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**Report of Head of Contracts and Business Development**

**Report to Adult Social Services Public Health NHS Scrutiny Board**

**Date: 24<sup>th</sup> November 2015**

**Subject: The Adult Social Care Residential and Nursing Framework Contract**

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 type="checkbox"/> Yes	<input checked="" 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

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**Summary of main issues**

1. The current Adult Social Care Residential and Nursing Framework Contract has now been in place since December 2012 and is now in its third year of operation. This report is to inform scrutiny members of the history of this contract, how it is now operating and the proposals for the next phase of the commissioning process.

**Recommendations**

2. The Adult Social Services Public Health NHS Scrutiny Board members are asked to note the content of this report.

## **1 Purpose of this report**

- 1.1 This report is to inform scrutiny members of the history of the Adult Social Care Residential and Nursing Framework Contract, how it is now operating and the proposals for the next phase of the commissioning process.

## **2 Background information**

- 2.1 During 2010 and 2011, there had been a significant number of legal challenges to local authorities, concerning the fees paid to residential and nursing homes for placements made by those local authorities. The outcome of many of these legal challenges was that the rationale used by those authorities in setting the usual cost of care for the sector was unlawful and fees had to be reviewed, sometimes at significant extra cost to those councils.
- 2.2 Prior to the introduction of the framework contract in Leeds in 2012 Leeds Adult Social Care had negotiated individual fees with homes which lead to a great inequity in the fees which were paid across the city for the same type of service. At the same time, the city faced major financial challenges and Adult Social care was required to save approximately £5m from the supported residential and nursing care budget.
- 2.3 The issues mentioned in 2.2 above together with the legal challenges to councils over the way they set fees and that fact that there was a need to significantly improve the way that residential and nursing care contracts were monitored by the council, the directorate took the decision to embark on an ambitious recommissioning exercise to develop a quality framework for residential and nursing homes which was linked to a fair price for care in the city.
- 2.4 The Director of Adult Social Services submitted a report to the Executive Board on the 7th September 2011 recommending the establishment of an Advisory Board to include representatives of all groups with a direct interest in commissioning, providing and receiving sustainable high quality care for older people. This Board had a primary remit of bringing forward a long term sustainable fee settlement linked to quality services. A Quality Framework linked to the fee settlement, along with proposals to deal with the issue of sector inflation would also be devised (this work would not include residential placements in other service areas such as learning disabilities and mental health, which are being dealt with separately). This was set in the context of a reducing Council budget, and therefore the requirement to devise affordable solutions. A further report was then submitted to Adult Social Care Delegated Decision Panel on 18th January 2012 with a recommendation to the Director that the services of Ernst and Young, an international accountancy firm be engaged to assist officers of the Council to develop a Quality Framework and a new fee structure.
- 2.5 The Advisory Board mentioned in 2.4 above was established in November 2011 and was chaired by the Executive Member for Adult Social Care. The Board consisted of five elected members (one from each of the parties on the Council), five representatives from the independent provider sector (including directors from BUPA, Maria Mallaband and the Leeds Care Association), a service user representative, a voluntary sector representative and representation from NHS Leeds.

- 2.6 The Quality Framework set out to provide an assurance framework to assess the quality of services being provided in a care home setting together with a fair fee structure which would incentivise quality care being provided in these establishments. From the outset, the development of the quality framework contract and fee structure was to be achieved under a coproduction model with input from all stakeholders involved. This coproduction model involved:
- Workshops to which all providers in the city were invited to seek views on how the quality framework documents would be developed and how these would be assessed during the contract period.
  - Focused meetings with providers to further develop and refine the quality framework, specification and conditions of contract.
  - The establishment of resident and relative groups to identify the most important standards of daily life in a care home to be included in the framework documents.
  - A full cost of care exercise during which all in the city providers were asked to submit the cost of care for their establishments and then focused negotiation with provider representatives to come to a fair cost of care for the city.
  - In conjunction with NHS Leeds, the development of a nursing specification to be included with the framework documents.
  - Development of an equipment schedule with the Community Equipment Service to be included in the contract.

At all times throughout this process the Advisory Board was kept apprised of development of the Quality Framework through regular monthly meetings.

- 2.7 The outcome of the work described in 2.6 above was a quality framework document which set out that standards of quality expected in a care home setting, a copy of this document is attached at Appendix 1 (the document is in three parts 1a Quality Standards, 1b Environment and Resources Standards and 1c Financial Security and Development Standards) to a set of tender documents including a specification, conditions of contract, instructions to tenderers and a new residential and nursing fee structure for the city.
- 2.8 The fee structure was developed to incentivise quality within care homes and was set at three different levels:
- Non-QF Fee, which would apply to those homes who chose not to be, or were excluded from being part of the framework contract;
  - Core QF Fee, which would apply to all homes on the framework contract who had achieved the core standard level or were in the process of working towards this level, and;
  - Enhanced QF Fee which applies to all homes who had reached the enhanced standards as part of the quality framework.

The fees were also set for each of the care home service types. An example of the fees payable during 2014 for each of the service and quality framework areas is shown in Appendix 2.

- 2.9 In April 2012, the Advisory Board agreed the quality framework documents and fee structure and the Director of Adult Social Services submitted a report to the Executive Board, recommending the adoption of the quality framework and fee structure in Leeds, the commencement of a procurement exercise to appoint providers to the quality framework and the implementation of new monitoring arrangements for care homes on the framework contract. These recommendations were approved by the Executive Board at their meeting on the 20<sup>th</sup> June 2012.
- 2.10 Following the approval of the Executive Board, two procurement exercises were undertaken during 2012 and 2013, to appoint providers of care homes in the city to the quality framework. Prior to the first tender exercise a number of workshops were held with providers, facilitated by ASC Commissioning staff and procurement colleagues, to go through the tender documents to ensure providers were fully aware of the process involved. The tender exercise required providers to answer a number of questions relating to the quality of service including safeguarding and these were evaluated by an evaluation team consisting of ASC contracting and commissioning officers, social workers, safeguarding representatives and a service user representative.
- 2.11 Under the first tender carried out during the latter half of 2012, a total of 74 care homes were successful in being appointed to the framework and the Director approved these through a delegated decision on the 21<sup>st</sup> November 2012. However a number of providers were unsuccessful at this stage, not having achieved the necessary score threshold to be appointed. As this was the first tender exercise that had been undertaken in the sector for a number of years and as it was the intention of the directorate to appoint as many of the care homes in the city to the framework as possible, the decision was taken to go through a second phase tender exercise and this was undertaken during the first half of 2013. Prior to this happening, ASC officers met with all providers who had been unsuccessful in the first round to provide a full debrief on the reasons why they had not succeeded. Providers had to go through the same exercise (with different questions set) and with the same threshold scores required to be successful. Following the phase 2 tender, a further 17 care homes were successful in being appointed to the framework.
- 2.12 Following both tender exercises, the majority of older people's care homes in the city are now part of the framework contract. Only 4 care homes choose not to participate in the contract. Feedback from these homes was sought as to why they did not participate and the main reason given was that their business focused on the self-funder market.

### **3 Main issues**

- 3.1 The framework contract has now been operational for three years and has two more years left of the contract period. There is no provision to extend the contract beyond the initial 5 year period (including the phase 2 contract which is coterminous with the phase 1 contract).

- 3.2 During the first year of the contract, a dedicated monitoring team was established to undertake the validation of the quality framework within older peoples care homes. The team consists of a Principal Business and Contracts Officer who manages the team and 4 Business and Contracts Officers who each have a portfolio of homes which are assigned on a provider/company basis e.g. all BUPA homes in the city will be allocated to one Business and Contracts Officer. The Business and Contracts Officers are responsible for maintaining the business relationship between the Council and the provider, for undertaking the validation visits to ensure compliance with the standards contained in the Quality Framework, managing the contract with that provider and being the point of contact for other professional stakeholders e.g. CQC inspectors, Safeguarding Officers, CCG Contracting Officers, Social Workers etc.
- 3.3 Within the Quality Framework are three main domains which are Quality Standards and Outcomes, Environment and Resources, Financial Security and Development and within these three main domains there are 11 standards overall (which are further sub divided), on which the quality of the provider will be assessed. This assessment will be undertaken through the validation process which initially involved a self-assessment by the provider against the standards (together with submission of documents such as policies etc.) followed up by a validation visit. This validation visit consisted of a number of officers attending at the care home and seeking evidence from the provider that they were meeting that standard. This involved scrutinising documents and policies such as training records and medication charts etc, interviewing the manager and staff members, observation of care practices in the home and discussion with residents and relatives. Once the evidence has been gathered, a report is produced and the home will be awarded either the core or enhanced rate. Should any issues be uncovered during this validation visit, an improvement action plan will be put in place with the home.
- 3.4 All providers have now been through an initial validation visit and currently there are 70 care homes who receive the core rate and 20 who have achieved the enhanced rate (we have had one home close during the period of the contract). The Business and Contract Officers now have validation visits scheduled throughout the year and these are now undertaken on an unannounced basis. The officers will also seek information from other sources such as CQC, CCGs, safeguarding and complaints and where any issues seem to be arising, they will prioritise a visit to that home. The validation visits will concentrate on specific standards in the quality framework where any issues have arisen either with that home or generally within the sector. All homes on the framework will be visited at least once a year.
- 3.5 The Business and Contracts Officers will seek to work with a home to help it achieve the standards required within the quality framework however, where a home has failed to achieve those standards then further action will be taken against that home such as suspension of local authority placements, issuing contract default notices and ultimately, the termination of the framework contract. To date, we have not had cause to terminate a contract with a provider however, other sanctions have been put in place with a small number of providers over the years.

- 3.6 As part of the ongoing process to improve the quality framework document, Contract officers have been working with a Leadership Group established by Leeds Care Association to review the standards contained in the document.
- 3.7 Given that we are now approaching the last two years of the contract and there is no extension period allowed for under the terms, it is now necessary to consider the recommissioning exercise for this contract. The planning for this process will commence in January 2016. An indication of the timeframe involved to complete the recommissioning process will be an initial 6 month consultation period and completion of a cost of care exercise, 6 months to draft and agree the new quality framework documents, 8 months for any subsequent procurement exercise and a 4 month lead-in period, which will take us to the end of the current contract period.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 A full consultation process was undertaken for the initial framework contract and a similar process will be completed in connect with the recommissioning of the contract.

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

- 4.2.1 A full Equality Impact Assessment was undertaken as part of the establishment of the initial framework contract and this will be repeated during the recommissioning process.

### **4.3 Council policies and the Best Council Plan**

- 4.3.1 The services provided as part of the contract will contribute to the Health and Well-Being City Priority plan.

### **4.4 Resources and value for money**

- 4.4.1 The initial framework and fee structure was established to bring equity to the fee structure for residential and nursing care in the city, to ensure that a fair cost of care was paid for these services and to help meet the financial challenges which were had arisen at the time.
- 4.4.2 A fee review is conducted annually in accordance with the terms and conditions of the contract.

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

- 4.5.1 This report is for information purposes only. There is no confidential information contained in this report and the report is not subject to call-in.

### **4.6 Risk Management**

- 4.6.1 There are no specific risk issues with this report.

## **5 Conclusions**

- 5.1 The Quality Framework was established to ensure that there was a sound framework to assess the quality of services under the contract the Council has with residential and nursing care homes in the city. It also brought in a fair cost fee structure which sought to incentivise quality services being provided in the homes. The Contract has now been in place for three years and since this time, the Care Act has been implemented, which is the single biggest change to the law affecting Adult Social Care in a generation. There have been a number of changes which the Care Act has brought in which affect the provision of residential and nursing care, therefore it is the correct time to look to review the whole contract to ensure further improvements are made.

## **6 Recommendations**

- 6.1 The Adult Social Services Public Health NHS Scrutiny Board members are asked to note the content of this report.

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

- 7.1 None.

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<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.