

## **Cabinet – 20 March 2019**

### **Adult Social Care Supported Living Framework**

**Portfolio:** Councillor Rose martin

**Related portfolios:**

**Service:** Adult Social Care

**Wards:** All

**Key decision:** Yes

**Forward plan:** Yes

#### **1. Summary**

- 1.1 The current Transitional 4 Contract arrangements for supported living services for adults with learning disabilities and mental health end on the 31<sup>st</sup> March 2019. A procurement exercise is underway to ensure the continuity of care for people in receipt of eligible services which is expected to be completed by August 2019.
- 1.2 The Council will need to enter into temporary contract arrangements with existing Providers of supported living services up until the award and implementation of the new contractual framework of Providers.
- 1.3 The new framework will host Providers that have the expertise to deliver care and support to the following client groups:
  - Lot 1; learning disabilities including co-morbidities
  - Lot 2; autism
  - Lot 3; physical disabilities
  - Lot 4; sensory impairment
  - Lot 5; mental health functional
  - Lot 6; mental health dementia
  - Lot 7; children and young people aged between 16-17 years with complex needs
- 1.4 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. Recommendations**

- 2.1 That approval is given for the Council to award Transitional 5 contracts to existing Providers who are currently contracted with the Council under Transitional 4 contracts, for a new contract term from the 1<sup>st</sup> April 2019 to either 31<sup>st</sup> March 2020 or until such time as the contracts arising from the new procurement are successfully awarded and take effect (whichever the earlier).
- 2.2 That delegated authority to approve the award of the contracts following completion of the procurement exercise and sign all associated procurement recommendation reports, agreements and other documents associated with the procurement is approved in favour of both the Executive Director of Adult Social Care and Executive Director of Children's Services in consultation with the Portfolio Holder for Adults and Children's social care.

## **3. Report detail**

- 3.1 The Care Act 2014 sets out the Councils' statutory duties to develop a market that delivers a wide range of sustainable high-quality care and support services that will be available to local communities. The Council performs its responsibilities through a procured Provider framework from which it can call off work to deliver care and support to a person that has been assessed as needing care by the Council.
- 3.2 The current Agreements for supported living services for adults with complex care and mental health end on the 31<sup>st</sup> March 2019. The Council is undertaking a competitive tender exercise which in accordance with Public Contracts Regulations 2015, will allow the Council to implement a framework (new suppliers can apply to join the framework once the initial contracts have been awarded) for a period of 3 years with the option to extend for an additional 2 years (total of 5 years).
- 3.3 Supported living is a way of helping adults with learning disabilities and mental health to have the opportunity to live independently as possible. A supported living scheme can consist of either a person renting a room in a house shared by up to 3 other people with similar needs or renting a flat close to other people who also need support. In addition to the tenancy arrangements for the accommodation, the person will also receive care and support in accordance with their assessed needs from a Care Provider who is independent from the housing arrangements.
- 3.4 The framework will be commissioned across the following service lots allowing the Council to meet its statutory obligations under the Care Act 2014:
- Lot 1; learning disabilities including co-morbidities
  - Lot 2; autism
  - Lot 3; physical disabilities
  - Lot 4; sensory impairment
  - Lot 5; mental health functional
  - Lot 6; mental health dementia
  - Lot 7; children and young people aged between 16-17 years with complex needs

3.5 The existing Agreement for supported living (delivered under the Transition 4 Contracts) ends on the 31<sup>st</sup> March 2019. It is expected that the implementation of the new framework will not complete until August 2019 and that the current arrangements for these services will need to be extended for several months beyond this point, to ensure that the Council is compliant with its responsibilities under the Care Act 2014 and Public Contract Regulations 2015. More specifically this will provide an adequate overlap between the old contracts and the new contracts during which time the handover from outgoing providers to incoming providers can be planned and implemented, or otherwise to implement other contingency arrangements if the framework procurement exercise is not successful. The Directorate are therefore seeking approval from Cabinet to issue a Transitional 5 contract to existing Providers who have a Transitional 4 Contract arrangement, for a further period of 12 months from the 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020, allowing the full implementation of the new framework following contract award.

3.6 The Council's Contract Rules require a competitive tendering process to be undertaken except in special circumstances. Rule 9.4 states:

A Chief Officer shall not be required to seek quotations or tenders where goods, works or services:

9.4.1 must be purchased from a supplier holding exclusive rights of manufacture, supply, authorship, editorial, publication or distribution and where no generic equivalent exists;

9.4.2 are required by the Council as a partial replacement for or in addition to existing goods, works or services already purchased by the Council and to obtain them from a supplier other than the supplier which supplied the existing goods would oblige the Council to acquire goods, works or services having different technical characteristics which would result in:

9.4.2.1 technical incompatibility between the existing goods, works or services and the goods, works or services to be purchased; or

9.4.2.2 Significant disproportionate technical difficulties in the operation and maintenance of the existing goods, works or services

9.4.3 repairs or parts for existing plant or machinery provided by the original supplier and no equivalent exists

3.7 The exemption of Contract rules 9.4; 9.4.2; 9.4.2.1 apply in that the services are required by the Council and to obtain services from a different supplier (at short notice) would result in significant disproportionate technical difficulties in the operation of the services. The complexity of the clients require consistent support from a defined staffing group and any immediate change in provision would impact on the person's wellbeing. The continuity of the current arrangements would allow the Council a period of planning to support individuals to transition to new Providers should there be a need to change. There would also be a requirement for significant resources operationally (re-assessments and system updates)

should the Transitional 5 contracts not be awarded. This would have a significant impact on resources across Adult Social Care. The arrangements under Rule 9.4 will be for the shortest period of time possible and on the completion of the supported living tender the Transitional 5 contracts shall either be terminated early by the Council, or allowed to come to an end by expiry of time, on the 31<sup>st</sup> March 2020.

#### **4. Council Corporate Plan priorities**

The framework for supported living services is in line with the following corporate priorities:

- Make a positive difference to the lives of Walsall people; increasing independence and improving healthy lifestyles through meeting the eligible care and support needs of local residents
- Safe, resilient and prospering communities; Walsall is a clean, safe and healthy place, with the right housing to meet need. Vulnerable adults are supported to meet their housing needs and responsibilities through support provided by Providers who have been commissioned.

#### **5. Risk management**

5.1 There is a low risk of challenge to the award of temporary Transitional 5 contract arrangements on the basis that although the Council has not undertaken a competitive tender exercise for the temporary T5 contract, it is currently undertaking a competitive process for long term service provision. The risk of challenge could be further mitigated by the Council issuing a 'voluntary ex ante transparency notice' (VEAT notice) in accordance with Public Contracts Regulations 2015. A VEAT 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. In addition the Council will, at the point of this report being tabled, have completed, or be in the process of completing, a competitive compliant tendering exercise for supported living services and taking this forward to implementation.

5.2 There is a risk to continuity of services if approval is not secured for the award of Transitional 5 contracts. There is risk that services will have to be delivered via a non-compliant temporary, short term spot purchase arrangement outside of compliant procurement processes and possible cost pressure by Providers imposing service price increases. This risk is minimised by the implementation of Transitional 5 contracts from the 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020 whilst the agreement of the framework is implemented.

#### **6. Financial implications**

6.1 The 2018/19 forecast gross expenditure related to providing supported living services, based on costs to date is approximately £15.7m or 58% of all community based care expenditure. The vast majority of this relates to complex service users.

- 6.2 Supported living care is currently provided by 35 Providers. Having said that, the top 5 suppliers by value account for 58% of all supported living expenditure.
- 6.3 For children and young people, any support costs would be from the Looked After Children's budget or short breaks budget for the provision and detailed in their statutory case review. At present there are no children within supported living care with all current children either residing within supported accommodation or independent living at an average weekly cost of £936.

## **7. Legal implications**

- 7.1 Legal Services have been closely involved in preparing for and carrying out the framework tendering exercise, in order to ensure compliance with the Council's best value duty and the procurement requirements in the Public Contracts Regulations 2015. Legal Services have also been consulted about and agree with the recommendations in this report with regard to the award of the Transitional 5 Contracts.

## **8. Procurement implications/Social Value**

- 8.1 Contract rules 9.4; 9.4.2; and 9.4.2.1 apply in that where services are required by the Council for services already purchased, and to obtain services from a different supplier would result in significant disproportionate technical difficulties in the operation of the services, a Chief Officer shall not be required to seek quotation of tender.
- 8.2 The Council has published a contract notice to procure a framework of Providers to secure long term provision, and is currently in the process (at time of submission to Cabinet) of completing due diligence on the submissions.
- 8.3 The Council have also published a 'voluntary ex ante transparency notice' (VEAT notice) in accordance with Public Contract Regulations 2015 (at the time of submission to Cabinet), to mitigate the risk of challenge on grounds of ineffectiveness under the Public Contract Regulations 2015.

## **9. Property implications**

- 9.1 There are no property implications because users will have individual tenancy agreements with landlords that are not within the scope of (or affected by) the supported living tender.

## **10. Health and wellbeing implications**

- 10.1 Supported living services support people with disabilities to live as independent lives as possible. Providers work in a person-centred manner maximising opportunities for people whilst facilitating positive participation within communities.

- 10.2 Providers support people to access primary and secondary health services as appropriate to ensure that preventative and targeted health interventions are provided in a timely manner to meet people's needs.

## **11. Staffing implications**

- 11.1 The Council does not and will not be guaranteeing levels of business for Providers that deliver services to service users with complex care needs in supported living, as the demand for services is not consistent. Providers will resource services based on the eligible assessed needs of the individual which will be reviewed annually. The Council does not directly employ staff for these services and the employment responsibilities are with the supported living Providers.

## **12. Reducing inequalities**

- 12.1 Consideration has been given to the Councils responsibility under the Equality Act 2010. The Councils' duty to meet people's eligible needs will remain the same under Transitional 5 contracts and the contract that are awarded pursuant to the proposed framework.

## **13. Consultation**

- 13.1 A number of workshops have been delivered engaging with the market to inform the supported living tender. A broad range of providers attended the workshops and provided feedback on the challenges they face within the market and opportunities where services could be improved with the right infrastructure.

Some of the key themes raised were as follows:

- Managing voids within shared accommodation, both housing and managing the cost of care where services are shared
  - Retainer fees for care when people are admitted to hospital allowing for quicker discharges from acute and mental health services
  - National living wage and sleep in allowances in line with guidance from HMRC and employer liabilities
- 13.2 The feedback was collated and has been used to inform the drafting of the tender documentation; the Council will be seeking to review how some of the key challenges faced by stakeholders could be mitigated. Further engagement was carried out with stakeholders and health colleagues to develop the service specification.

Stakeholder consultation dates:

- Supported living providers workshop, (6<sup>th</sup> July 2017)
- Supported living providers workshop, (10<sup>th</sup> July 2017)
- Professionals workshop, (24<sup>th</sup> July 2017)
- Stakeholders and health colleagues (16<sup>th</sup> November to 01<sup>st</sup> December 2017)

## Background papers

Not applicable

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12 March 2019



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12 March 2019