

## **Cabinet – 18 March 2020**

### **Provision of Residential and Nursing Care Services for Older People, Complex Care and Mental Health**

**Portfolio:** Adult Social Care

**Related portfolios:** Councillor Rose Martin

**Service:** Adult Social Care

**Wards:** All

**Key decision:** Yes

**Forward plan:** Yes

#### **1. Aim**

For the Council to be assured that it will be able to continue to have sufficient availability of services to comply with its statutory obligations. To also ensure that the Council has compliant contractual arrangements in place which are fit for purpose from 1<sup>st</sup> April 2020 for Residential and Nursing Care Services for Older People, Complex Care and Mental Health.

#### **2. Summary**

- 2.1 To allow for the conclusion of a robust procurement exercise, there is a need to extend the contractual arrangements with existing providers of the Services under the 2019/20 contracts for up to a further 6 months.
- 2.2 The retender of the Services with all current contracts (for older people and complex care services users) will establish a new, compliant contractual arrangement which has undergone significant review and update, to ensure future 'fit for purpose' contractual and operative arrangements.
- 2.3 This is a key decision because it exceeds the threshold for "significant" expenditure of £250,000.
- 2.4 These Services are a corporate priority because they protect the most vulnerable from avoidable harm, including treating and caring for people in a safe environment.

#### **3. Recommendations**

- 3.1 That Cabinet delegate authority to the Executive Director for Adult Social Care, in consultation with the Portfolio Holder for Adult Social Care, to approve the extension of 2019/20 transitional contractual arrangements for the provision of the Residential

and Nursing Care services for the period of up to 6 months from 1 April 2020 to 30 September 2020.

- 3.2 That Cabinet delegate authority to the Executive Director for Adult Social Care, in consultation with the Portfolio Holder for Adult Social Care, to approve the award of and the ongoing application process for contractual arrangements for the provision of the Residential and Nursing Care services for Older People, Complex Care and Mental Health services for the period from 1 October 2020 to 31 March 2030 and to subsequently authorise the sealing of deeds and/or signing of contracts and any other related documents for the provision of such services, as appropriate, including any agreement with the CCG to facilitate these services.
- 3.3 That Cabinet delegate authority to the Executive Director for Adult Social Care, in consultation with the Portfolio Holder for Adult Social Care, to authorise any variations to the contractual arrangements or other related documents for such services should this be required throughout the duration of the term of any contracts.

#### **4. Report detail - know**

##### ***Context***

- 4.1 The Care Act 2014 sets out the Council's duty to meet the care and support needs of people who are determined to have eligible needs in accordance with the criteria set out within the Act. Local Authorities must promote wellbeing when carrying out care and support and prevent, reduce or delay the onset of need and support the person to be as independent as possible.
- 4.2 The Council commissions care providers to deliver care and support where it has a duty to meet this need. Residential and Nursing services are one of the many ways that the Council is able to meet its statutory duty. Accommodation and care are provided by a range of providers and the service is staffed 24/7 (ie round-the-clock). These services are regulated by the Care Quality Commission. The Council and Walsall Clinical Commissioning Group (CCG) adopts an additional internal quality assurance process.
- 4.3 There are two types of contract arrangements in place for the Services: (i) the 2004 complex care contracts; and (ii) the 2019/20 transitional contractual arrangements. The 2019/20 contractual arrangements expire at the end of the month. The new competitive tendering exercises will set out to align these contractual arrangements through an ongoing process over 10 years.
- 4.4 The Council currently leads the procurement of these Services on behalf of the CCG.
- 4.5 There have been a number of factors that have delayed the re-procurement exercise, including:
  - The future status of the commissioning activity conducted by the Council on behalf of the CCG. The CCG is required to make a decision whether they would like to continue with this current arrangement and the outcome could significantly impact on the procurement and contractual documentation;

- The Council is obliged to follow statutory guidance when commissioning services to assure itself and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care. The Council is still in the process of considering the impact of its own activities on the market as a whole, in particular the potential impact of its commissioning and re-commissioning decisions.

4.6 As a result of the issues set out in the above paragraph of this report, there is a requirement to extend the terms of 2019/20 contractual arrangements from 1 April 2020. This is in order to ensure continuity of service provision for placements that have been made under contracts that are due to expire on 31 March 2020.

4.7 Work with our Procurement and Legal Services to progress the tendering exercises is ongoing with draft service specifications, contracts and arrangements with the CCG nearing their final stages, plus with ongoing consultation with key stakeholders such as Public Health and Assessment and Care Management.

4.8 It is expected that the procurement exercise and new contractual arrangements will be completed and in place by September 2020. Therefore, extending current contractual arrangements will ensure that the Council is compliant with its responsibilities under the Care Act 2014.

### ***Council Corporate Plan priorities***

4.9 This proposal links to the Council's corporate priority 'Communities are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion'. The Services will deliver the following outcome:

*The most vulnerable are protected from avoidable harm, including treating and caring for people in a safe environment through working within the local community.*

4.10 Enhancing quality of life for people with care and support needs and those with long term conditions; residential and nursing care provision provides a safe and more appropriate environment for individuals recovering from ill health and/or injury or requiring long term care.

### ***Risk management***

4.11 Adult Social Care have assessed the risk of challenge by the extension of the transitional contractual arrangements to be low. This is on the basis that the Council has already commenced the procurement exercise and will shortly be undertaking a competitive tendering process for the long-term service provision.

4.12 The risk of challenge will be further mitigated by the Council's Procurement colleagues issuing a Modification notice, allowing the modification of the current contract during its term in accordance with the Public Contracts Regulations 2015, following Cabinet's approval.

4.13 There is a risk to continuity of services if approval is not secured for extending transitional contractual arrangements. Further, without such extensions, the services might have to be delivered via non-compliant, temporary, short-term 'spot

purchase' arrangements outside of compliant tendering processes, with a possible cost pressure as a result of providers imposing service price increases. This would be unlikely to achieve best value and might also make it harder for the Council to be assured that it will be able to continue to have sufficient availability of the service to comply with its statutory obligations. The risk of having to deliver the services via such spot purchase arrangements will be minimised by Cabinet's approval to extend contractual arrangements for up to 6 months whilst the competitive tendering exercise is completed and the long-term arrangements are implemented.

### ***Financial implications***

- 4.14 The Services will continue to be funded from the existing residential and nursing care budget of £28.05m per annum (£28,050,000).

### ***Legal implications***

- 4.15 The Care Act 2014 places a duty on the Council to promote the efficient and effective operation on the care market for meeting care and support needs. Whilst the Council is not required to set out a minimum price for care, it clearly does have to ensure that the rates paid are sustainable. Statutory guidance states that the Council should have evidence that the price it pays for care is sufficient to meet the costs and to meet the requirement for quality.
- 4.16 The Council's new contractual arrangements for the Services will be in a form approved by Legal Services.
- 4.17 Due to recent Local Government and Social Care Ombudsman reports about care home top up fees (for Dudley Council, dated 29 November 2019 and Lincolnshire County Council, dated 30 January 2020) there is the potential that during the lifetime of the proposed contracts, the Council may have to review payment terms with care homes and how top-up fees are recovered. In the event that such changes are necessary this may result in modifications to the contracts and Adult Social Care will seek a further Cabinet decision if necessary before any such changes are made.

### ***Procurement Implications/Social Value***

- 4.19 The 6 months extension to the existing transitional contractual arrangements from 01 April 2020 to 30 September 2020 will be conducted in accordance with Regulation 72 of the Public Contract Regulations 2015, the Council's Contract Rules and Social Value Policy.
- 4.20 The Council will publish a Modification notice, allowing the modification of the current contract during its term in accordance with Regulation 72 of the Public Contract Regulations 2015. Regulation 72 sets out a range of conditions which need to be satisfied in order to modify contracts, which include ensuring that contracting authorities are not materially modifying the scope or scale of any existing contracts. Procurement and Legal services are satisfied that the proposed modification complies with these requirements.
- 4.21 Although this is not ideal in the current circumstances it has been assessed that this is the most compliant option available that provides the least risk to the Council, while ensuring the continuity of service provision.

- 4.22 For the new contractual provision from 01 October 2020 the value of the contracts are above the current European Union Threshold for Light Touch Services (£615,278) and the tendering processes will therefore be conducted in accordance with the Public Contract Regulations 2015, the Council's Contract Rules and Social Value Policy.
- 4.23 The 'Light Touch' regime gives Contracting Authorities such as the Council greater flexibility to design procurement processes which are appropriate for the relevant market and service need, provided they follow the principles of equal treatment and transparency.
- 4.24 As individuals have a statutory right of choice under the Care Act 2014, it is important that any process used does not restrict this choice inappropriately. By utilising an open application process, the Council can ensure that the process is appropriate and proportional for service providers to sign up to the Council's standard contract.

#### ***Property implications***

- 4.25 There are no property implications arising out of this report.

#### ***Health and wellbeing implications***

- 4.26 Continuing to commission these services will enable the Council to promote independence, choice and control for adults and their families. It also links and contributes to the Council's corporate priorities referred to in section 4.9 – 4.10 of this report.
- 4.27 The principles and actions contained within this report are in full accordance with the Marmot objectives because service users will have increased independence, improved health and can positively contribute to their communities in a safe and healthy way.

#### ***Staffing implications***

- 4.28 There are no staffing implications arising out of this report.

#### ***Reducing Inequalities***

- 4.29 The implications for reducing inequalities have been taken into account and assessed as set out below:
- (i) Consideration has been given to the Council's responsibility under the Equality Act 2010; and
  - ii) The Council's duty to meet people's eligible needs will remain the same following the award of the new contracts for the Services.
- 4.30 An Equality Impact Assessment (EqIA) is not required as this is a statutory service.

#### ***Consultation***

- 4.31 A public consultation was not undertaken, as there is no change to the current service. The renewal of the contract is to ensure that all contracted providers are issued with new terms and conditions of the contract. Engagement including Walsall CCG and internally within the Council was undertaken to ensure that the updated Schedules for the residential and nursing contract will continue to meet the specific needs of the protected groups who are being placed in residential and nursing homes across Walsall and out of borough providers.

## **5. Decide**

- 5.1 The Council needs to extend its current contractual arrangements for the continuity of the Services whilst it undertakes an open application process and awards contracts to providers for the period 1 October 2020 to 31 March 2030 to allow additional providers to join during the this term, which will give flexibility to ensure service user needs and ability to exercise choice are met more effectively.
- 5.2 The new proposed arrangements also offers the Council the opportunity to contract in different ways with providers throughout the lifetime of the application process, to encourage continuous improvement, including streamlining contractual arrangements, which may achieved better value for money, rather than use a standard framework approach.
- 5.3 Cabinet is requested to consider the content of this report and to approve the extension of the current 2019/20 contractual arrangements whilst the finalisation of the new application process is completed to the award contracts for the Services for the period from the date the application is accepted to 31 March 2030 as outline in section 3.

## **6. Respond**

- 6.1 Subject to Cabinet approval of the recommendations, Adults Social Care will work with corporate colleagues to progress:
- The extension of current contractual arrangements for a period of up to 6 months from 01 April 2020 to 30 September 2020, to allow the re-procurement and award of new contracts from 01 October 2020;
  - The award of new contracts for the provision of the Services for the period from 01 October 2020 to 31 March 2030;
  - Ongoing applications by providers of the Services, awards of and finalising contractual arrangements for the provision of the Services for the period from the date any application is accepted until 31 March 2030.

## **7. Review**

Residential and Nursing contracts will be reviewed in line with our contract management and individual support plan review process.

## **Background papers**

None

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9 March 2020



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9 March 2020