

## **Cabinet – 12 February 2020**

### **Domiciliary Care and Supported Living Providers Contract**

**Portfolio:** Councillor Rose Martin, Adult social care

**Related portfolios:** All

**Service:** Adult Social Care

**Wards:** All

**Key decision:** Yes

**Forward plan:** No

#### **1. Aim**

1.1 This report seeks Cabinet approval to award spot contracts:

- Across all lots of the Community Based Services (CBS) Framework for non-contracted domiciliary care providers to address capacity within the market and to enable the council to discharge its duty of care.
- To non-contracted Supported Living (SL) providers that have been used to this financial year and will continue to use until 31 March 2021.
- Extend Transitional 5 (T5) contracts where supported living providers have been unsuccessful or not applied for the new SL framework.

To allow the Council to manage the smooth implementation and transition of the new supported living framework up to 31 March 2021 and have formal contracts in place.

#### **2. Summary**

2.1. This is a key decision because it exceeds the threshold for “significant” expenditure of £250,000.

2.2. It is likely to have a significant impact on two or more wards within the borough.

2.3. These services are seen as a corporate priority as the most vulnerable are protected from avoidable harm, including treating and caring for people in a safe environment.

#### **3. Recommendations**

3.1 This report seeks Cabinet approval to:

- Award spot contracts for the CBS Framework to non-contracted domiciliary care providers that the Council has used this financial year and will need to

continue to use, to address capacity within the market until 31 March 2021 when the framework will be retendered (see appendix 1, this information is contained in the Private Report as it contains confidential information). Delegated authority is requested for the Executive Director of Adult Social Care in consultation with the Portfolio Holder, Councillor Rose Martin, to subsequently authorise the sealing, signing, deeds or other related documents for such services.

- Award delegated authority to the Director of Adult Social Care, in consultation with the Portfolio Holder for Adult Social Care, to award additional spot contracts across the CBS framework to all client groups should this be required to manage capacity in the market until the tender exercise is completed in 2021.
- Award spot contracts to non-contracted supported living providers that the Council has used this financial year and will continue to use until 31 March 2021 (see appendix 3, this information is contained in the Private Report as it contains confidential information). Delegated authority is requested for the Executive Director of Adult Social Care in consultation with the Portfolio Holder Rose Martin to subsequently authorise the sealing, signing, deeds or other related documents for such services.
- Extend the current Transitional 5 (T5) supported living contract with providers that have been unsuccessful or not applied for the new supported living framework that goes live on 27 January 2020 (see appendix 2, this information is contained in the Private Report as it contains confidential information). This will allow the Council to manage the smooth implementation of the new supported living framework providers during the 12 month transition period and ensure formal contracts are in place until 31 March 2021.

#### **4. Report detail - Know**

- 4.1. The usual hourly rate for Older People (OP) Domiciliary care in Walsall is £14.33. The regional average rate paid is £15.04. Wolverhampton City Council as our closest comparator pays £14.52.
- 4.2. The rate that Walsall pays has been subject to significant investment in the last three years; however, in reality this has only served to narrow the gap and has not closed it.
- 4.3. Despite the low rates paid to Domiciliary Care providers, Walsall Council has managed to maintain a good relationship with providers in the borough and domiciliary care capacity has always met demand.
- 4.4. A number of factors have now compounded to create challenges in commissioning sufficient capacity in the domiciliary care market to meet demand. These factors are:
  - Despite introducing a 'Zone Provider', model<sup>1</sup> in the way that we commission care in 2017, providers did not shift their resources to create capacity in the zone that they were awarded. The impact of that is that

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<sup>1</sup> The Zone Provider Model means that the Borough was split into six zones and providers were awarded a Primary, Secondary or Tertiary contract in that Zone. The expectation was that if any packages of care were required in that Zone it would be picked up by one of the three Zone Providers. This model was introduced in order to reduce travel time and costs between visits.

despite the zones being awarded in 2017, some zones have upwards of 15 providers operating in that area. This is an inefficient way of working and means that there is overprovision of capacity in some areas and underprovision in others.

- Recruitment of domiciliary care staff has always been very challenging, however, a number of recent events have meant that recruitment is currently particularly challenging, these are:
  - The recent opening of supermarkets in and around the Borough. Although it is very sad, the reality is that supermarket work is often in direct competition for the same work force who provide care, particularly when those supermarkets are able to pay in excess of £10 per hour when carers are paid the National Minimum Wage and can offer more stable working hours.
  - The opening of a 72 bed care home in the Borough. This care home will employ 90 staff, many of these will be care workers, many will move from domiciliary care as care home work is seen as more attractive to care workers.
  - Domiciliary care in neighbouring boroughs are paid at a higher hourly rate and therefore some domiciliary care agencies will pay their carers above (although usually only marginally) the National Minimum Wage. Those carers that are willing and able to travel to neighbouring boroughs are doing so.
- Demand for domiciliary care has increased over the last year, and although domiciliary care capacity is not decreasing, it is not increasing in line with the increase in demand.
- In August 2019, Adult Social Care implemented a requirement for providers to be paid only for the care that they have delivered (actuals), rather than on the care that was commissioned. Although there is no evidence to support that providers are reducing their capacity because of this decision, there is reason to believe that this is influencing their willingness to increase their capacity in line with Adult Social Care demand.

#### Use of Non Contracted Providers

- 4.5. Adult Social Care is currently using a number of non-contracted domiciliary care providers listed in appendix 1 (this information is contained in the Private Report as it contains confidential information) to ensure the Council is able to discharge its duty of care when there are peaks in demand. The Council will need to continue to use these providers until the new CBS Framework is in place during 2021. To date the Council has spent £1,089k on non-contracted domiciliary care providers and based on this, is forecast to spend £1,453k for 2019/20.

#### Supported Living

- 4.6. On 20 March 2019 Cabinet gave approval for the Council to award T5 contracts to existing providers currently contracted with the Council under Transitional 4 contracts, this was for a new contract term from 1 April 2019 to 31 March 2020. Due to the delay in awarding the supported living framework, the Council now requires approval to extend T5 contracts and award spot contracts to facilitate the smooth implementation of the new supported living framework.
- 4.7. T5 contracts for successful providers will expire at midnight on 26 January 2020. For unsuccessful supported living providers and those providers who chose not to apply to the framework, T5 contracts expire 31 March 2020. Therefore, approval is required to extend these T5 contracts by 12 months, to 31 March 2021 to allow

for the smooth transition of service users. There is a transition plan in place for these service users. These providers are listed in Appendix 2 (this information is contained in the Private Report as it contains confidential information). Spend to date with these providers is £1,408k and based on this, the Council is forecast to spend £2,112K for 2019/20 within budget.

- 4.8. The Council use a number of non-contracted supported living providers who will either continue to supplement the new framework by providing a small number of bespoke packages, or live caseloads will transfer to framework providers post 27 January 2020. There is a transition plan in place for these service users. These providers will require a spot purchase contract to be awarded to provide a formal contractual arrangement and are listed in Appendix 3 (this information is contained in the Private Report as it contains confidential information). Spend to date with these providers is £813k and based on this, the Council is forecast to spend £1,219k for 2019/20.
- 4.9. Of the 312 supported living service users, 118 are affected by the implementation of the new framework. The transitional arrangements in place to manage this are:

No.	Action	Timescale	No Service Users Affected	Comments
1	Re-open framework	Post 27.1.20	81	There are currently 2 providers delivering packages to these service users who are expected to apply.
2	Replace provision at a 20 bedded SL project	Completion by 31.3.20	18	Social work reviews to be completed by end January 2020 with the aim to undertake a procurement exercise and have a new contracted provider in place for April 2020
3	Transfer to DPs	Completion by 30.09.20	3	N/A
4	Transfer to an appropriate framework provider.	Completion by 31.03.21	16	These service users are supported by 6 different providers will be reviewed and transferred to an appropriate framework provider, unless the current provider is required to deliver a bespoke package which will require an individual compliant procurement exercise to put a complaint contract in place.

## **Council Corporate Plan priorities**

- 4.10. 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'. This service will deliver the following outcomes:
- 4.11. The most vulnerable are protected from avoidable harm, including treating and caring for people in a safe environment through working within the local community.

## **Risk management**

- 4.12. The award of spot contracts:
- Across all lots of the CBS Framework for non-contracted domiciliary care providers listed in appendix 1 (this information is contained in the Private Report as it contains confidential information) and additional non contracted providers
  - To non-contracted supported living providers listed in appendix 3 (this information is contained in the Private Report as it contains confidential information)

and extension of T5 Supported Living contracts for those providers that have been unsuccessful or have chosen not to apply will ensure that the Council is compliant with its Contract Rules and able to respond compliantly to demands in the care market until the new CBS Framework is in place during 2021 and until new supported living framework transitional arrangements are embedded.

- 4.13. The supported living transitional arrangements outlined in 4.10 will put contractual arrangements in place to mitigate the risk to the Council to ensure that the majority of service users are transferred to appropriate supported living framework providers; or awarded a direct payment or an individual compliance procurement is put in place to manage the small number of bespoke packages of support on or before 31 March 2021.

## **Financial implications**

- 4.14. The recommendations contained within this report, to extend existing contractual arrangements and to add additional providers onto the Council's contracting frameworks will be implemented with no change to the rates currently paid by the Council. As a result no additional costs will be incurred in approving the recommendations set out within this report.

## **Legal implications**

- 4.15. It is clear that the proposed expenditure with a number of the providers listed in Appendix 1, 2 and 3 (this information is contained in the Private Report as it contains confidential information) has already, or before 31 March 2021 is likely to, exceed the financial thresholds that apply under the Public Contract Regulations 2015 in terms of the Council having a legal obligation to go out to tender for the award of the contracts in question. This therefore exposes the Council to a risk of legal challenge in terms of the procurement of some of the contracts potentially

constituting an unlawful direct award. In order to mitigate this risk, the contracts will be awarded for the shortest period of time possible in order to achieve a managed transfer of work to the alternative providers that have been awarded longer term framework contracts via compliant procurement exercises in accordance with the transition plan.

- 4.16. While there may be no formal written contracts in place in relation to any of the identified providers, there will nevertheless be an implied contract in place based on the previous expired terms and conditions (where applicable) or custom and practice where there has been no previous contract.
- 4.17. The Council will enter into a spot and or extend existing transitional contracts with the providers listed in appendices 1, 2 & 3 (this information is contained in the Private Report as it contains confidential information) in a form approved by Legal Services.

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

- 4.18. The award of spot contracts and extension of T5 contracts during 2020 will require an alignment of procurement resources.

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

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

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

- 4.20. Putting compliant contractual arrangements in place with providers 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 this report at section 4.10.
- 4.21. The principles and actions contained within this report are in full accordance with the Marmot objectives as clients will have increased independence, improved health and can positively contribute to their communities in a safe and healthy way.

#### **Staffing implications**

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

#### **Reducing Inequalities**

- 4.23. An Equality Impact Assessment (EqAI) is not required for this report.

#### **Consultation**

- 4.24. There is no need for consultation because the Council is not making any changes to the service, it is putting the correct contractual governance in place.

### **5. Decide**

- 5.1 Cabinet is requested to consider the content of this report and to agree the recommendations 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:

(a) Progress the award of:

- spot contracts to non-contracted domiciliary care providers listed in appendix 1 (this information is contained in the Private Report as it contains confidential information),
- spot contracts to non-contracted supported living providers listed in appendix 3 (this information is contained in the Private Report as it contains confidential information), that the Council has used this financial year and will continue to use until 31 March 2021 or earlier; based on the conclusion of the supported living transition plan.
- Award additional spot contracts across the CBS framework to non contracted domiciliary care providers where this is deemed necessary to meet market demand until the new CBS framework is in place during 2021.

(b) Extension of:

- T5 contracts listed in appendix 2 (this information is contained in the Private Report as it contains confidential information).

## 7. Review

7.1. Once awarded and fully commissioned, these contracts will be reviewed in line with our contract management and individual support plan review process

## Background papers

None

The Appendices are included in the Private Report as they contain confidential information

Appendix 1 Non-contracted spend for Domiciliary Care Providers that require spot contracts

Appendix 2 Unsuccessful Supported Living Providers on a T5 contract that requires extension

Appendix 3 Non Contracted Supported Living Providers that require spot contracts

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4 February 2020



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4 February 2020