefing, Wednesday 4 <sup>th</sup> August 2021
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**Note:** Where relevant, please provide detail and ensure that it is clear how and when particular stakeholders were involved in this work, that there is clarity of what the key message/decision was, and whether amendments were requested about any part of the work.

## Aspire (CIC) Contract – VAT Impact and Options

### 1. Executive Summary

In 2015 Salford City Council approved the establishment of an independent community interest company (Aspire CIC) to deliver a range of services for vulnerable adults.

The contract for this service was transferred from Salford City Council to Salford Royal Foundation Trust in 2016.

As a result of the approach to VAT by HMRC, Salford Royal Foundation Trust is now subject to VAT costs of c. £470k per annum, related to this contract.

Advice has been sought on options to remove this VAT 'pressure', which indicate a preferred option to transfer the contract from Salford Royal Foundation Trust to Salford City Council, with an associated service level agreement for Salford Royal Foundation Trust relating to the Social Work and Market Management components of servicing the contract.

### 2. Background

2.01 Aspire, was created in June 2015 for the delivery of care services for adults with complex social care needs. The services, previously provided by the council's internal provider arrangements, are now delivered by Aspire, which is a community interest company, and a completely separate legal entity to the council.

2.02 Services are provided to more than 800 service users who have eligible needs under the eligibility criteria of the Care Act 2014. This provision is carried out by just under 400 staff.

2.03 Services can be largely grouped under the following 5 areas of provision. Indicative values are also provided <sup>1</sup> :

- Day Services: Alexandra House, Poppy Day Centre, Brierley House, St Georges Resources Centre, Waterside - £2.0m
- Learning Disability Supported Tenancies - £5.5m
- Shared Lives - £0.1m
- Learning Disability Respite: Granville House - £0.8m

<sup>1</sup> Management and overheads add an addition £0.7m to make up the £9.6m

- Humphrey Booth Resource Centre - £0.5m

2.04 The contract was established for a five-year period with the cost to the council scheduled to rise each year and planned to have risen to £10.9m by year five <sup>2</sup>.

2.05 The Salford City Council novated the contract to Salford Royal Foundation Trust (SRFT) on 1 July 2016, as part of the implementation of the Integrated Care Organisation (Salford Care Organisation (SCO)). It was agreed as part of the transfer to SRFT that Commissioners would continue to support the contract management function for a period of one year, giving time for SCO to establish and recognise that this was a new commissioned service, that Aspire was still in development and also taking into account the considerable size and complexity of this provision.

2.06 Since 1<sup>st</sup> July 2017 SRFT has been responsible for the contract management and quality assurance of Aspire, just as they are with the rest of the adult social care supply chain which novated to SRFT in July 2016, meeting Salford City Council's Care Act 2014 responsibilities regarding market management.

### 3. VAT Impact

3.1 The current arrangements for delivery of Aspire services have resulted in an unintended VAT impact on SRFT of c.£470k pa. This has arisen from HMRC clarifying their position (/adopting a stricter view) on integrated arrangements which means that SRFT would be unable to recover all its VAT expenditure in respect of the Aspire services. SRFT have been in discussion with HMRC but have been unable to resolve the situation. A solution through restructuring the current arrangements is therefore sought.

### 4. Options

4.01 Salford City Council has sought advice from Price Waterhouse Coopers (PWC) on options that might relieve the situation. PWC has presented 3 options which have been appraised. **The key characteristics of each option are set out in Appendix A.**

- Option 1 is the current situation, where a VAT impact falls on SRFT
- Option 2 mitigates the VAT impact on SRFT, but creates a partial exemption risk for the council

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<sup>2</sup> Owing to the transfer of the Limes to SRFT in July 2017, the contract value reduced to £9,622,778

- Option 3 mitigates the VAT impact on SRFT, without creating a partial exemption risk for the council, but involves principle and contractual changes to the current arrangements.

## 5. The Partial Exemption Risk

5.01 Normally, organisations cannot fully recover all their VAT expenditure where they have income sources that are exempt from VAT. As a council, SCC enjoys “section 33” status which gives it certain VAT benefits, including the ability to fully reclaim *all* VAT, even on exempt supplies, so long as the council stays within a partial exemption calculation limit. Should it exceed that calculated limit, the impact on SCC is potentially up to £4m.

5.02 While options 2 and 3 both resolve the identified VAT impact for SRFT, option 2 threatens the council’s partial exemption calculation. The proposed **Option 3 is therefore preferred.**

## 6. Preferred Option

**6.01 The preferred option 3 is for SCC to take over responsibility from SRFT of the provision of service to the end user.** The service can still be sub-contracted from Aspire CIC. As SCC does not have the staff to manage the Aspire contract, it would need to source capacity from within the SRFT market management and social work teams.

6.02 This option could be implemented through the following changes to contractual arrangements:

### 6.03 *Integrated Care Partnership Agreement*

- No amendments required to the partnership agreement between SCCG and SCC

### 6.04 *ICO contract*

- The Aspire services would need to be removed from the ICO contract between SCCG and SRFT
- The ICO contract would be reduced in value by A+B where
  - A is the value of the Aspire contract
  - B is the cost of managing the Aspire contract within SRFT

### 6.05 *Integrated fund – new funding of SCC*

- Funding of A+B would be returned from the integrated fund to SCC
- SCC to invoice SCCG?

#### 6.06 *Aspire contract*

- Novate the contract from SRFT to SCC
- Value of the contract remains at its current value A

#### 6.07 *New SLA contract*

- SRFT provide capacity to manage Aspire contract through an SLA
- The value of the SLA contract to be B

### **7. Turning Point**

7.01 For information, a situation with some similarities exists with the Turning Point contract. Turning Point employs a two company structure to secure itself a tax advantage. The services are provided by a CQC-registered company, but SRFT contracts with a complementary non-CQC-registered company. Unfortunately, this has created a VAT problem for SRFT, which is now unable to recover its VAT expenditure on the contract.

7.02 PWC has advised that, if the contract is novated to the council, an arrangement similar to option 3 can be set up. SCC will then be able to recover VAT, provided that the contract documentation gives the council adequate governance and oversight to ensure that the services will only be delivered by the CQC-registered entity. A final recommendation will be brought forward on this matter in due course.

### **8. Miscellaneous**

8.01 PWC has advised that:

- Documenting arrangements is key
- SCC choosing to structure its affairs and contractual arrangements in a way that suits it, including consideration of the most efficient tax arrangement, is perfectly in order from HMRC's point of view.

### **9. Strategic Implications and Impact**

9.01 Under the current agreements for integrated care, Salford City Council has delegated a range of Care Act 2014 duties to Salford Royal Foundation Trust which enable the integration of Adult Social Care services with Health services within a single provider organisation.

9.02 These arrangements include those duties under Section 4 of the Care Act 2014 and the associated Care and Support Statutory Guidance, typically relating to the oversight of the 'independent' sector adult social care market.

9.03 This recommendation will alter the current arrangements to the extent that circa £10m pa commissioning investment into Adult Social Care will move from a contracting arrangement led by SRFT with Aspire to contracting arrangement led by SCC with Aspire.

9.04 This would result in formal contracting responsibility being transferred from SRFT to be managed under Salford City Council policy, under the governance of the Procurement Board. It would retain the strategic commissioning arrangement with Salford City Council.

9.05 The recommendation does however propose that the contracting capacity and the work associated with servicing the contract, remains with SRFT's Adult Social Care Market Management Team, who will be accountable to SCC under council procurement strategy. This relationship will be managed by the People directorate under the retained DASS Care Act 2014 responsibilities, through the integrated commissioning team.

9.06 Maintaining the responsibility for servicing the contract with SRFT, whilst at the same time connecting this into council procurement governance, will serve to maintain the arrangements for the delegated duties under Section 4 of the Care Act 2014 from the council to SRFT.

## **10. Legal and Procurement comment**

10.01 The report sets out the reasons for, and the three options considered for operating models to safeguard the future of provision for adults with complex needs under the Aspire contract, in summary, and following detailed advice from PWC;

1. maintain the current situation, where a heavy VAT impact falls on SRFT;
2. mitigate the VAT impact on SRFT by contracting with SRFT but creating a potential partial exemption risk for the Council; and
3. the recommended option to mitigate VAT risk whereby the contract between SRFT and Aspire is novated to the Council as the contracting party and avoids the partial exemption risk and take over responsibility for the provision of service to the end user from SRFT.

10.02 When the contract for adult services was originally awarded to Aspire by the Council (and then subsequently novated to SRFT when the ICO was created), Legal Services worked closely with procurement colleagues in considering and advising on



the process for awarding the contract to Aspire, in summary by concluding that a direct award preceded by the issuing of a VEAT notice to be the most appropriate method. That process permitted the award of a 5-year contract to Aspire under then current procurement legislation. SRFT extended that term for 12 months, and it is understood that they are in the process of approving a further extension to the term for a period of 2 years with an optional further 12 months to run from 1<sup>st</sup> June 2021 (to expire therefore on 31<sup>st</sup> May 2023 or if the additional 12 months option is exercised to 31<sup>st</sup> May 2024).

10.03 To enable the proposed recommendation to take place there are several contractual arrangement issues which need to be addressed. These are set out at section 5 of the report, and Legal Services will assist where required to ensure the Council's interests re protected with the novation of the contract (described above) between SRFT and Aspire, and the agreement to be put in place for SRFT to manage the Aspire arrangement on the Council's behalf.

10.04 The financial arrangements will also need to be clearly documented, both for the parties involved, and for HMRC purposes should they request to see evidence of the arrangement.

10.05 Whilst the PCR give some flexibility to awarding contracts or extensions under regulation 72 (modification of contracts), regulation 32 (negotiated procedure without prior publication), and possibly regulation 77 (reserved contracts for certain services), and regulation 74 ("light touch regime services"), Council must comply with the Public Contract Regulations 2015 (PCR) ), which require that contracting authorities treat candidates equally and in a non-discriminatory way and act in a transparent manner. In addition, the Council is required to comply with the requirements of its own Contractual Standing Orders (CSO's), Financial Regulations and the duties of Best and Social value failing which a contract may be subject to legal challenge from an aggrieved provider.

10.06 The recommendation contained within the report outlines the novation of the existing contract from SRFT to the council. As the contract transfers from SRFT to the council, the council will be required to tender the services in compliance with the Public Sector contract regulations and the council's contractual standing orders through the light touch regime

## **11. Recommendation**

11.01 The Adult Commissioning Committee is asked to:

- Approve that the provision of the services to the end user is returned to SCC from SRFT
- Approve that the contractual changes set out in section 5 are put into effect

**Paul Walsh**  
**Assistant Director Integrated Commissioning**