

**Report of:** Deputy Director Adult Social Care

**Report to:** Director of Adult Social Services

**Date:** 24<sup>th</sup> July 2014

**Subject:** Waiver of Contract Procedure Rule (CPR) 9.1 and 9.2, using the authority in CPR 1.3 and award a contract for twelve months plus two possible six month extension to four organisations to provide Community Based Respite Services (CBRS) to carers with a combined contract value of £1,129,440 per annum. The organisations concerned are Leeds Jewish Welfare Board, Czajka Community Care, CareUK and Allied Healthcare.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### Summary of main issues

1. The CBRS developed to meet the need for carers to have respite breaks which did not involve the cared for person going to a residential setting, with funding provided by ring-fenced funding from central Government which has now ended. The service has been popular and the demand exceeds supply.
2. The service model is one of direct access or referral. Eligibility is assessed by the provider and there is no charge for the service. The Council has used a block contract to commission the service and this has worked well, providing security for the provider and good value for the Council
3. From 2015 the Care Act extends the Council's duties towards carers and brings a new duty to provide a support plan to carers and prevent needs for support from arising. This is likely to result in an increase in demand for this service and the model of delivery will have to be revised.

4. The existing contracts are coming to an end in October 2014 but it will not be possible to carry out a review and devise a service model which fits the requirements of the Care Act before they expire. Therefore Adult Commissioning Board (ACB) is recommending that a further contract be issue to the existing providers on the same terms while this review is undertaken.
5. CBRS is a personal care and support service delivered to the cared for person and as such any change to the service is extremely sensitive and challenging. Experience has shown that a substantial amount of time needs to be allowed for contract mobilisation and so two extensions of six months are recommended.

## **Recommendations**

1. The Director of Adult Social Services is recommended to use her authority under CPR 1.3 to waive CPR 9.1 and 9.2 and award a contract for the provision of CBRS for carers to:

Allied Healthcare in the sum of £323,128

CareUK in the sum of £322,322

Czajka Community Care in the sum of £243,750

Leeds Jewish Welfare Board (Moorcare) in the sum of £240,240

The contracts shall commence on 1<sup>st</sup> November 2014 and expire on 31<sup>st</sup> October 2015 with the option to extend for two periods of six months.

2. The Carers Commissioning Officer will be responsible for ensuring that the project team carry out a review of the service model and the current service users, have discussions with current and potential providers about different ways of delivering this service and consider other models of service delivery being used in other Local Authority areas. The conclusion from the review will be reported back to Adult Commissioning Board and a further recommendation for procurement of the new model of service delivery will made to the Director of Adult Social Services in early 2015.

## **1 Purpose of this report**

- 1.1 The purpose of the report is to obtain a waiver to award contracts to existing providers to continue providing community based respite services to carers for twelve months during which time a review will take place of the current users of the service and consider how access and provision of the service should be arranged in the future. This will include greater use of personal budgets by service users.
- 1.2 The report also highlights the impact of the Care Act and the need to integrate access to this service with other care and support delivery processes within Adult Social Care (ASC) to bring it into line with internal developments in ASC's new electronic database system.

## **2 Background information**

- 2.1 From 2000 to 2010 Central Government provided Local Authorities with funding specifically to provide respite breaks for carers, which was the main aim of the 1997 National Carers Strategy.
- 2.2 Using the Carers Grant, Leeds City Council (LCC) established a CBRS which provides up to 8 hours per week of replacement care so that carers can have a rest, engage in social and leisure activities, carry out domestic tasks, do paid work or any other normal task which people who are not carers are free to do. From 2000/2001, and again in 2009, this service was commissioned following a competitive tendering exercise, under 5 area based contracts (based on the then Primary Care Trust boundaries), plus one city-wide contract to meet specific needs of Black and Minority Ethnic (BME) carers.
- 2.3 The service is provided to those carers who are providing substantial care on a regular basis. There is no charge for the service because it is seen as a service for the carer, rather than the cared for person. It can be directly accessed without an assessment by ASC. However, 92.7% of the carees were known to ASC on ESCR at the point where their carer started receiving this service. Three hundred and eighty-five carers have used this service during the first four months of the financial year 2014-15.
- 2.4 Contracts were awarded to the providers, who are all Care Quality Commission registered domiciliary care providers, for a block number of hours per week. The size of the contract has not increased since 1<sup>st</sup> November 2009, and the current position is 1,735 hours per week as set out below. The total value of the six contracts is £1,129,440.

East area	370 hours	Allied Healthcare
North East area	350 hours	(Leeds Jewish Welfare Board) Moorcare
West	240 hours	CareUK
North West	250 hours	CareUK
South	375 hours	Czajka Community Care

Citywide BME            150 hours    Allied Healthcare

- 2.5 The current contracts were awarded in 2009, following a competitive tendering exercise in which providers could bid for any or all of the blocks. As a result, five of the six contracts were awarded to a different provider than previously and two new providers came into the service.
- 2.6 The take-up of this service has always been very high and there is a waiting list in each area. The total number of carers waiting for this service at the end of April 2014 was 141. The situation has been the same since 2010 and ASC has been unable to allocate additional funding to the contracts.
- 2.7 The total value of the services is £1,129,440 per annum. There is a small element of £98,000 CCG's funding within this.

### **3 Main issues**

#### **Reason for Contracts Procedure Rules Waiver / Invocation**

- 3.1 From April 2015 the Care Act 2014 will have a very great impact on the way in which local authorities support carers. ASC will have a duty to provide a carers assessment for virtually any carer who requests one and the threshold for providing a support plan and support services is much lower than under the current legislation than that which it replaces. It is difficult to predict the financial cost of the additional duties towards carers and it is likely that the take-up of carer's new opportunities will be slow at first. Access to, and management of existing support services for carers will need to change in order to manage demand.
- 3.2 At present carers can access the CBRS directly or by being referred by ASC or any other voluntary or statutory agency. Eligibility is assessed and service allocated by the provider themselves, working to criteria set by ASC and covered in the service specification. There is no validation or review of these eligibility judgements either by ASC commissioning or by social workers. However, as stated above a very large majority of the cared for persons are known to ASC and recorded on ESCR. Access to the service is effectively "capped" by the size of the block contract with ASC.
- 3.3 Often carers will use this service for 6-7 years and during that time the circumstances of the cared for person may change so that their ASC support plan will be reviewed and more services may be provided by ASC. This usually does not include the review of the community based respite so the throughput of services users of this service is fairly low (15%) and usually only occurs when the cared for person dies or goes into permanent residential care. A thorough review of the service users taking into account all the other personal care services provided to the family and also service user choice over where they would like their respite to be provided, will show whether they are receiving the correct quantity of hours of community based respite care and whether it should continue, increase or decrease.

- 3.4 Use of a block contract which secures a fixed numbers of hours of care provision has worked well for this service from ASC's point of view, because the contract is always full with a waiting list of new users. This has enabled most of the providers to recruit suitable staff who enjoy spending large blocks of time being a companion for the cared for person with some personal care tasks and sometimes escorting them on local excursions, rather than short, intense home care slots delivering entirely practical or personal care tasks. Staff turnover is low and client satisfaction high. Carers can develop a close and trusting relationship with the same carer over several years and this helps the caree accept a care service from outside of the family.
- 3.5 A block contract provides some business stability for providers and has helped to keep the price of this service low over an extended period of years. The hourly rate varies between £11.95 and £13.20 and has not changed for five years. The current service providers all offer private respite services to some clients and charge a higher hourly rate. This compares to the home care hourly rate in Leeds of up to £13.50.
- 3.6 One option for consideration is to reduce the size of the block contract by a certain amount and taper the reduction over a number of years whilst offering carers a direct payment to employ the same agency themselves. This would help to increase the number of carers who have a personal budget or a direct payment (which is very low at the moment) and would enable carers to have a choice of provider. It may not be possible to maintain the current low price as the provider may wish to charge the "private" rate.
- 3.7 In future, ASC will be aiming to increase the use of direct payments by carers for their support. However, we have evidence that this will not be a popular option for people who are currently using the CBRS, though it may be chosen by new carers who are new to the service. The number of carers who are new to the service each year is fairly low, because the turnover is low due to the vacancy rate being about 15%. In a survey of carers using the services carried out in April 2012 of the 171 carers who responded, 126 said "No" to the question "Would you be interested in having the cost of your carers services given to you as a cash payment so you could purchase the service from a different agency or individual?"
- 3.8 The age range of the users of this service is quite wide but over 50% are aged over 70 years and this age group are known to be less keen on direct payments.
- 3.9 An options paper was discussed at ACB on 25th March 2014 which set out a number of options for re-commissioning the existing block contracts taking into account the impact of the Care Act and other service developments going on at the present time. The paper proposed that a Project Team be set up with the participation of colleagues from Access and Support and Finance to carry out all of the tasks involved, reporting back to Adult Commissioning Board. Access and Care would not be able to provide reviews of all the current service users by social workers in the normal way, so different arrangements will have to be made in order to ensure that the service is

allocated appropriately taking account of the total support package in place for the cared for person and their carer.

3.10 The next actions are:

- Interrogate ESCR to ascertain how many of the current carees are receiving a care package and what the nature of these are (and how they might be affected by day centre closures)
- Have conversations with providers about what they think will work best
- Obtain information from other local authorities about how they manage and commission similar services, use personal budgets or direct payments for carers and administer charging regimes
- Devise a method and identify resources to review current service users
- Draw together a project team with colleagues from Access and Care and finance to implement a referral-only pathway to this service in future.
- Ensure that Carer's personal budgets or direct payments for carer's own respite and any associated charges are incorporated into CIS
- An appropriate charging and financial assessment scheme needs to be devised. There may be a model in the scheme that Shared Lives are using for the introduction of their charges.

3.11 ACB took the view that the implications of the Council's new duties, which are not yet fully understood, were significant enough to justify awarding a further short-term contract to the existing providers to give the Council time to develop a new model of carer's short breaks with new access pathway, following new style of carers assessment which are compliant with the Care Act 2014.

3.12 The experience of re-commissioning this service in the past has shown that at least a six month period needs to be planned for the TUPE mobilisation and addressing service user concerns if their service provider is changing. This is the reason for the recommendation of a second six month extension period, if eighteen months is not sufficient for contract mobilisation.

### **Consequences if the proposed action is not approved**

3.13 The situation of having a service which is in such high demand being effectively managed outside of the normal access and care management processes cannot continue, particularly in light of the new duties of ASC towards carers as a result of the Care Act 2014. However the draft guidance on the new duties under the Act was only published in June 2014 and will not be finalised until October 2014. Therefore it is prudent to wait until the final publication of the guidance prior to commencing a review of the service. The tasks which will be required to review the service, the pathway and the eligibility issues raised by the Care Act cannot be completed before the contracts expire in October 2014.

## **Advertising**

- 3.14 The waiver of CPRs is required in order to ascertain the impact of the Care Act 2014 on demand for breaks for carers and to explore the potential for greater uptake of direct payments by carers, alternatives to community based respite breaks. At the end of the waiver period the new services will be commissioned through competitive tender and advertised accordingly.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The proposal to waive CPRs and issue a twelve month contract will enable all current service users to continue having their service. Over the next twelve months a consultation exercise will be carried out on any change to the current service delivery method (e.g. If carers are to be encouraged to take up a Direct Payment) and on the financial assessment scheme that ASC does introduce.
- 4.1.2 The project plan will begin with a survey of the experiences, views and preferences of existing services users and also with stakeholders such as referring agencies, Shared Lives, social workers and the people being cared for through the carers respite schemes.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 An Equality, Diversity, Cohesion and Integration screening tool has been completed and is available at Appendix 1. A full screening or impact assessment will be carried out when the new model of service provision is completed and future commissioning decisions are required.

### **4.3 Council Policies and City Priorities**

- 4.3.1 The Leeds Carers Strategy has been revised and the new Strategy will be published later in 2014.

### **4.4 Resources and Value for Money**

- 4.4.1 The proposal to award a further twelve months contract with two possible six month extension on the same terms as agreed in 2009 will provide the Council with value for money as the hourly rates charged by the providers is at the lowest end of the range of prices charged for domiciliary care. The home care hourly rate in Leeds is up to £13.50.

### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 Call-in will apply as this is a key decision with a value of more than £250,000.
- 4.5.2 Awarding a contract directly to the four current providers without seeking competition could leave the Council open to a potential claim from other providers that may be interested in providing the service. However, due to the

fact that the council intends to carry out a competitive tender within the next eighteen months, the risks are mitigated somewhat.

4.5.3 As these are Part B services for the purposes of the Public Contracts 2006 ("Regulations"), and therefore not subject to the full procurement regime, the risk of challenge identified at para 4.4.2 can be diminished further by the publication of a voluntary transparency notice in OJEU immediately after the decision to award the contract has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made a claim for ineffectiveness cannot be brought. Further, publishing such a notice will also start the time running for any other claim for a breach of Regulations, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach has occurred.

4.5.4 Although there is no overriding legal obstacle preventing the waiver of CPR 9.1 and 9.2, the above comments should be noted. In making their final decision, the Director of Adult Social Services should be satisfied that the course of action chosen represents Best value for the Council.

## **4.6 Risk Management**

4.6.1 The risk of challenge from other providers who are not able to tender for this contract will be mitigated by the fact that this is clearly an interim situation and there will be a competition for contracts for the permanent arrangements.

## **5 Conclusions**

5.1 Re-commissioning this service is a complex matter and involves decisions and process across the whole of ASC. The timetable for the contract expiry and award does not fit neatly into the timescales for the implementation of the Care Act 2014, and other developments such as the new ASC computer database but the exercise is significantly affected by the Act.

5.2 A project team with representation from Access and Support and Finance as well as commissioning needs to be created, reporting back to ACB, to develop a new model of service, access pathways, eligibility, assessment and charging.

## **6 Recommendations**

6.1 The Director of Adult Social Services is recommended to use her authority under CPR 1.3 to waive CPR 9.1 and 9.2 and award a contract for the provision of community base respite services for carers to:

Allied Healthcare in the sum of £323,128

CareUK in the sum of £322,322

Czajka Community Care in the sum of £243,750

Leeds Jewish Welfare Board (Moorcare) in the sum of £240,240



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- 6.2 The Carers commissioning Officer will be responsible for ensuring that the project team carry out a review of the service model and the current service users, have discussions with current and potential providers about different ways of delivering this service and consider other models of service delivery being used in other Local Authority areas. The conclusion from the review will be reported back to Adult Commissioning Board and a further recommendation for procurement of the new model of service delivery will be made to the Director of Adult Social Services in early 2015.

## **7 Background documents <sup>1</sup>**

- 7.1 None

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<sup>1</sup> <sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.