

**Report of Head of Commissioning for Integration**

**Report to Director of Adults and Health**

**Date: 22<sup>nd</sup> November 2017**

**Subject: Request approval to waive Contracts Procedure Rules 9.1 and 9.2 using the authority set out in CPR 1.3, to enter into interim individual contracts in respect of Community Based Respite Services**

Are specific electoral wards affected? If yes, 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. This report sets out proposals for a waiver of Contracts Procedure Rules (CPR) 9.1 and 9.2 in order that individual contracts are awarded to existing providers of community based respite services.
2. Adults and Health have completed a 12 week period of consultation on the transformation of short breaks. 'Transforming Short Breaks' provides an opportunity to modernise the way unpaid carers are helped to get a short break by developing more innovative approaches to supporting the person they care for. 'Transforming Short Breaks' will also bring consistency of approach, ensure compliance with the Care Act and will enable resources to be efficiently used and targeted to have the greatest impact
3. Adults and Health propose that community based respite services are prioritised for people with eligible needs and that, subject to a financial assessment, the person with care needs may be required to pay towards the costs of the service. This is to ensure that there is a fair and consistent approach across Adults and Health in terms of assessment, eligibility and charging.

4. Awarding new individual contracts to existing providers of community based respite services will ensure that arrangements are in place so that current customers continue to receive a service without disruption.
5. During the contract period Adults and Health will undertake further consultation and stakeholder engagement and will liaise with the Projects, Programmes and Procurement Unit (PPPU) to identify and implement the most appropriate procurement option to ensure that there is a service or services in place which can provide a break for those people who have eligible social care needs.
6. The award of new individual contracts without competition to the providers listed in paragraph 6.1 will be by a waiver of CPRs 9.1 and 9.2 (high value procurements), using the authority set out in CPR 1.3.

## **Recommendations**

1. This report recommends that the Director of Adults & Health enter into 6 individual contracts up to the individual values set out below, for a period of 16 months commencing as soon as practically possible on completion of the appropriate processes.
  - Allied to provide community based respite services in Leeds East for a period of 16 months: contract value of £306,557
  - Allied to provide BME Citywide community based respite services for a period of 16 months: contract value of £124,280
  - Mears to provide community based respite services in Leeds West for a period of 16 months: contract value of £210,496
  - Mears to provide community based respite services in Leeds North West for a period of 16 months: contract value of £219,266
  - Moorcare to provide community based respite services in Leeds North East for a period of 16 months: contract value of £320,320
  - Sevacare to provide community based respite services in Leeds South for a period of 16 months: contract value of £325,000
2. The Head of Commissioning (Integration) is responsible for the implementation of this decision which will be done in consultation with the PPPU after the period of call-in has expired.

## **1. Purpose of this report**

- 1.1 The purpose of this report is to seek a waiver of CPR 9.1 and 9.2, using the authority set out in CPR 1.3, in order that individual contracts are awarded to existing providers of community based respite services for a period of 16 months as soon as practically possible on completion of the appropriate processes.

## **2. Background information**

- 2.1 There are currently five geographical community based respite service contracts and a city-wide BME contract. The contracts were awarded for a period of six months from 1<sup>st</sup> June 2017 by a waiver following legal advice that Adults and Health should undertake a period of consultation regards the transformation of short breaks in Adults & Health.
- 2.2 There are a number of advantages to having individual contracts in geographical areas, for example:
- Understanding the unique needs of each locality and how to access local services and assets and linking in with the community organisations in each of the specific geographical areas
  - Building on the expertise and knowledge the provider has with the local communities and community groups
  - Recruitment of staff from local communities to work in those local communities
  - Supports consistency of staff which is valued by service users and carers
  - Reduced travel time and transport costs
  - Strategic fit with developing health and care locality approaches
- 2.3 The BME service requires care workers from a particular ethnic or cultural background.
- 2.4 The short term period of the contract award and the potential requirement for TUPE are considered as reasons why it is unlikely that there are other providers who would wish to take on the services.
- 2.5 Community based respite services are often referred to as sitting services as they provide support directly to a person with care needs through a paid worker in a person's own home while the person who usually provides care (the unpaid carer) has a break, attends an appointment or pursues social or leisure activities. The services currently support around 350 people, each of who receive the service for between 2 and 8 hours per week.
- 2.6 Community based respite services present an anomaly in that they are inconsistent with other forms of short break/respite/replacement care in terms of how people are assessed, how their eligibility is determined and whether people are charged. For example the service is provided to people who have not had a needs or carers' assessment, eligibility to the service is determined by the provider based on the contract specification rather than by Adults and Health based on the national eligibility framework, and since eligibility to the service is not undertaken by Adults and Health there is no financial assessment and the service is provided free of charge.
- 2.7 Adults and Health have completed a 12 week period of consultation on the transformation of short breaks. 'Transforming Short Breaks' in Adults and Health provides an opportunity to modernise the way unpaid carers are helped to get a short break by developing more innovative approaches to supporting the person

they care. Transforming short breaks will also bring consistency of approach, ensure compliance with the Care Act and will enable resources to be efficiently used and targeted to have the greatest impact. This requires a fundamental review of, and change to, the service specification.

- 2.8 Adults and Health have a concern that the consultation was not sufficiently explicit with regard to people who currently receive a community based respite service but who, following a needs or carer's assessment, would not be deemed as eligible and whether those people understood that this would mean that they would not receive a community based respite service and may have to pay for an alternative service.

### **3. Main issues**

#### **3.1 Reasons for contract procedure rules waiver**

- 3.1.1 Awarding new individual contracts to existing providers of community based respite services will ensure that arrangements are in place in order that Adults & Health continue to meet their statutory responsibilities and so that current customers continue to receive a service without disruption.
- 3.1.2 During the contract period Adults and Health will undertake further consultation and stakeholder engagement and will liaise with PPPU to identify and implement the most appropriate procurement option to ensure that there is a service or services in place which can provide a break for those people who have eligible social care needs.
- 3.1.3 It will be necessary to assess all current users of community based respite services to determine (a) if they have eligible social care needs and (b) if they do have eligible needs whether they are required to contribute to the cost of their care in line with the Council's Charging Policy. It is anticipated that this will take place from April 2018 until December 2018. Where people do not have eligible needs or where people do not wish to have a replacement care service arranged by Adults and Health, Adults and Health will support them to access universal services or target open access services as a way of having their break.

#### **3.2 Consequence if the proposed action is not approved**

- 3.2.1 Current customers would be left without appropriate support arrangements in place which would likely lead to an immediate increase in demand on Access and Care Delivery for assessment and review of cared-for/carers needs.
- 3.2.2 There would most likely be negative impact upon the Council's reputation given the heightened awareness of duties towards carers following the introduction of the Care Act and the duty upon Adults and Health to promote well-being.

#### **3.3 Advertising**

- 3.3.1 It is not proposed to advertise this opportunity for the reasons set out in this report.

### **4. Corporate considerations**

#### **4.1 Consultation and engagement**

- 4.1.1 An initial period of consultation has ensured that the views of current customers of community based respite services have been taken into account prior to further recommendations being made.

- 4.1.2 Adults and Health now consider that a further period of consultation is advisable to ensure that:
- It is explicit to people who do not have eligible needs that they will not be able to access community based respite services and that they would be supported to access universal services or target open access services as a way of having their break and that they may have to pay for an alternative service
  - There is an opportunity for stakeholders to influence the final shape and design of a community based respite service specification
- 4.1.3 This work will be reported to the Leeds Carers Partnership which has strong representation from carers, voluntary and community sector organisations and statutory sector partners
- 4.1.4 Our commissioning information assures us that the service will continue to meet the needs and expectations of existing service users and carers during the contract period.

## **4.2 Equality and diversity / cohesion and integration**

- 4.2.1 Short breaks reduce health inequalities experienced by unpaid carers by providing opportunities to maintain social contacts, to have a life of their own alongside their caring and may support carers to continue in employment. It is recognised that as well as supporting the carer, a short break should provide a meaningful and fulfilling experience for the person with care and support needs.
- 4.2.2 An equality and cohesion screening tool has been completed and is appended to this report.

## **4.3 Council policies and best council plan**

- 4.3.1 Short Breaks contribute to the delivery of key outcomes within the Best Council Plan 2015/2020, specifically to improve the quality of life for our residents and particularly those who are vulnerable or in poverty.
- 4.3.2 Short Breaks make significant contributions to the Health and Well Being Plan and its priority to make Leeds the best city for Health & Wellbeing.
- 4.3.3 Having a break from caring was a key priority identified by carers in the development of the Leeds Carers Strategy.

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

- 4.4.1 The value of the individual contracts is set out in paragraph 6.1. Payment is based on actual hours delivered up to the maximum contract value and so expenditure may be less.
- 4.4.2 The average hourly rate for community based respite across the six individual contracts is lower than the hourly rate currently paid for domiciliary care.

## **4.5 Legal implications, access to information, and call-in**

- 4.5.1 This is a key decision which is subject to call-in as the maximum combined cost of the services within this decision exceeds £250k per annum. A notice was published on the List of Forthcoming Key Decisions dated 23<sup>rd</sup> October 2017.
- 4.5.2 There are no grounds for treating the contents of this report as confidential under the Council's Access to Information Rules.
- 4.5.3 Awarding a contract directly to these providers may leave the Council open to a potential claim from other providers, to whom this contract could be of interest that it has not been wholly transparent as the opportunity is not being advertised. In terms

of transparency, it should be noted that case law suggests that the Council should always consider whether contracts of this value would be of interest to providers in other Member States and if it would, subject the matter to a degree of European wide advertising. It is up to the Council to decide what degree of advertising would be appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographical location of the place of performance.

- 4.5.4 The Director of Adults and Health has considered the nature of the services being delivered and due to the requirement to be physically located in Leeds, and the transitional nature of the individual contracts, is satisfied that these services would not be of interest to providers in other EU member states
- 4.5.5 There is also a risk that an aggrieved contractor could argue that this is a “community based respite” service and there is nothing unique about these services which justifies them being divided up into 6 separate contracts, and therefore the Council are simply disaggregating the total contract spend to simply not comply with the requirements of the Public Contracts Regulations 2015. However, given the short term period of the contract award and the potential requirement for TUPE this risk is perceived to be low.
- 4.5.6 In making their final decision, the Director of Adults and Health should note the above comments and be satisfied that the course of action chosen represents best value for the Council.

#### **4.6 Risk management**

- 4.6.1 The individual contracts will continue to be performance managed by officers in Adults and Health. To date the services have delivered in accordance with the service requirements and performance criteria in the specification.
- 4.6.2 Adults and Health will liaise with PPPU to identify and implement the most appropriate procurement option to ensure that there is a service or services in place which can provide a break for those people who have eligible social care needs.
- 4.6.3 Although client contributions will offset future expenditure on replacement care, there is a risk that assessing people’s needs may identify needs which are currently not being met which could result in additional costs to Adults and Health. However, it is difficult to estimate the likely financial impact as each needs assessment and financial assessment is based on personal circumstances.
- 4.6.4 Where people do not have eligible needs or where people do not wish to have a replacement care service arranged by Adults and Health, Adults and Health will support them to access universal services or target open access services as a way of having their break. Leeds is, of course, well known for its vibrant third sector which includes the 37 Neighbourhood Networks, a network of over 40 dementia cafes and a wide range of services and support groups run by voluntary and community groups including singing groups, walking groups, luncheon clubs etc. There are also wide range of organisations listed in the Leeds Directory who state that they can provide a sitting service. Organisations include private home care agencies, charities and community interest companies. The Leeds Directory operates the Green Tick symbol which, although it does not constitute a recommendation of a provider, can provide a degree of peace of mind that the organisation has been checked and vetted.

#### **5. Conclusions**

- 5.1 This report sets out proposals for a waiver of Contracts Procedure Rules (CPR) 9.1 and 9.2 in order that individual contracts are awarded to existing providers of community based respite services.
- 5.2 Adults and Health have completed a 12 week period of consultation on the transformation of short breaks. 'Transforming Short Breaks' provides an opportunity to modernise the way unpaid carers are helped to get a short break by developing more innovative approaches to supporting the person they care for. 'Transforming Short Breaks' will also bring consistency of approach, ensure compliance with the Care Act and will enable resources to be efficiently used and targeted to have the greatest impact
- 5.3 Adults and Health propose that community based respite services are prioritised for people with eligible needs and that, subject to a financial assessment, the person with care needs may be required to pay towards the costs of the service. This is to ensure that there is a fair and consistent approach across Adults and Health in terms of assessment, eligibility and charging.
- 5.4 Awarding new individual contracts to existing providers of community based respite services will ensure that arrangements are in place so that current customers continue to receive a service without disruption.
- 5.5 During the contract period Adults and Health will undertake further consultation and stakeholder engagement and will liaise with PPPU to identify and implement the most appropriate procurement option to ensure that there is a service or services in place which can provide a break for those people who have eligible social care needs.
- 5.6 The award of new individual contracts without competition to the providers listed in paragraph 4.4.2 will be by a waiver of CPRs 9.1 and 9.2 (high value procurements), using the authority set out in CPR 1.3.

## **6. Recommendations**

- 6.1 This report recommends that the Director of Adults & Health enter into 6 individual contracts up to the individual values set out below, for a period of 16 months commencing as soon as practically possible on completion of the appropriate processes.
  - Allied to provide community based respite services in Leeds East for a period of 16 months: contract value of £306,557
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- Sevacare to provide community based respite services in Leeds South for a period of 16 months: contract value of £325,000

6.2.1 The Head of Commissioning (Integration) is responsible for the implementation of this decision which will be done in consultation with the PPPU after the period of call-in has expired.

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

7.2 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.