

## CABINET

23 July 2024

<b>Title:</b> Commissioning of a Community Healthy Weight Development Partner	
<b>Report of the Cabinet Member for Adult Social Care and Health Integration</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
<b>Report Author:</b> Philip Williams – Head of Localities Commissioning	<b>Contact Details:</b> Tel: 07849833756 E-mail: <a href="mailto:philip.williams@lbbd.gov.uk">philip.williams@lbbd.gov.uk</a>
<b>Accountable Director:</b> Fiona Russell - Director of Care, Community and Health Integration	
<b>Accountable Executive Team Director:</b> Elaine Allegretti, Strategic Director, Children and Adults	
<b>Summary:</b> <p>The borough is facing an unprecedented and ever-increasing obesity crisis and also has the lowest levels of physical activity in England. To stem this tide, the Council needs to make significant changes in its approach to tackling unhealthy weight.</p> <p>Evidence shows that we cannot treat our way out of this with the kind of individual programmes we currently rely on. These only reach a tiny fraction of our population and the Council can no longer focus its resources on providing weight management programmes that in their current form doesn't benefit the vast majority of residents.</p> <p>In every context upstream intervention beats downstream in terms of both equity and impact and we know that tackling these issues requires a sustained and integrated portfolio of preventative measures around food, activity and the environment to address the obesogenic environment and social norms so that healthy behaviours become easier for all.</p> <p>We know that multiple small changes in large numbers of people can have a large impact at population level and we know that these need to be delivered across a whole system. We also know the value of working with communities to co-develop inclusive, accessible and more successful healthy weight support and that a 'one-size-fits-all' approach is not going to work in Barking and Dagenham - no healthy weight approach will work unless it is realistic and recognises the way people actually live their lives.</p> <p>Taking all of these factors into account we have designed a new strategic approach that moves us away from providing traditional individual weight loss programmes and towards delivering a plan of action for the whole population. In March 2024, the health and Wellbeing Board / ICB Sub-Committee (Committees in Common) and the Health Scrutiny Committee both endorsed this new approach.</p>	

As a result, we are disinvesting in many of the structured weight management programmes and initiating a new largescale whole-system project to really understand what will work for the residents of Barking and Dagenham, and to design and test out new ideas and interventions and develop ways of realistically support people to build their own healthy weight plan around the way they live their lives.

To support us in achieving this we are looking to commission a development and delivery partner to work collaboratively with the council, it's partners and communities to design and deliver new ways of supporting healthy weight for many more people in the borough.

This partner will act as an enabler in this process of change – using their expertise in engaging with communities, networks and partners, and their experience of developing innovative healthy weight initiatives to create a new system level, community driven approach to improving healthy weight in Barking and Dagenham.

This work with our communities, voluntary sector and faith partners will be crucial to successfully implementing our new approach.

We know that that this development process will be iterative and based on community insights so whilst we are clear about the outcomes we want to see, our approach is very much about listening, testing and learning to deliver support that really works.

A full, detailed Specification has been developed that sets out the background, vision and principles and requirements whilst acknowledging that elements will need to be further developed as the work progresses. Our aim is to procure a provider who not only has the right skills, knowledge and experience but is also willing and able to work collaboratively with us on that basis.

### **Recommendation(s)**

Cabinet is recommended to:

- (i) Agree that the Council proceeds with the procurement of a contract for a Community Healthy Weight Development Partner in accordance with the strategy set out in the report; and
- (ii) Delegate authority to the Strategic Director, Children and Adults, in consultation with the Cabinet Member for Adult Social Care and Health Integration and the Head of Legal, to conduct the procurement and award and enter into the contract and all other necessary or ancillary agreements, including periods of extension, to fully implement and effect the proposals.

### **Reason(s)**

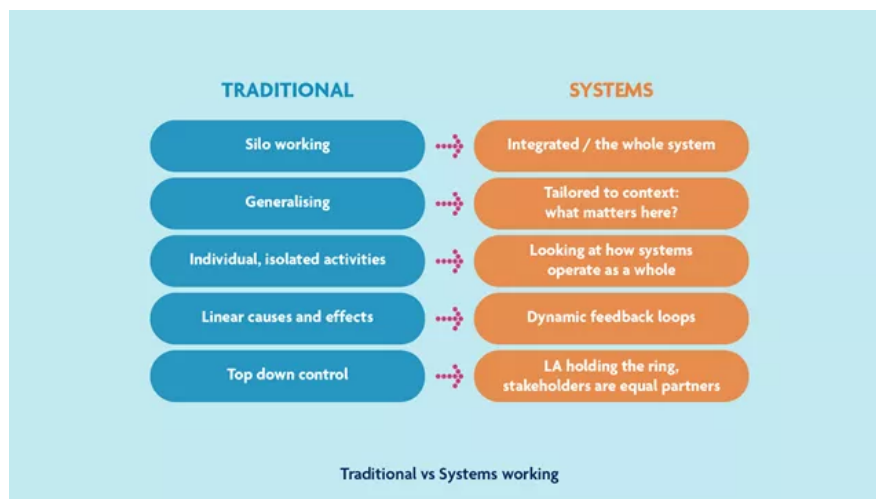
The procurement exercise will ensure compliance with the Council's Contract Rules and Public Contract Regulations and ensure continued provision and delivering new ways of supporting healthy weight for many more people in the borough.

## **1. Introduction and Background**

- 1.1 The Council wishes to make significant changes in the approach to tackling unhealthy weight in Barking and Dagenham. The need for these changes is driven by two key factors.
- 1.2 Firstly, we are facing an unprecedented obesity crisis in the borough, meaning that we have had to urgently reappraise our approach to weight management. We have until this point relied heavily on the delivery of structured weight management programmes to individuals through our Community Solutions Healthy Lifestyle Service; however, these only reach a tiny fraction of the population and have no discernible impact at all in supporting improvements in healthy weight for the overwhelming majority of our residents.
- 1.3 It has been estimated by our Public Health Team that it would take between 115-230 years to support every eligible B&D resident (just at today's levels). This has been described by the current President of the Association of Directors of Public Health (ADPH) as like trying to empty the ocean with a teaspoon
- 1.4 Secondly, the London Borough of Barking and Dagenham (LBBD), along with many other authorities and NHS partners, is facing significant financial pressures and is consequently going through a process of rebuilding and rightsizing to be fit for the future. This means that the council has to make difficult decisions to balance its budget and it needs ensure that every penny of funding is used to best effect, where it will benefit the greatest number of our residents and with particular consideration being given to the equity, reach and effectiveness of interventions.
- 1.5 Both of these factors have led us to conclude that focusing the majority of our funding on programmes to support a small number of people with their weight is no longer viable. Our aim is to instead invest the funding we have available in working in partnership with communities to find new ways to reach and support many more of our residents to maintain a healthy weight.
- 1.6 To do this we need to make very significant changes to the way we work together as a system and the means we employ to support our residents – intervening upstream at a population/community level wherever possible.
- 1.7 This change in approach is supported by a recent review of Healthy Weight Services led by the LBBD Public Health Team which provided the criteria for 'what best looks like' and set out some of the opportunities around changing healthy weight services in the borough, these included:
  - Exploiting place-based arrangements to commission/provide a system-wide response.
  - Exploring the role of health champions, care navigators, social prescribers, community and voluntary sector, primary care, education, council, policy, social workers, frontline staff, school nursing, health visiting etc. in delivering the support within the community.
  - Recognising the potential greater connectivity the community and voluntary sector has to local communities, and that they may be better placed to provide targeted support to underserved populations.

- Building community capacity and providing support in various community venues i.e. churches, mosques, synagogues, temples children centres, libraries and other CVS estates to improve access and to help with the system-wide approach.

1.8 The opportunities around providing a system response have over the past decade also become increasingly prominent nationally. In 2019 Public Health England published its 'whole-systems approach to obesity programme' which evidenced that adopting a systems approach, working 'upstream' and investing in work that supports improvements within local communities and the environments they live in ultimately provides a positive impact for a greater number of people.



- 1.9 By system, we mean everyone - from statutory partners to voluntary, community and faith groups to residents. By acting together, we are stronger and can achieve more.
- 1.10 Our new Localities Programme is centered around this systems approach. Localities-working is about stronger partnerships, more collaboration and (where effective) integration of services such as health and care to support improvements within our local communities and the environments residents live in. Alignment of healthy weight support within the Programme is a key objective.
- 1.11 Further impetus for changing our approach has been provided through the recently completed LGA Peer Review of Public Health which identified childhood obesity as a first priority that B&D Place should focus on to develop a cohesive, strategic approach.
- 1.12 Taking all of these factors into account a new strategic approach to healthy weight has been designed and was presented to the Barking and Dagenham Committees in Common and the Health Scrutiny Committee in March 2024. This set out the detailed reasoning behind need to change. Both committees endorsed this new strategic direction that moves us away from providing traditional individual weight loss programmes and towards delivering a plan of action for the whole population.
- 1.13 As a result of this decision, we intend to initiate a new largescale whole-system project to really understand what will work for the residents of Barking and Dagenham, and to design and test out new ideas and interventions that help and support our population and make a real difference.

- 1.14 We recognise that a 'one-size-fits-all' approach is not suitable in Barking and Dagenham. It must be a multi-faceted and tailored for LBBB as an ethnically diverse borough with many different communities requiring differing approaches. So, to develop this new approach we first need to gain deeper insights and understanding of the complex factors leading to unhealthy weight across our many different communities and use this to design a new direction that actually works for people.
- 1.15 There are developing three pillars to support our approach:
- **Pillar 1:** Healthy Weight: Developing a range of support for adults and children to help them adopt healthier behaviours and to guide them in setting and achieving personalised and realistic goals regarding their weight and overall health.
  - **Pillar 2:** Good Food: Creating positive relationships with food and eating in the borough through a wide range of initiatives relating to developing community access to healthier, fresher food as set out in the 'Barking and Dagenham Good Food Plan'.
  - **Pillar 3:** Movement and Activity: Increasing opportunities to participate in physical activities that allow people of all sizes, abilities, and interests to engage in enjoyable movement.
- 1.16 The three pillars are all closely interconnected but separate – it is not just about equating good food and activity with reducing obesity).
- 1.17 To support us in achieving Pillar 1, we are seeking to commission a provider who will act as an enabler in this process of change – using their expertise in engaging with communities to gather insight and their experience of developing innovative healthy weight initiatives to create our new way of working. We want to tailor interventions to local population groups and cultures, reaching into underserved communities, better targeting support and evolving a realistic approach to weight management that recognises the way people live their lives.
- 1.18 The provider will be expected to develop a whole range of support as set out in next section 2 below but this will include designing a whole borough healthy weight plan with partners, new healthy weight pathways, community-led healthy weight activities, individualised healthy weight guidance and support and specialist support for those who can't access mainstream activities.
- 1.19 The initial design and development contract length is two years with the option, subject to full independent evaluation, to extend for up to three additional years (2+2+1 years) to further extend and embed the provision. The initial phase of the contract will focus on the design and delivery of an all-age Healthy Weight Plan and Pathways for the borough. This will be based on community insight, an understanding of community strengths and assets and evidence from the testing of different activities, interventions and models of support.
- 1.20 The Plan will set out a preventative model of healthy weight support that should be innovative, locality based, self-sustaining, build community capacity, provide upstream interventions wherever possible, and be based on a systemic, partnership approach that harnesses the connective reach of our VCFS sector, local groups and organisations to work with and within local communities.

- 1.21 The second phase will focus on leading the implementation of the Plan and the delivery (with local partners and communities) of the interventions and initiatives agreed. Funding for this initial two-year development will be a maximum of £425,000 per annum.
- 1.22 The provider is expected, in collaboration with commissioners, to allocate this funding to support the agreed community activities and interventions for children, families and adults and to ensure the allocation of resources is kept continually under review as needs and priorities change.
- 1.23 Extension of the contract will be dependent on meeting all KPIs and agreed outcome measures and will take into account the findings of an independently commissioned Evaluation which will be conducted in Year 2 of the contract to assess the overall success of the new approach.

## **2. Proposed Procurement Strategy**

### **2.1 Outline specification of the works, goods or services being procured**

2.1.1 A full specification has been drawn up. The key deliverables are:

- Development of a new Healthy Weight Plan and Pathway built on community engagement and insights and including a full needs analysis / system mapping / interventions piloting and testing.
- Development with partners of a range of mainstream community led sessions/activities that directly and indirectly support Healthy Weight for children and adults (this will include extensive joint work with good food and activity partnerships as well as developing complementary sessions).
- Healthy Weight Navigation - develop individualised ways to help people think about the factors affecting their own and their family's weight, considering what they want to achieve, the barriers they face and what will work best for them in making lifestyle changes and tailoring their own programme of healthy weight support from the options available.
- Provision of limited structured healthy-weight support programmes, innovatively designed to engage those who due to disability or personal circumstances cannot access mainstream activities and interventions (even with reasonable adjustments and/or additional support).

2.1.2 The initial two-year design, delivery and implementation has been split into two phases:

#### **Phase 1. Design and Testing**

- Production of a full Phase 1. Development Plan.
- Creation of a stakeholder reference group.
- Development of strong locality partnership networks to build a whole borough approach to healthy weight, food, activity and the environment.
- Working with partners and communities to develop good local insights about 'what works' so as to guide the development of community activities and design the support people will need to access these. To trial and test these interventions and pathways to support.

- Working with partners to test out new models for the delivery of healthy weight interventions for vulnerable priority groups who are not able to access mainstream support.
- Healthy Weight Navigation - develop and test out individualised ways to help people think about the factors affecting their own and their family's weight so that they can adopt healthier living strategies and design their own programmes of support activities that will be meaningful and enjoyable to them.
- Delivering an all-age 'Healthy Weight Plan and Pathway' for the borough. This will be based on community insight, an understanding of community strengths and assets and evidence from the testing of different models of support.
- Delivery of a full implementation plan for Phase 2.

### **Phase 2. Healthy Weight Plan Implementation**

- Supporting ongoing partnership work around food, activity and the environment.
- Facilitating the delivery of co-produced community healthy weight and nutrition activities and targeted interventions that will be sustainable.
- Assessing any 'pump-priming' development funding required to facilitate new groups.
- Development of improved, better targeted communications and digital support around healthy weight.
- Working with VCFS partners to build a volunteer / Community healthy weight champions network / Peer support groups.
- Working with partners including social prescribing services to develop the navigator roles which will guide individuals in tailoring their own programme of healthy weight support from the options available.
- Improving equity through providing targeted weight-management support to individuals from specific priority groups and underserved communities who cannot access mainstream support.
- Supporting the independent evaluation.

2.1.3 It is important to note that the intention of this work is not to develop new self-contained weight management programmes but to work with partners to ensure there is a range of accessible, targeted interventions, opportunities and activities that people can be guided in choosing from to construct their own virtual programme of healthy weight support that meets their needs.

2.1.4 Whilst every effort will be made to ensure that these community activities are accessible to people with the widest range of needs, there will be a limited number of cases where the nature of a person's disability or particular personal circumstances mean this is not possible. In these small number of cases the provider will be expected to develop more structured and tailored support for these individuals that is specifically and creatively designed around their needs using local insight work and research.

2.1.5 We are looking to commission a provider who will have a wide breadth of knowledge and expertise around developing innovative healthy weight strategies and interventions, in-depth understanding of behavioural change techniques and a track record of undertaking intensive community connecting/insight work. We recognise the possibility that no single organisation will have the combination of skills necessary to carry out all of this on its own and, as such, we will be making it clear in the ITT that consortia bids are encouraged and welcomed.

## **2.2 Estimated Contract Value, including the value of any uplift or extension period**

2.2.1 The total maximum contract value if extended for five years (subject to Evaluation) is £2,125,000. Total maximum contract value over the initial two development years is £850,000 (£425,000 per annum for two years). The service will be funded from the Public Health Grant.

- The initial Development and Implementation contract will be for 24 months from 1 October 2024 – 30 September 2026. Of the funding provided for this stage a minimum of £50,000 should be used annually during the first two years to directly support the setting up of community led healthy weight activities.
- A 2+1 year Full Delivery extension will subsequently be negotiated on the basis of a robust independent evaluation demonstrating that the new provision is successfully achieving the aims set out in this specification and is supporting improved healthy weight across a wider reach of the borough's population.
- The costs of service delivery will be recalculated at this point but will not exceed the annual values for years 1 and 2.
- The evaluation provider will be directly commissioned by LBBD and will evaluate the project against agreed criteria from 01/04/25 – 31/03/26. This will allow for time for reporting, governance and any redesign work prior to any extension agreement. The funding for the evaluation will be over and above the payment to the provider but will not exceed £50,000 (This will be separately funded).

## **2.3 Duration of the contract, including any options for extension**

2.3.1 Five years. The initial design, development and implementation contract will be for two years with a possible extension for a maximum of 3 further years subject to successful evaluation).

**2.4 Is the contract subject to (a) the Public Contracts Regulations 2015 or (b) Concession Contracts Regulations 2016? If Yes to (a) and contract is for services, are the services for social, health, education or other services subject to the Light Touch Regime?**

2.4.1 No, The service falls under the Health Care Services Provider Selection Regime

## **2.5 Recommended procurement procedure and reasons for the recommendation**

2.5.1 The procurement will be undertaken using the Competitive procedure in accordance with The Health Care Services Provider Selection Regime (PSR) and will be advertised in Find a Tender and Contracts Finder as required by the Regulations.

## **2.6 The contract delivery methodology and documentation to be adopted**

2.6.1 The Council's standard terms and conditions contract will be used for the delivery of the contract. A no-fault termination clause will be included in the contract allowing notice to be given by the Council for early termination. This allows increased flexibility should a significant change in service provision be required.



- 2.6.2 Services are to be provided to Barking and Dagenham residents only; the service specification will highlight respective service eligibility criteria.
- 2.6.3 Service performance will be monitored through a series of Key Performance Indicators (KPIs) as detailed in the service specification that includes quantitative and qualitative data, service user feedback and activity on outstanding action plans reviewed at quarterly meetings.

**2.7 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract**

- 2.7.1 This new service is expected to deliver a minimum saving of over £1 million over the next two years in relation to the costs of the previous Healthy Lifestyles service. It is also expected to support more of the population to stay healthier, reducing to some degree pressure (and costs) on services.

**2.8 Criteria against which the tenderers are to be selected and contract is to be awarded**

- 2.8.1 It is proposed that a Quality/Price/Social value breakdown is split respectively in the following ratio 60:30:10 is used in the assessment of tenders.

**Quality - 60%**

- Quality and innovation (20%)– the need to ensure good quality services and support processes that will improve the delivery of healthcare or health outcomes.
- Integration, collaboration and service sustainability (20%)– the extent to which services can be provided in an integrated and collaborative way and in a sustainable way (e.g. stable delivery or service continuity).
- Improving access, reducing health inequalities and facilitating choice (20%)– ensuring all eligible patients have access to services, respecting patient choice and improving health inequalities.

**Social value (10%)** – providing additionality beyond the specification that improves social and environmental well-being for the local area.

**Price -30%**

**2.9 How the procurement will address and implement the Council's Social Value policy**

- 2.9.1 The specification sets out expectations that the Provider will ensure that staff represent the diversity of the borough wherever possible, through employing staff to deliver the contract from the local workforce/local communities.

The provision is also targeted at the key local issue of unhealthy weight which has a significant impact on the delivery of health and social care services as well as the local economy.

The Specification also sets out how the services will be delivered in partnership with local organisations, communities and resources on the ground and includes a

section on the partners the provider is expected work with and useful contact details to help the provider deliver on this commitment.

As part of the evaluation process bidders for the contract will also be asked to complete a Method Statement explaining how LBBD's Social Value expectations will be met and delivered.

## **2.10 London Living Wage (LLW)**

2.10.1 The provider is statutorily required to pay the UK Government's 'National Living Wage' to those over 23. Payment of the "London Living Wage" is at the discretion of the Provider.

## **2.11 How the Procurement will impact/support the Net Zero Carbon Target and Sustainability**

2.11.1 Not applicable.

## **3. Options Appraisal**

3.1 For the reasons stated in this report retention of the current service would not have been a viable option in terms of both cost and effectiveness. There are also no other 'off-the-shelf' weight management programmes that would be any more effective or any less expensive. It was concluded that designing a new service tailored around the needs of our residents was therefore the best option.

## **4. Waiver**

4.1 Not applicable.

## **5. Consultation**

5.1 The changes to Healthy Lifestyles services (inc. weight management) have been discussed and reviewed through relevant Council bodies and forums, including portfolio holders and directors.

5.2 The proposals for a new strategic approach including the commissioning of a Community Healthy Weight Support Partner to lead the development were endorsed at Health and Wellbeing Board and ICB Sub-Committee (Committees in Common) on 12 March 2024 and at Health Scrutiny Committee on 27 March 2024.

5.3 The Procurement Plan was considered at PRMG on 16 May 2024 and at Health Portfolio on 21 May 2024. The proposals were also considered and endorsed by the Procurement Board at its meeting on 17 June 2024.

## **6. Corporate Procurement**

Implications completed by: Ade Winjobi – Procurement Lead, Commercial Services

6.1 This report is seeking approval to procure a Community Healthy Weight Development Partner service for up to 5years from 1 October 2024. The service

being procured falls within the description of services covered by the Health Care Services Provider Selection Regime.

- 6.2 Keeping with the Public Contracts principles, it is imperative that the contract is tendered in a competitive way and that the process undertaken is transparent, non-discriminatory and ensures the equal treatment of bidders.
- 6.3 The report gives details of the procurement procedure, evaluation criteria, award criteria and the timetable for the procurement exercise. All the above show evidence of a fair tender exercise, which must be adhered to in compliance with the Regulation.
- 6.4 Corporate procurement will provide the required support to commissioners throughout the entire process.

## **7. Financial Implications**

Implications completed by: Sharon Ring – Finance Business Partner

- 7.1 Under the new strategic approach to healthy weight, the Healthy Lifestyle Development model will be funded from £480,000 Public Health Grant.

## **8. Legal Implications**

Implications completed by: Lauren van Arendonk, Acting Principal Contracts and Procurement Lawyer, and Mehzabeen Patel, Employment Lawyer

- 8.1 This report seeks to approve the procurement of a Community Healthy Weight Development Partner contract in accordance with the strategy set out in the report, for an initial period of two years with the option to extend for a further 3-year period up to a maximum of 5 years with an estimated value of £2,125,000. The procurement is subject to the Health Care Services (Provider Selection Regime) Regulations 2023. The report has not specified the relevant procurement procedure under the specific section of the PSR that it intends to use. The evaluation criteria is split in favour of quality, making up 60% of the evaluating metric. Under the Local Government Act 1999, the authority is legally required to provide and consider best value for money. Price is weighted at only 30% of the award criteria.
- 8.2 The healthy weight programme has connections to the recent leisure centre procurement. The background to the leisure contract and the full circumstances of the leisure procurement is not set out in this report. The Healthy Weight Programme was removed from the requirements of the leisure procurement.
- 8.3 Public procurements require the authority to be transparent, fair and treat bidders equally in relation to information to the market and its process. An authority must avoid distorting competition, it must prevent favouritism and it must prevent, identify and remedy any conflict of interest. Any relevant information pertaining to the authority's intention to procure such a service should be disclosed to all bidders so as not to provide an incumbent provider with an unfair advantage and the risk of legal challenge. Other bidders may argue unfair deprivation of a Programme element.

- 8.4 If the Council proceeds with the Healthy Weight Development Partner programme, it is recommended that it should ensure that this procurement is separate and distinct to the leisure procurement. In circumstances where the authority has found not to comply with PCR 2015 or PSR, financial penalties and/or legal challenges (which may result in court awarded damages) could occur. Where the integrity of any procurement process has been compromised and the procurement is non-compliant with the governing legislation, there is a risk of legal challenge.
- 8.5 This report was originally created for consideration at June cabinet. However, by way of background, procurement, HR and Legal colleagues raised some concern about the proposal with the background of the Leisure procurement, and therefore the report was deferred whilst this was explored. There have been numerous discussions in the interim to explore the concerns and assess the risk, and whilst there remains a great deal of uncertainty, in part the report has undergone some brief changes in an attempt to address the risks identified.
- 8.6 The key risk from an employment perspective, (which is not contained in the risk assessment appended to this report) can be summarised as follows. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) is a complicated area of employment law. It is highly fact specific and therefore advice and determinations require a clear understanding of what existed prior to a potential transfer, and what is envisaged after a transfer. Only then can satisfactory Legal advice usually be sought on whether there is a relevant transfer which is designed to protect the employment of an 'organised grouping of staff', by way of the automatic transfer principle. A straightforward example is where the Council engages a contractor to undertake work on its behalf i.e. outsourcing.
- 8.7 However, management has been clear, that they do not know what the future for healthy lifestyles holds both during this testing period and thereafter. They can at this stage only confirm that it will not look like it previously did. Management has been categorical that the services are not statutory in nature, that services previously delivered by LBBD staff are not being commissioned (formally, or otherwise), that the current services will cease when the final staff members have served their notice (with no extensions) and that the future activities are categorically different from the service previously provided. Where there is conflicting information, and to find a way forward, Managements instructions, (as the client and in part, Leadership of this Council) are favoured, and on that basis, we simply reiterate their assessment that TUPE does not apply to this procurement proposal. As a general rule, legal advice is only as good as the instructions received.
- 8.8 That being said, there remains a risk, that staff who have been made redundant and/or the Trade Unions, could argue that this approach is seeking to circumvent the application of TUPE and/or that the work carried out by the development partner going forward is "fundamentally the same". If that situation arises, it is expected that management will be able to explain in simple terms how the work carried out by the successful bidder, on a day-to-day level, is not "fundamentally the same" as the activities carried out by LBBD staff prior to the procurement. In doing so, they will need to avoid taking a pedantic approach to the explanation which risks defeating the purpose of the provisions, whilst also not being too generic in nature. Whilst the risks and uncertainty have been explored in detail outside of this report and will not be repeated here, one example which illustrates this, is the existence of the "navigator" roles. It remains unclear how soon these functions will materialise, or

what they will entail in any detail, which once again makes definitive legal advice impossible. Ultimately, there is a lot of uncertainty around this testing period, in an area of law that is notoriously uncertain even where the facts are clear. It is therefore crucial that robust contractual provisions are in place, addressing the potential risks and liabilities.

- 8.9 Lastly the litigation risk stemming from this proposal, are ultimately claims for unfair dismissal. Both from automatically unfair dismissal claims i.e. TUPE related dismissals, and/or ordinary unfair dismissal claims stemming from redundancies of staff that were once employed to carry out 'healthy lifestyle' activities. The remedies available to an employee who succeeds on an unfair dismissal claim, are reengagement, reinstatement or compensation. Reengagement, although unlikely can be by a successive employer, or an associated employer, in employment comparable to that from which they were dismissed or other suitable employment. There is also the risk of a failure to inform or consult claim. This litigation overall could be particularly costly, dependant on the number of claimants. Whilst Management's assessment of the risk being extremely low is noted, it is understood that there is considerable discontent stemming from the restructure exercise within this service, and therefore there is likely to be considerable scrutiny over the Council's next steps with this service, possibly resulting in litigation.

## **9. Other Implications**

- 9.1 **Risk and Risk Management** – Employment related risks and mitigations are noted in the section above, other risks relating to the service procurement and provision are included in the risk assessment (Appendix 1.)

### **9.2 TUPE, Other Staffing and Trade Union Implications**

Implications completed by Adnan Masood, Interim HR Business Partner

Staffing issues relating to the current service have been advised by HR through a separate report to LBBB Workforce Board and subsequent staff consultation involving Trade Unions. In the Workforce Board paper which went on 22 November regarding Healthy Lifestyles HR comments included the following statement:

*'If option 3 in section 1 above is agreed (Option 3: Utilise Newham's 'Healthier Lives' Dynamic Purchasing Vehicle (DPV)), it is recommended that the commissioning of an external provider to deliver the new model includes consideration of whether there is a 'relevant transfer' for the purposes of TUPE – i.e. existing roles in the current structure are replicated by the new provider and staff therefore have a right to transfer their employment to the new provider.'*

It was also minuted at the meeting:

*'There is a risk regarding TUPE implications which is complicated by the timelines for commissioning the external provider, and exactly what is being commissioned. This risk will be mitigated through staff consultation and once there is more certainty about the future model.'*

HR has been consistent in its guidance that there needs to have shared a definitive specification in order for us to advise whether TUPE does apply. The service leadership have asserted that the existing service has ceased, and that any future

offer will be delivered in a radically different way. However, management has been clear, that they do not know what the future for healthy lifestyles holds both during this testing period and thereafter. They can at this stage only confirm that it will not look like it previously did future activities will be categorically different from the service previously provided.

HR role is limited to provide advice and guidance in line with policies and best employment practices and highlight potential risk. Onus is on service leadership to use the advice and guidance provided i.e. in this case, to present in simple terms how the work carried out by the successful bidder, on a day-to-day level, is not “fundamentally the same” as the activities carried out by LBBB staff prior to the procurement.

- 9.3 **Corporate Policy and Equality Impact** – The proposals link to the Joint Health and Wellbeing Strategy, specifically the priority to ‘live well’. The recommendations seek to increase LBBB’s capacity and capability to improve outcomes for residents in relation to healthy weight. The equality impact statement refers to protected characteristics in relation to staff. There are no expected implications in relation to residents, instead the new model is expected to be more culturally appropriate, so intended to improve outcomes across protected characteristics. The service will be expected to be accessible to all residents (provided they meet eligibility) including those with both mental and physical disabilities in which case reasonable adjustments as per requirements under the Disability Discrimination Act 1995 will be offered by providers to facilitate and maintain access. Commissioners will actively monitor this.

The new provision will also employ the principles of health equity and have a greater presence in the areas with highest obesity prevalence and where there are greater numbers of people from the priority groups.

An EQIA screening tool has been completed and assessed and it has been confirmed that a full assessment is not required. The Screening tool is attached at Appendix 2.

- 9.4 **Health Issues** - As the strategic case above sets out, the commissioning of this support seeks to improve LBBB’s capacity and capability to increase healthy weight, healthy behaviours and lifestyles of residents. The recommendations are expected to achieve a positive impact on our communities through having a wider reach.

**Public Background Papers Used in the Preparation of the Report:** None

**List of appendices:**

- **Appendix 1:** Risk Assessment
- **Appendix 2:** EQIA Screening Tool Assessment