

## **Cabinet – 9 September 2020**

### **Provision of Adult Social Care Service contracts for: Residential Nursing Care for older people, Complex Care and Mental Health, Community Based Care Services and Transitional Beds Framework**

<b>Portfolio:</b>	Adult Social Care
<b>Related portfolios:</b>	Councillor Rose Martin
<b>Service:</b>	Adult Social Care
<b>Wards:</b>	All
<b>Key decision:</b>	Yes
<b>Forward plan:</b>	Yes

#### **1. Aim**

For the Council to be assured that it will continue to have compliant contractual arrangements in place during the pandemic, which are fit for purpose to enable the review of strategic priorities.

#### **2. Summary**

- 2.1. To allow for the conclusion of a robust competitive tendering exercise, there is a need to award interim and/or extend the contractual arrangements for Residential and Nursing Care Home Services, Community Based Services and Transitional Beds Services with existing Providers.
- 2.2. This is a key decision because it exceeds the threshold for “significant” expenditure of £250,000.
- 2.3. 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 approves the award of the new contracts for Residential and Nursing for Older People, Complex Care and Mental Health from 1 October 2020 to 31 March 2023.
- 3.2. That Cabinet delegate authority to the Interim Executive Director of Adult Social Care (ASC) to award contracts on behalf of the Council to providers who apply for

and meet the requirements of the Residential and Nursing Application Process as detailed in 4.2 below and to subsequently authorise the variation, sealing or signing of any associated contracts, deeds or other related documents.

- 3.3. That Cabinet approves the extension of the CBS Framework from 1 April 2021 to 31 March 2023 and delegates authority to the Interim Executive Director of Adult Social Care to subsequently authorise the variation, sealing or signing of any associated contracts, deeds or other related documents.
- 3.4. That Cabinet approves the extension of contracts for the Transitional beds from 1 October 2020 to 30 September 2021 and delegates authority to the Interim Executive Director of Adult Social Care to subsequently authorise the variation, sealing or signing of any associated contracts, deeds or other related documents.
- 3.5. That Cabinet notes the recommendations of this report will not change the current fee rates payable by the Council for all the above services. Furthermore, the quality expectations of Providers to improve and/or maintain good outcomes for all service users remains.

#### **4. Report detail – know**

##### **Context**

##### Residential & Nursing

- 4.1. Residential and Nursing homes currently operate on the “2004” form of contract or the Transitional Framework Agreement. The 2004 contracts are ongoing and have no end date. The latest Transitional Framework Agreement commenced on 1 April 2019 for 12 months and was extended in March 2020 to expire on 30 September 2020.
- 4.2. There is an ongoing, open and transparent ‘Residential and Nursing Application’ process in place whereby potential providers can complete documentation via the Council’s e-tendering portal, In-tend, at any time to become an approved provider, as long as they meet the minimum basic requirements.
- 4.3. A project team has been meeting regularly prior to Covid-19 Pandemic to work towards the implementation of new permanent contractual arrangements for Residential and Nursing contracts. The work undertaken to date includes:
  - Process Mapping of current processes and procedures.
  - Discussion and design of requirements for the future.
  - Review and update of the out of date contractual documentation.
  - Review of processes and procedures to reduce administrative burden and increase accuracy of data, including the WSS1010 form.
  - Review of relationship with CCG for this contract.
- 4.4. The Covid-19 Pandemic has affected the progression of the above due to the impact it has had on the sector as a whole and the Council does not want to put additional pressure on that sector at the current time. In addition, this would be an ideal time for the Council to consider a potential remodelling of the requirements by undertaking a strategic needs assessment.

- 4.5. Procurement and Commissioning Colleagues have considered the following options:

Residential and Nursing Care for both Older People, Complex Care and Mental Health

Option 1 – Take no action

- Providers will continue to be subject to either the 2004 contract terms or for those providers contracting upon any Transitional Framework contracts terms, they will continue upon those implied terms after the current extension period ends on 30 September this year.
- Taking no action does not address any of the contractual or strategic issues detailed in this report.
- This leaves the Council open to risk due to non-compliance and outdated and confusing contractual arrangements.

Option 2 - Full Tender and redesign

- There is not sufficient time and available resources to address all the outstanding issues before the current contract expires.
- Given the current Global circumstances relating to Covid-19 and in particular the pressure on the Council and care homes, this is not the right time to go out to full tender.
- Procurement and Legal Services recognise the scale of the project, as well as the potential benefits, of a wider realignment and strategic needs assessment in the Residential and Nursing Market. This could include designing new models of delivery as well as moving to a more outcomes focused approach.

Option 3 - Implement interim contract (recommended)

- A new contract has been partially drafted by Legal Services in consultation with Procurement and ASC in preparation for the new procurement process.
- Drafting will be concluded, and the new contract will be largely the same as the existing terms in scope and requirements for providers, but will be up-to-date and should address the current contractual confusion and provide greater clarity for both the Council and the market.

- 4.6. The Council currently leads the procurement of these Services on behalf of Walsall Clinical Commissioning Group (CCG) who access of Continuing Health Care placements. At the August Joint Commissioning Committee Walsall CCG confirmed their intention to be part of the contractual arrangements going forward.

Community Based Services Framework

- 4.7. The Community Based Services Framework Agreement has been extended into its final option period and is due to expire on 31 March 2021. This framework agreement is for a range of Regulated Community Based and Short Break Services inclusive following:

- Complex Care ie Learning Disability/Mental Health/Physical Disability/ Continuing Health Care (CHC) domiciliary care;
- Older People domiciliary care;
- Continuing Health Care;
- Reablement;
- Home from Hospital;
- Rapid Discharge;
- Children Short Breaks; Services; ie 1-2-1 activities (Buddy Services)/ Personal Carers/Short Break Activities

4.8. Procurement and Commissioning Colleagues have considered the following options:

Option 1 - Take no action

- This is not an option as contractual arrangements must be in place to ensure compliance.

Option 2 - Full Tender and redesign

- The contract expires on 31 March 2021 and there is not sufficient time and available resources to successfully run the full tender process and implement the new contracts by 1 April 2021.
- The CBS contract requires a full review and possible contract modelling redesign, which will result in the need for extensive market engagement and a possible long implementation period. There will also be the requirement to present to Cabinet for approval.
- In order to adequately design a contracting model, as well as engage adequately with the market to support a successful procurement, this activity started in early 2020 but was delayed due to the Covid-19 Pandemic and the additional pressures that resulted for the Council and for the market.

Option 3 - Extend the current contractual arrangements (recommended)

- The Council would utilise Regulation 72 of the Public Contract Regulations 2015 to extend the current contractual arrangements.
- There is requirement to present this option to cabinet for approval and to include the CBS providers that are delivering care off contract due to market capacity issues.
- Given the current Global circumstances relating to Covid-19 and in particular the pressure on the Council and care homes, this is not the right time to go out to full tender.

4.9. The Council currently leads the procurement of these Services on behalf of Walsall CCG who access of Continuing Health Care placements. At the August Joint Commissioning Committee Walsall CCG confirmed their intention to be part of the contractual arrangements going forward.

4.10. 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 pandemic has required the Council to consider the impact of its own activities on the market as a whole, in particular the potential impact of its commissioning and re-commissioning decisions.

- 4.11. As a result of the issues set out in the above paragraph of this report, there is a requirement to award interim and/or extend contracts of the above services. This is in order to ensure continuity of service provision.
- 4.12. Work with our Procurement and Legal Services to progress the tendering exercises is ongoing, along consultation with key stakeholders such as Public Health and Assessment and Care Management.
- 4.13. Therefore, the recommendations of this report will ensure that the Council is compliant with its responsibilities under the Care Act 2014.

#### Transitional Beds Framework

- 4.14. Transitional beds form one of a number of pathways that health and social care staff use to promote the health, wellbeing and independence of adults with co-morbidities; to prevent:
  - Unnecessary hospital admissions whereby a client is placed directly from a home setting into a transitional bed to provide care and support as an alternative to an admission to hospital (Step Up), or
  - Delayed hospital discharges (Step down) which will support individuals through an ongoing period of assessment, rehabilitation and reablement as part of an agreed plan; with the aim of continuing to promote their health, wellbeing and independence
- 4.15. The aim of the service is to:
  - Prevent acute admissions for individuals admitted to Accident and Emergency (A&E) and Acute Medical Unit (AMU) where a range of health and social care interventions can be undertaken in a managed care and support setting, to promote rehabilitation, reablement, and independence and prevent decompensation.
  - Provide individuals with closer monitoring and support, as a result of an exacerbation of an ongoing Long-Term Condition to promote rehabilitation and maximise independence.
  - Provide intensive support to individuals and their carers with co-morbidities and urgent social needs to prevent their admission to hospital and maximise independence.
  - Provide a bed-based intervention where a person no longer needs acute sector care but does need an extended period in an enabling environment to address outstanding social care issues of a Short-Term nature. This includes individuals awaiting the completion of a decision support tool assessment, appropriate alternative accommodation, home adaptations and families waiting for the home of choice where a long term nursing or residential placement has been assessed and agreed as being required, if they are likely to be available within an acceptable timeframe.

- 4.16. The Transitional Beds Framework Agreement was awarded 1 October 2016 for a period of 12 months to 30 September 2017, with the options to extend for 12 months on 3 separate occasions. All extension options have been used and the contract expires on 30 September 2020.
- 4.17. The Service was due to be recommissioned following the Residential and Nursing procurement, which is detailed above. Additional delays were caused in this implementation by the COVID-19 pandemic.
- 4.18. Procurement and Commissioning Colleagues have considered the following options:

Option 1 - Take no action

- This is not an option as contractual arrangements must be in place to ensure compliance.

Option 2 - Full Tender and redesign

- The contract expires on 30 September 2020 and there is not sufficient time and available resources to successfully run the full tender process and implement the new contracts.
- The transitional beds contract requires a full review and possible contract modelling redesign, which will result in the need for market engagement. There will also be the requirement to present to Cabinet for approval.

Option 3 - Extend the current contractual arrangements (recommended)

- The Council would utilise Regulation 72 of the Public Contract Regulations 2015 to extend the current contractual arrangements.
- Given the current Global circumstances relating to Covid-19 and in particular the pressure on the Council and care homes, this is not the right time to go out to full tender.
- There is a requirement to present this option to cabinet for approval as the transitional bed service needs to be tendered to attract new providers in the market, secure additional beds across a range of bed types and agreed new fee rates to remove over reliance on spot purchase arrangements.

***Council Corporate Plan priorities***

- 4.19. People have increased independence, improved health and can positively contribute to their communities.
- P1 - Enhancing the quality of life for people with care and support. Needs and those with long-term conditions.
  - P2 - Delaying and reducing the need the need for care and support
  - P-3 - People recover from episodes of health or injury
  - P-4 - The most vulnerable are protected from avoidable harm, including treating and caring for people in a safe environment.
- 4.20. All the above corporate priorities are supported by this approach in these extraordinary circumstances.

### ***Risk management***

- 4.21. The award of interim contracts and contract extension will ensure that the Council is compliant with its Contract Rules and able to respond compliantly to demands. To meet statutory duties until the new Frameworks are in place.

### ***Financial implications***

- 4.22. The recommendations contained within this report, to extend existing contractual arrangements, is to 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 in this report.

### ***Legal implications***

- 4.23. 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.

#### Residential and Nursing Care for both Older People, Complex Care and Mental Health

- 4.24. ASC will liaise with Legal Services to ensure that that the new contractual arrangements will be in a form approved by Legal Services, including any access agreement with the CCG and appropriate contractual provisions between the Council and/or CCG, care providers and any third party contributors

#### Community Based Services Framework

- 4.25. ASC will liaise with Legal Services to ensure that extension of the current contractual arrangements will be carried out compliantly and using legally binding methods

#### Transitional Beds Framework

- 4.26. ASC will liaise with Legal Services to ensure that extension of the current contractual arrangements will be carried out compliantly and using legally binding methods.

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

#### Residential and Nursing Care for both Older People, Complex Care and Mental Health (Recommendation 3.1)

- 4.27. The Council would implement this recommendation compliantly under the Public Procurement Contracts Regulations 2015 (PCR2015) Light Touch Regime (LTR). The LTR applies to social care and allows the Council to design its own procedure provided that it meets some minimum requirements including complying with the principles of equal treatment and transparency.

- 4.28. An open and transparent Residential and Nursing Application process will continue to be in place. This allows new providers to apply to become approved providers as long as they meet the minimum requirements.

Community Based Services Framework (Recommendation 3.2)

- 4.29. The Council would utilise regulation 72 of the PCR2015 to extend the current contractual arrangements. This means that the contract can be extended in a compliant manner while the redesign work is completed.

Transitional Beds Framework (Recommendation 3.3)

- 4.30. The Council would utilise regulation 72 of the PCR2015 to extend the current contractual arrangements. This means that the contract can be extended in a compliant manner while the redesign work is completed.

***Property implications***

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

***Health and wellbeing implications***

- 4.32. 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 4.16 of this report.
- 4.33. 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***

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

***Reducing Inequalities***

- 4.35. The implications for reducing inequalities have been considered 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.
- 4.36. An Equality Impact Assessment (EqIA) is not required as this is a statutory service.

***Consultation***

- 4.37. A public consultation was not undertaken as there is no change to the current service. The renewal of the Residential and Nursing contracts is to ensure that all

contracted providers are issued with new terms and conditions of the contract to provide consistency, equity and clarity.

## 5. Decide

Cabinet is requested to consider the content and the options detailed in Section 4 of this report and to agree the recommendations as outlined in section 3.

## 6. Respond

Subject to Cabinet approval of the recommendations, Adult Social Care will work with corporate colleagues to:

(a) Progress the award of:

- Interim contracts for Residential and Nursing from 1 October 2020 to 31 March 2023
- Interim contracts of the CBS Framework from 1 April 2021 to 31 March 2023
- Interim contracts for Transitional Beds from 1 October 2020 to 30 September 2021

(b) Completed the retender of all three services during the interim contract/contract extension period.

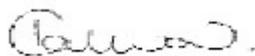
## 7. Review

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

## Background papers

### Author

Tracy Simcox  
Lead Commissioner  
☎ 07983611416  
✉ [tracy.Simcox@walsall.gov.uk](mailto:tracy.Simcox@walsall.gov.uk)



Kerrie Allward  
Interim Executive Director

1 September 2020



Councillor Martin  
Portfolio Holder

1 September 2020