

Cabinet – 20 March 2019

Residential and Nursing Care Services for Older People and Complex Care

Portfolio: Councillor Rose Martin

Related portfolios: N/A

Service: Adult Social Care

Wards: All Wards

Key decision: Yes

Forward plan: Yes

1. Summary

- 1.1 Residential and Nursing homes currently operate on either 2004 contract terms which are ongoing and have no end date unless terminated or the 2018/2019 Residential and Nursing transitional contractual arrangements which are due to expire on 31st March 2019.
- 1.2 To ensure continuity of service provision the Council will need to enter into new interim contractual arrangements with existing providers of Residential and Nursing services for older people and complex care services under the 2018/2019 Residential and Nursing transitional contract. This will allow for the conclusion of robust competitive tendering exercises, which will establish new contractual arrangements for older people, complex care and mental health services.
- 1.3 This report also provides an update about the tendering process leading up to the approval being sought under this report. This report seeks delegated authority to the Executive Director for Adult Social Care, in consultation with the Portfolio Holder for Adult Social Care, to approve the award of, finalise and enter into the Residential and Nursing Care Services transitional contractual arrangements with existing providers.
- 1.4 The recommendations in this report constitute a Key Decision on the basis that they are likely to have significant impact on two or more wards within the borough. They would result 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. Recommendations

- 2.1 That the award of new 2019/20 transitional contractual arrangements for the provision of Residential and Nursing Care services for older people, complex care and mental health services be approved for a period of 6 months from 1st April 2019 to 30th September 2019. With the option to extend for a further period of up to 6 months from 1st October 2019 to 31st March 2020. This is pending completion of a competitive tendering process and the award of new Residential and Nursing Care services contracts for older people, complex care and mental health services.
- 2.2 That delegated authority be given to the Executive Director for Adult Social Care, in consultation with the Portfolio Holder for Adult Social Care, to approve the award of and finalise the transitional contractual arrangements.
- 2.3 That delegated authority be given to the Executive Director for Adult Social Care, in consultation with the Portfolio Holder for Adult Social Care, to subsequently authorise the sealing or signing of the transitional contractual arrangements, deeds or other related documents with existing providers of Residential and Nursing Care services for older people, complex care and mental health services.

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 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 basis. Residential and Nursing services are regulated by the Care Quality Commission and the Council and Walsall Clinical Commissioning Group adopts an additional internal quality assurance process.
- 3.3 As set out above, there are two types of contract arrangements in place; the 2004 complex care contracts and the 2018/19 transitional contractual arrangements which expire at the end of next month. The new competitive tendering exercises will set out to align these contractual arrangements under two contracts: one for older people services and the other for complex care services ensuring providers are working to current policy, terms and conditions. The Council currently leads the procurement of Residential and Nursing services on behalf of Walsall Clinical Commissioning Group.
- 3.4 The Council will shortly be commencing retendering exercises to establish frameworks for all Residential and Nursing services (older people and complex care) to bring all existing contractual arrangements under two distinct sets of terms

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

and conditions and ensure fit for purpose contractual arrangements for future placements.

3.5 There have been a number of factors that have required the Council to review the procurement of these services following an application process in July 2015, which delayed the award of the contract. These include:

- 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;
- The future status of the commissioning activity conducted by the Council on behalf of Walsall Clinical Commissioning Group. A decision is to be made on what this will look like in the future 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, and how Residential and Nursing Care services are packaged or combined for tendering; and
- Final decisions are awaited as regards operational issues which may affect future service design and contracting options.

3.6 As a result of the issues set out in paragraph 3.5 of this report, there is a requirement to enter into transitional contractual arrangements from 1st April 2019. 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 2019 and new placements pending completion of the re-tendering exercises.

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

3.8 It is expected that the procurement exercise will not complete until September 2019 and that new contractual arrangements will need to be in place to ensure that the Council is compliant with its responsibilities under the Care Act 2014. Subject to approval, it is proposed that new transitional contractual arrangements be awarded to existing providers under the 2018/19 contractual arrangements for a period of 6 months from 1st April 2019 to 30th September 2019. With the option to extend for up to a further 6 months from 1st October 2019 to 31st March 2020 should it be required.

4. Council Corporate Plan priorities

4.1 The commissioning of the framework for Residential and Nursing services links to Walsall Council's corporate priority "People have increased independence, improved health and can positively contribute to their communities'. This framework will deliver the following outcomes;

- 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;
- The most vulnerable are protected from avoidable harm, including treating and caring for people in a safe environment;

5. Risk management

- 5.1 These services are Adult Social 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 existing contract arrangements do not continue.
- 5.2 There is a low risk of challenge to the award of the transitional contractual arrangements. This is on the basis that although the Council has not undertaken a competitive tendering exercise for the transitional contractual arrangements, it will shortly be undertaking a competitive tendering process for the long-term service provision. The risk of challenge will be further mitigated by the Council issuing a 'voluntary ex ante transparency notice' (VEAT notice) in accordance with the Public Contracts Regulations 2015. A VEAT notice should be published by the Council where a contract has been awarded without prior publication and a period of 10 days should elapse before entering into a contract.
- 5.3 There is a risk to continuity of services if approval is not secured for the award of transitional contractual arrangements. There is a risk that services will have to be delivered via non-compliant temporary, short-term spot purchase arrangements outside of compliant tendering processes. There is a possible cost pressure by 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 Residential and Nursing Care services places to comply with its statutory obligations. The risk of having to deliver services via non-compliant short-term spot purchase arrangements is minimised by the implementation of transitional contractual arrangements for the initial 6 month period and the exercise of a possible extension for a further period of up to 6 months if necessary, whilst the competitive tendering exercise is completed and the long term arrangements are implemented.

6. Financial implications

- 6.1 The contracts referred to in this report will be funded from the existing residential/nursing care budget of £28.05m with no cost pressure.

7. Legal implications

- 7.1 Action will need to be taken to minimise risks of legal challenge associated with the award of transitional contractual arrangements. In order to minimise such risks, Legal and Procurement Services have advised that transitional contractual

arrangements should only be used for the shortest possible practical period and must run concurrently with the re-tendering exercises.

- 7.2 Care and diligence will need to be taken when awarding and implementing the terms of any transitional contractual arrangements in order to minimise financial and operational risk to the Council.
- 7.3 In order to ensure that the most appropriate and compliant contractual arrangements are put in place the Adult Social Care Directorate will continue to consult with Legal and Procurement Services, who will assist with using the most appropriate procedures and documents.
- 7.4 The Care Act 2014 places a duty on the Council to promote the efficient and effective operation of a market in services for meeting care and support needs in its area. 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 says 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.
- 7.5 The proposed tendering exercises are being 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 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 Contracts Regulations 2015, the Council's Contract Rules, and Social Value Policy.
- 8.2 The Council will issue a VEAT notice in accordance with the Public Contracts Regulations 2015.
- 8.3 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.
- 8.4 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 As indicated in paragraph 3.1 of this report, the Council has a statutory duty under section 5 of the Care Act 2014 to promote the efficient and effective operation of a market in services for meeting care and support needs. This is with a view to ensuring that any person in its area wishing to access services in its area has a variety of providers to choose from specifically;
- (a) the need to ensure that the Council has, and makes available, information about the providers of services for meeting care and support needs and the types of services they provide;
 - (b) the need to ensure that it is aware of current and likely future demand for such services and to consider how providers might meet that demand;
 - (c) the importance of enabling adults with needs for care and support, and carers with needs for support, who wish to do so to participate in work, education or training;
 - (d) the importance of ensuring the sustainability of the market (in circumstances where it is operating effectively as well as in circumstances where it is not);
 - (e) the importance of fostering continuous improvement in the quality of such services and the efficiency and effectiveness with which such services are provided and of encouraging innovation in their provision; and
 - (f) the importance of fostering a workforce whose members are able to ensure the delivery of high quality services (because, for example, they have relevant skills and appropriate working conditions).
- 10.2 Continuing to commission Residential and Nursing Care Services placements 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 of this report.
- 10.3 The principles and actions contained within this report are in full accordance with the Marmot objectives. 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 associated with the proposals in the report.

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; and
 - The Council's duty to meet people's eligible needs will remain the same following the award of the new frameworks for Residential and Nursing Care Services.

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 ongoing with providers and their representatives, West Midlands Care Association and regional authorities to ensure good practice is embedded into future contracting arrangements.

Background papers

Cabinet – June 2013

Cabinet – February 2016

Cabinet – March 2018

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12 March 2019



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12 March 2019