

Report of: Mark Phillott, Head of Commissioning (Contracts and Business Development),

Report to: Director of Adults and Health

Date: 21st March 2018

Subject: Report to request the utilisation of the 3 month extension to the existing interim arrangement that is in place with the Independent Sector Older People's Care Homes.

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 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

Summary of main issues

1. In October 2016 a review of the quality standards, service specification, fees and contract terms of the independent sector care homes for older people commenced. The scope of this work was then extended to adopt a One City approach with the aim of identifying how the Council and the CCG Partnership could work with care home providers to improve the quality of care within the local care sector.
2. A cost of care exercise was undertaken by Mazars with a final report being submitted to LCC in July 2017. The findings and recommendations were then used to inform the Council's fee setting discussions with the care home providers.
3. The Care Home framework agreement expired on the 19th December 2017 so an interim agreement was put in place via the delegated decision process on 30/11/17 (DDN D45007) to cover the period from 20th December 2017 – 31st March 2018. This interim agreement included the option for a further extension period of 3 months if needed.
4. This interim agreement was required to enable sufficient time to complete the review of the quality standards, the enhanced standards and service specification. Further time was also required for discussion with care home providers about the proposed fees for the next long term arrangement.

Recommendations

1. The Director of Adults and Health is recommended to agree the 3 month extension to the existing interim arrangement with the independent sector care homes for older people when the existing agreement expires on 31st March 2018.
2. The Director of Adults and Health is recommended to approve the interim arrangement for the period 31st March 2018 – 30th June 2018.
3. The Director of Adults and Health is recommended to approve that this decision is exempted from Call In to ensure that contract extension notifications can be issued to contracted care homes prior to the 31st March 2018.
4. The Commissioning Officer (ASC) will liaise with the Programmes, Projects and Procurement Unit to oversee the implementation of the interim arrangement prior to the expiration of the existing framework agreement. All independent sector care homes for older people affected by this decision will be contacted to notify them of the interim arrangement and the intentions moving forward.

1. Purpose of this report

- 1.1 The Residential and Nursing Care Services Framework Arrangement (YORE-935MX3) and subsequent phase 2 and phase 3 framework contracts (YORE-95QHXX and 9RUF-QK3014) for the independent sector care homes for older people expired on 19th December 2017.
- 1.2 An interim arrangement on the existing terms and conditions, with the existing contracted providers, was approved on 30th November 2017 to cover the period from 20th December 2017 – 31st March 2018. This included the option to extend for a further 3 month period from 1st April to 31st 30th June 2018.
- 1.3 The purpose of this report is to request approval to utilise this 3 month extension period to enable the review of the service specification and negotiation of the new fee rates to be concluded.

2. Background information

- 2.1 In October 2016 a review of the quality standards, service specification, fees and contract terms of the independent sector care homes for older people commenced. The scope of this work was then extended to adopt a One City approach with the aim of identifying how the Council and the CCG Partnership could work with care home providers to improve the quality of care within the local care sector.
- 2.2 Part of the review entailed a Cost of Care exercise which was undertaken by Mazars (who won the tender after a procurement process was conducted). Mazars issued a final report to LCC in July 2017. A series of meetings regarding fees took place with provider representatives of the Care Homes Strategic Advisory Group along with consultation with the rest of the market. Consequently, a fee for the final year of the contract (Dec 16 to Dec 17) was agreed through the DDP process on 30th November 2017 DDN D45006.
- 2.3 A review of the quality standards framework has been undertaken between March 2017 and January 2018 alongside a review of the CQC fundamental standards to

ensure that the quality standards framework aligns with CQC and best practice standards as issued by a number of sources such as NICE and SCIE.

- 2.4 The service specification has been reviewed in consultation with providers and other subject matter experts.
- 2.5 A market analysis document has been produced which was used to inform the development of the commissioning vision and options appraisal which determined the most appropriate purchasing solution, procurement route and timing of contract award for the new long term contract agreement.
- 2.6 An options appraisal regarding commissioning and procurement options has taken place with care home providers and other stakeholders to determine the most efficient method of commissioning this service.
- 2.7 A report has been submitted to the Executive Board of the Council in March 2018 advising of changes to the current model, procurement options and quality framework standards.

3. Main issues

- 3.1 The current contract documents were previously coproduced with the independent sector providers in 2012 and there have been no major issues with any of the documents during this period. However, since the original contract in 2012, the Care Act 2014 has been introduced therefore a full review of all the documents was necessary to ensure they were Care Act compliant and that they were up to date with current best practice.
- 3.2 As part of this review process, a Reference Group was established which was made up of various care home managers who are part of the current framework contract. This group have been working with commissioning officers in Adults and Health over the last year on updating the contract documents to reflect best practice. As part of wider consultation on the documents, a number of workshops had been held at the end of January 2018 for all providers in the city to contribute to the development of the contract. The terms and conditions of the contract have also been revised and updated by the council's contract solicitor.
- 3.3 Further consultation will now need to take place on the final draft documents to be utilised. A contract extension is therefore required to enable this work to be finalised.
- 3.4 To ensure the correct procurement route can be chosen to implement the new contract, a series of options appraisal workshops have been held with stakeholders including the independent sector providers.
- 3.5 The outcome of these discussions was that a framework contract should be considered. Additionally, Adults and Health together with the CCG Partnership will consider whether separate or additional arrangements are required for any specialist areas of provision where resources are scarce, such as nursing dementia. The preferred option for the length of contract is 5 years as it allows providers more certainty and allows them to plan. The option chosen for the procurement process is for a simplified application process that complies with the Public Contracts Regulations.

- 3.6 These outcomes were reported to the One City Care Homes Project Board in January 2018 with a recommendation that a new 5 year framework contract is commissioned with providers through an application process. It was also agreed to further explore the possibility of block contracting for specialist residential and/or nursing dementia services in the future and this work is currently ongoing and will be subject to separate approvals.
- 3.7 Future fees to be paid for the new contract that will commence in April 2018 are still being negotiated with providers but it is anticipated that these negotiations will be concluded by the end of March 2018.
- 3.8 It is proposed that this interim extension would be provided on the existing terms and conditions as the previous framework contract.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 Consultation has taken place with all independent sector care homes for older people regarding all aspects of this commissioning process and this is ongoing.
- 4.1.2 The Director of Adults and Health, Deputy Director, Integrated Commissioning Adults and Health and Head of Finance have been engaged with about this proposal.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality, Diversity, Cohesion and Integration Screening has been completed (see Appendix 1), which demonstrates that the service meets the desired equality requirements to cover the interim arrangement.
- 4.2.2 Appropriate policies and procedures are in place with the independent sector care homes for older people.

4.3 Council policies and best council plan

- 4.3.1 The independent sector care homes for older people helps contribute to the 5 outcomes detailed in the Leeds Health and Wellbeing Strategy 2016-2021. The nature and ethos of the services contribute to: people living longer and healthier lives; helping people to live full, active and independent lives; ensuring that people's quality of life is improved by access to quality services; involving people in decisions made about them, and; helping people to live in healthy and sustainable communities.
- 4.3.2 The Best Council Plan vision of Leeds being the best city for health and wellbeing is supported through the delivery of independent sector care homes for older people. This includes supporting more people to live safely and independently in an environment that they class as their own homes and giving people choice and control over their health and social care services.

4.4 Resources and value for money

- 4.4.1 The baseline fee for the period 20th December 2017 to 31st March 2018 was agreed with the sector but it should be noted that an inflationary increase is currently being offered to the sector thus the baseline fee will be increased for the period 1st April

2018 to 31st June 2018. The fee to be offered will be affordable within the constraints of the recently approved budget for 2018/19.

- 4.4.2 Though the cost of the contract is influenced by both demand and the mix of demand, it is presumed that the financial spend will be circa £16m for this period. This is provided for in the 2018/19 budget.

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

- 4.5.1 The decision highlighted in this report will be taken by the Director of Adult Social Services in line with the officer delegation scheme as detailed in Part 3 of the Council's Constitution.

- 4.5.2 It is a requirement of the Council Constitution that advance notification of Key Decisions will be given in the List of Forthcoming Key Decisions. Paragraph Rule 2.5 of the Decision Making Procedure Rules states:

'If a matter which is likely to be a Key Decision has not been included in the List of Forthcoming Key Decisions for 28 clear calendar days before the decision is planned to be taken and the decision must be taken by such a date that it is impracticable to defer the decision until the decision has been included in the List of Forthcoming Decisions for 28 clear calendar days, the decision may still be taken.'

- 4.5.3 If this decision is deferred in order to comply with the Key Decision Making Procedure Rules then the contract would expire and there would be no overarching framework arrangement in place with the independent sector Older People's Care Homes.
- 4.5.4 It had been anticipated that the work to complete the review of the quality standards, the enhanced standards and service specification and fee discussions would have been concluded before the end of March 2018 however this has not been the case thus the extension to the contract is required.
- 4.5.5 The timing and recording of the formal decision to extend the current arrangement meant that this item could not be included on the List of Forthcoming Key Decisions.
- 4.5.6 If this decision is not exempt from call in then the Council would have to issue individual contract agreements for each older person placed into residential or nursing care homes in the city until a new overarching framework is put into place.
- 4.5.7 Due to the nature of the service provision these services are exempt from Contract Procedure Rules thus no waiver of CPRs is required. However, such services are caught by the Public Contracts Regulations 2015 (PCR), meaning that any services with a value above £589K must be advertised in OJEU. However, as contracts are formalised on an individual level (due to the end user having the right to choose which provider they wish to contract with), the arrangement proposed is the continuation of an "approved list" where providers will be vetted for suitability by the Council. Whilst the Council can inform service users and carers about those providers that are vetted, they can choose any provider in the market they wish, regardless of whether the provider chosen is on the approved list or not. The Council will always seek to ensure that any individual contracts entered into by the end user are based upon the current framework agreement terms and conditions.
- 4.5.8 The above comments should be noted when making the final decision. The Director of Adults and Health should be satisfied that the course of action chosen represents Best Value for the Council.

4.6 Risk management

- 4.6.1 The previous procurement processes were conducted in accordance with the Council's Contract Procedure rules in order to ensure that a fair, open and transparent process was utilised. This will also be the case with any future procurement process.
- 4.6.2 If this interim extension period is not approved then the independent sector care homes for older people may give notice on the contract and ask LCC to find alternative care homes for people previously placed there.
- 4.6.3 If this interim extension period is not approved then some independent sector care home providers may try to charge LCC more for any future placements that are made within their care home until a new contract arrangement commences 1st July 2018.
- 4.6.4 If this interim extension period is not approved there will not be sufficient time to resolve the issues highlighted in this report. This may result in a contract that is not fit for purpose.

5. Conclusions

- 5.1 Much work has been undertaken to review the existing framework arrangement and consultation with care home providers and stakeholders is ongoing.
- 5.2 An extended interim arrangement will allow for further discussions and negotiations with the independent sector care homes for older people to agree the service specification and associated documents that will be utilised for the new contract arrangement that will be implemented 1st July 2018 (subject to approval of the recommendations contained within this report).

6. Recommendations

- 6.1 The Director of Adults and Health is recommended to agree the 3 month extension to the existing interim arrangement with the independent sector care homes for older people when the existing agreement expires on 31st March 2018.
- 6.2 The Director of Adults and Health is recommended to agree that the interim arrangement shall be from the period 31st March 2018 to 30th June.
- 6.3 The Director of Adults and Health is recommended to approve that this decision is exempted from Call In to ensure that contract extension notifications can be issued to contracted care homes prior to the 31st March 2018.
- 6.4 The Commissioning Manager (ASC) will liaise with the Programmes, Projects and Procurement Unit to oversee the implementation of the interim arrangement prior to the expiration of the existing framework agreement. All independent sector care homes for older people affected by this decision will be contacted to notify them of the interim arrangement and the intentions moving forward.

7. Background documents¹

¹ 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.

7.1 None