

Cabinet – 21 March 2018

Accommodation-based Service Tender (Lot 1- Residential & Nursing) and Residential and Nursing Transitional Contract Arrangements

Portfolio: Councillor Diane Coughlan

Related portfolios: N/A

Service: Adult Social Care

Wards: All Wards

Key decision: Yes

Forward plan: Yes

1.0 Summary

In 2013 Cabinet authorised a procurement process be undertaken in respect of residential and nursing care services for older people and people with complex needs

- 1.1 Residential and Nursing services are 24hr a day, accommodation, care and support on a long term or short term basis. This provision is required to be registered to provide such services through the Care Quality Commission.
- 1.2 Due to expiration of contacts in 2013 Cabinet authorised a procurement process be undertaken in respect of residential and nursing care service.
- 1.3 Complex care providers were awarded contracts however, these have not commenced and in the short term there is a requirement to reinstate existing 2004 contracts, and for older people providers to move to a transitional contact arrangement effective from 1st April, 2018
- 1.4 This report provides an update on the progress to date and current position and seeks Cabinet approval on a number of recommendations that enable continuity of care provisions whilst implementing fit for purpose, longer-term contractual arrangements.
- 1.5 The recommendations in this report constitute a Key Decision on the basis that it is likely to have significant impact on two or more wards within the borough and it results in the Council incurring expenditure which is, or the making of savings which are, significant, having regard to the Council's budget for the service or function to which the decision relates.

2.0 Recommendations

Cabinet approval is sought for the following recommendations:

- 2.1 Cabinet approve the award of new transition contracts for the provision of Residential and Nursing Care Services, where required, for the period 1 April 2018 to 30 September 2018, with the option to extend for a further period of up to six months
- 2.2 Cabinet approve the approach of offering Out of Borough placements to Walsall funded eligible clients, where it is safe and appropriate to do so and where the out of borough placement is more cost effective than in-borough available placements.

3 Report detail

- 3.1 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.
- 3.2 The Council commissions Care Providers to deliver care and support where it has a duty to meet this need. Residential and nursing services is one of many ways the Council is able to meet its statutory duty. Accommodation and care are provided by one Provider and the service is staffed 24/7. The Council commissions at a 'usual rate' rate for the provision of older people whilst complex care¹ is commissioned on an individual spot basis. Residential and nursing services are regulated by the Care Quality Commission and the Council and Walsall Clinical Commissioning Group (WCCG) adopts an additional internal quality assurance process.
- 3.3 The Council leads the procurement of residential and nursing services for Walsall Clinical Commissioning Group (WCCG) and recharges WCCG for the cost of placements where WCCG have responsibility.

3.4 Accommodation-based Service Tender (Residential and Nursing) Update

- 3.4.1 There are 3 types of contracts currently in place for residential and nursing services for adults, these include:
 - The 2004 complex care contracts.
 - The 2009 residential and nursing contracts (transitional contracts have superseded this arrangement which will come to an end on 31st March 2018).

¹ Learning Disabilities, Physical and Sensory and Mental Health needs are covered under the category of complex care

The 2016 complex care contracts² were awarded to the market following a comprehensive procurement exercise but has not been operationally implemented.

3.4.2 The Council commenced a retendering exercise to establish a framework for all residential and nursing services (older people and complex care) to bring all existing contract arrangements under one set of terms and conditions and ensure fit for purpose contractual arrangements for future placements.

3.4.3 In June 2013 Cabinet approved the Tender for Accommodation-based Service Tender which was inclusive of lot 1.1 Residential and Nursing. A number of factors have caused us to review this exercise following an application process in July 2015, which has delayed the award of the contract. These include the following:

- The introduction of the National Living Wage, which has increased costs significantly for providers and this extra cost, was not included within Providers' initial price submissions.
- A large increase in the FNC (Funded Nursing Care) contributions and the Council deciding to make considerable increases to its maximum weekly fee rates having regard to the costs of care provision and market rates in 2016/17.
- The financial provisions of the Conditions of Contract that was included with the Application in 2015 are now obsolete. The provision in the contract referring to the Maximum Usual Rate "as uplifted from time to time during the Agreement Term", does not work as the Usual Rates have been repeatedly uplifted despite the fact that the Agreement Term has not commenced. This creates a gap between what the contract is referring to and the Usual Rates that the Council is seeking to apply.
- A number of key providers failed to respond to the July procurement process and further work is required to resolve the legacy contract issues associated with this.

3.4.4 As a result of the issues set out in 3.4.3 there is a need to undertake a new re-procurement exercise and to enter into further transitional contractual arrangements, in order to ensure continuity of service provision for placements that have been made under contracts that are due to expire on 31 March 2018 and new placements pending completion of the re-procurement.

3.4.5 Work has commenced with our Procurement and Legal Services to progress the completion of a further competitive tender exercise as soon as practicably possible in order to address all the factors set out in this report.

3.5 Scheduled Payments

More recently a need has been identified review current payment terms, conditions and internal processes as set out below:

² Contracts have been awarded however the agreement term has never commenced

The automated scheduling of payments which moves the current arrangement of processing payments 2 weekly in advance and 2 weekly in arrears to 4 weekly in arrears. This will deliver a more efficient payment arrangement for the Council and service providers

3.6 Gross Payments

- 3.6.1 The Council has no measure of the amount that is being paid by third parties to Provider's. This places significant risk to the Council as when the third party is no longer able to continue or refuses to pay towards the placement cost, the Council has to then step in and pay the full cost of the placement. This makes budget forecasting very difficult and we capture no data on the actual cost of care within the Borough.
- 3.6.2 One of the potential solutions to the issue set out in 3.4.4 is the introduction of Gross Payments. This would mean the Council would pay the full cost of the placement to the Provider and recover all client and third party top-up contributions directly.
- 3.6.3 In order to address the issues set out in 3.4.4 further work will be completed with corporate colleagues to consider the feasibility of develop a business case for consideration at CMT. If agreed robust operational processes will be developed and embedded into practice and policy revised as required.

3.7 Out of Borough Placements

- 3.7.1 There are occasions, when available residential and nursing provision within Walsall is more expensive than comparable provision within neighbouring local authorities. Currently, when this occurs, Social Workers will seek to secure the in-borough provision as we do not have explicit guidance that advises service users that it is our policy to meet service user need at the best possible value, even if in some cases this means within a neighbouring authority.
- 3.7.2 The Adult Social Care Directorate intends to vary the Service User Charging Policy to make explicit the policy to meet service user need at the best possible value, even if in some cases this means within a neighbouring authority where it is safe and appropriate to do so. The proposed revised Policy will be presented for consideration and approval at a future Cabinet Meeting

4. **Council Corporate Plan priorities**

- 4.1 The commissioning of the framework for Residential and Nursing services is in line with the following Council corporate priorities:
- Economic growth for all people, communities and businesses
 - People have increased independence, improved health and can positively contribute to their communities

- Communities are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion

5. Risk management

- 5.1 These services are adult care services which have a positive impact on both social care and the health economy. There is not only a risk to the continuity of the service, but also the possibility of challenge regarding liabilities providers may have if 2004 contracts are not reinstated for complex care providers and transitional contracts for older people providers not awarded
- 5.2 Delays in implementation of the changes outlined in section 3 will negatively impact on the delivery of the Mosaic financial module and the Adult Social Care demand management transformation project.

6. Financial implications

- 6.1 The contracts referred to in this report will be funded from the existing residential/nursing care budget which is in the region of £27.835m

7. Legal implications

- 7.1 In order to ensure that the most appropriate and compliant contracting arrangements are put in place the Adult Social Care Directorate will continue to consult with Legal and Procurement Services.
- 7.2 The proposed tendering exercise will be undertaken by the Council in accordance with the requirements of the Public Contracts Regulations 2015, the Council's Contract Rules and Social Value Policy.

8. Procurement Implications/Social Value

- 8.1 Further work will need to be undertaken to establish the most appropriate procurement route however the likely value of the contract is above the current EU Threshold for Light Touch Services (£615,278) and the procurement process will therefore be conducted in accordance with the Public Contract Regulations 2015, the Council's Contract Rules, and Social Value Policy.
- 8.2 Inherent risks of legal challenge are associated with any procurement undertaken by the Council. Procurement and Legal advice will be sought to minimise procurement-related risk,
- 8.3 All new services will be evidenced by a written contract in a form approved by the Head of Legal and Democratic Services and shall be made and executed in accordance with the Council's Contract Rules.

9. Property implications

9.1 No Council property assets are implicated by the proposals in the report.

10. Health and wellbeing implications

10.1 Continuing to commission residential and nursing placement 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

10.2 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.

11. Staffing implications

11.1 There are no staffing implications

12. Reducing inequalities

12.1 The implications for reducing inequalities have been taken into account and assessed as set out below.

- Consideration has been given to the Council's responsibility under the Equality Act 2010.
- The Council's duty to meet people's eligible needs will remain the same following the award of the new framework for Residential and Nursing

12.2 The existing Equality Impact Assessments will be reviewed to ensure that it reflects the content of this report

13. Consultation

13.1 Consultation is on-going with Providers and their representative West Midlands Care Association and regional authorities to ensure good practice is embedded into future arrangements.

Background papers

Cabinet – June 2013

Cabinet – February 2016

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12 March 2018



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Portfolio Holder

12 March 2018