

**Report of** - Deputy Director, Integrated Commissioning, Adults and Health.

**Report to** - Director of Adults and Health

**Date:** 12 December 2018

**Subject: Variation to the Community Home Care Contracts and Framework Agreements to cover payment for up to a 14 day period of Service User Hospitalisation, pursuant to Contract Procedure Rule 21.**

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 contracts and framework agreements for externally commissioned homecare runs from 1 June 2016 to 31 May 2021. Payments made to providers under the current contracts and framework agreements are on the basis of an hourly rate, which includes travel time for the care worker. However, under the terms of the current contracts and framework agreements, where a Service User is admitted to hospital for a continuous period greater than 24 hour, the fee is only payable up to the date of admission. The provider does not get paid for the time where an individual is admitted into hospital.
2. Leeds is a highly competitive labour market and providers have indicated that staff recruitment and retention is one of the major issues currently affecting the homecare sector. A consequence of only making payments up to the date of admission to hospital is that staff will only be paid for the hours they provide to that service user therefore, the number of hours of work they are actually paid for could reduce during the admission which in turn is impacting on the providers ability to retain care staff.
3. In addition to the retention of staff, once a service user enters hospital there is a possibility that the care package is unable to be picked up immediately the service user is ready to be discharged from hospital as the provider has had to reallocate staff to cover other care packages.

4. By ensuring that payments are made to providers for a period of up to 14 days after the service user has entered hospital, subject to the conditions attached to this payment, providers will be supported to retain staff for this period and will enable the care packages to be restarted by the provider in a more timely fashion there by avoiding any unnecessary delayed discharges from hospital.

## Recommendations

5. The Director of Adults and Health is recommended to approve a variation to the contracts and framework agreements to enable a payment of up to 14 days to a provider to continue to cover a period when a service user has been admitted to hospital.
6. The Director of Adults and Health is asked to note that the variation to the contracts and framework agreements will be implemented by the Commissioning Manager in Adults and Health in conjunction with the legal officers in Procurement and Commercial Services.

## **1 Purpose of this report**

The purpose of this report is to seek approval from the Director of Adults and Health to vary the terms of the Community Home Care contracts and framework agreements to enable a payment to be made to providers to cover a period of up to 14 days whilst a service user who is receiving a home care service is in hospital. Currently, no payment is made to a provider once a service user is admitted to hospital which can cause difficulties in providers retaining staff and care packages being resumed once the service user is ready to be discharged. The payment will be made at the contracted rate per hour for the number of hours of care normally provided to that service user and for a period of up to 14 days. Payment will be made subject to providers ensuring staff receive their normal wage payment they would have received if the service user they are providing the service for had not gone into hospital. There will also be an expectation that the provider resumes the service immediately the service user is due to be discharged from hospital within the 14 day period.

## **1 Background information**

- 1.1 On 7 January 2016 following a procurement exercise the Director of Adults and Health awarded contracts to 4 primary providers and 12 providers were appointed to the framework agreement. The tender contained a commitment to the Ethical Care Charter requiring providers to improve employment conditions such as encourage non zero hour employment contracts, pay travel time, travel expenses and an hourly rate above the National minimum wage.
- 1.2 As part of the original commissioning process for the current contracts and framework agreements, in 2014, Leeds City Council engaged with providers to undertake a "Fair Rate for Care" exercise using as its basis the UK Homecare Association pricing template. The rate was revised in February 2016 following the Executive Board decision to sign up to the Ethical Care Charter, which was undertaken on 1 May 2015, and the establishment of the Leeds Living Wage.

- 1.3 With the introduction of the Leeds Living Wage a decision was made to increase the overall homecare contract and framework agreement rate to support the increased staff hourly rate. The successful contractors were encouraged to accept a contract variation which inserted into the contract and framework agreement a requirement to pay care staff a minimum of £8.01 per hour.
- 1.4 The homecare market already has difficulty attracting sufficient care workers into the industry and offer the best hourly rate achievable to attract staff as well as many “soft” benefits to staff and recruitment and retention of care staff in the city remains particularly challenging given the prosperous and growing economy in Leeds.

## 2 **Main issues**

- 2.1 Whilst the Council has made considerable strides to improve the pay rates to staff through the introduction of a pay rate higher than the current National Living Wage, Leeds has a local city economy growing faster than other parts of the country which contains a considerable service sector. There is significant competition for staff both within the sector and from other care or service markets such as residential or retail. Homecare faces an uphill battle to attract staff with sectors which often do not require a vehicle, are based in a single location or building, offer regular shifts and are unaffected by weather or traffic disruption. Positive contract terms and conditions play a significant part in the competition to attract staff.
- 2.2 The existing contract and framework agreements specification (clause 2.47) requires providers to communicate with family and carers in order to avoid unnecessary delays to recommencing the service on discharge from hospital. The current contract and framework agreement does not place a time limit on the “readiness” of providers to support discharged service users.
- 2.3 The current contracts and framework agreements with homecare providers contain a clause (specification clause 2.46) which permits only an initial payment to providers during admission to hospital. The contracts and framework agreements currently allows for payment only for the first missed visit due to unplanned hospital admission on the basis that the provider had made staff available to deliver at the time and location required, but after that the service for the individual is cancelled, albeit temporarily, and so the provider does not get paid.
- 2.4 This clause does not allow the provider to charge to keep available services which would have been provided if a service user had not been admitted to hospital. As most staff within a provider’s organisation are paid for contact time with a client (including travel time), this means that once a service user is admitted to hospital the care staff team providing services for that customer will not be paid for services they would have been providing had the service user not been admitted to hospital.
- 2.5 One of the four primary providers has informed the Council that they can have up to 500 hours per month where the services have ceased because service users have gone into hospital. Based on the current contracts and framework agreements terms the provider does not get paid for these hours and in most cases the care workers do not get paid unless the provider has been able to give the staff alternative work to fill their rota.
- 2.6 There are three significant impacts which this can have:

- Where staff lose a significant number of hours of care work because the clients they are providing services for are admitted to hospital, providers have informed the Adults and Health Directorate that this can have a significant negative impact on staff retention as staff who see their payments reduced for a significant period seek to find work elsewhere to make up their overall take home pay.
- Where staff have either left the organisation or been reassigned to other service users, this can have a significant impact of delays in respect of hospital discharge, in that the package would need to be reallocated to other care staff or to a new provider altogether.
- Re-brokerage of care can introduce a new provider, new staff and new visit arrangements for the care. This is contrary to one of the aims of the contract which is to maintain the continuity of care and by this support the service user to settle back home after time in hospital.

2.7 In order to attempt to alleviate the issues mentioned in 2.5 above, it is proposed that the current community homecare contracts and framework agreements are varied to allow payment to be made to enable staff availability to be retained based on the contracted rate per hour for the number of hours of care normally provided to that service user and for a period of up to 14 days. Any such payment would be subject to:

- The provider agreeing to continuing to pay their staff for the hours of work that would be provided to the service user during the retention period that they are in hospital; and
- The provider agreeing to recommence a package of care immediately the service user is ready to be discharged from hospital within the 14 day retention period,

By utilising this payment in this way, a provider could ensure that care staff are retained as employees of the homecare company by not having to seek alternative employment during this period and that hospital discharges are significantly reduced with care packages being able to be started on the day a person is ready for discharge from hospital.

### **3 Corporate Considerations**

#### **3.1 Consultation and Engagement**

3.1.1 The Lead Executive Member has been consulted about the proposals contained within this report.

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

3.2.1 An Equality and Diversity Impact Assessment has been undertaken and is attached at Appendix 1.

#### **3.3 Council Policies and the Best Council Plan**

3.3.1 The proposals outlined in this report will help to deliver a number of crucial elements of the Adult Social Care 'Better Lives' strategy by helping local people with care and

support needs to enjoy better lives. With a focus on: promoting choice, helping people to stay living at home, joining up health and social care services. These in turn support the ambition of the Best Council Plan 2018/19 to 2020/21 for Leeds to be the Best City in the country, promoting inclusive growth, challenging low pay and inequality. In addition the proposals will contribute to the achievement of the objectives set out in the city's Health and Well-Being plan: people will live full active and independent lives, people's quality of life will be improved by access to quality services, people will be involved in decisions made about them and the city's Priority Plan by contributing to the indicators for: best city for health and wellbeing, best city for business, best city for communities.

### 3.4 Resources and value for money

3.4.1 The proposed variation to the contract is a long term change to the contract. The funding required to support the expenditure generated by the variation is a new spend to the contract which finance officers have confirmed can be met from existing 2018 -2019 resources. The additional spend however will need to be calculated into the budgets set for the remaining years of the contract 2019-2020 and 2020 to 2021. The contract is due to expire May 31<sup>st</sup> 2021.

3.4.2 The current rates and approximate proportion for the homecare areas are:

- Urban £15.94 per hour which accounts for 78.4% of the total care delivered.
- Rural £17.59 per hour which accounts for 18.5% of the total care delivered.
- Super rural £17.89 per hour which accounts for 3.1% of the total care delivered.

3.4.3 Payment for up to 14 days.

It is estimated that in the last 12 month period hospital admissions for less than one week total 5,837 hours, admissions of between one and two weeks total 7,774 hours. This produces a total hours admission for up to 14 days of 13,611 hours.

3.4.4 When hospital admissions for between one day and up to 14 days duration are apportioned between volumes of delivery across the city of Urban 78.4%, Rural 18.5% and Super rural 3.1% it produces the following cost breakdown:

- Urban - £170,096
- Rural - £44,292
- Super rural £7,548

3.4.5 Proposing a 14 day period of retention payment could result in an estimated additional expenditure of £129,463 for the 7 months from planned start date of November 1<sup>st</sup> 2018 to end of contract year 31<sup>st</sup> May 2019

Estimated total annual cost would be £221,936

3.4.6 Payment for up to 21 days.

If the period of payment were to be extended to three weeks, the admissions of between 2 and three weeks total 7,045 hours. This would increase the estimated overall total for three weeks of admission for 12 months to 20,656 hours.

3.4.7 When hospital admissions for less than a week up to three weeks have these proportions applied to them it produces a cost breakdown of:

- Urban - £258,144
- Rural - £67,147

- Super rural £11,530

3.4.8 Proposing a maximum 21 day retention could result in expenditure of £196,478 for the 7 months from planned start date of November 1st 2018 to end of contract year 31st May 2019

Estimated total annual cost would be £336,821

3.4.9 The contract year runs from June 1<sup>st</sup> until May 31<sup>st</sup>. The homecare budget for 2018-19 budget is £17,835,959.

### 3.5 Risks

3.5.1 Any payments made would be subject to the providers agreeing to the conditions stated in 2.6 above which would be included as part of the contract and framework agreement variation

3.5.2 Homecare providers who do not hold a contract or who are not on the framework agreement may challenge on the basis that the contract and framework agreement variation is not compliant with the Public Contract Regulations 2015.

### 3.6 Legal Implications, Access to Information and Call In

3.6.1 The decision highlighted in this report will be taken by the Director of Adults and Health in line with the officer delegation scheme as detailed in Part 3 of the Council's Constitution.

3.6.2 Procurement and Commercial Services, legal officers have confirmed that there are clauses within the contracts with primary contractors (Clauses C4.1 and Clause F3) and framework agreement contractors (Clause 13 and Clause 30 and schedule 8) which permit negotiations to occur regarding changes in the price or services, provided any variations proposed are reasonable and do not materially change the specification.

3.6.3 Procurement and Commercial Services, legal officers have also advised that such changes as detailed in this report ,sections 2 and 3.4, may be permitted by Regulation 72 (1) (c) of the Public Contracts Regulations 2015 where all of the following conditions have been fulfilled:-

(i) The need for modification has been brought about by circumstances which a diligent contracting authority would not have foreseen.

(ii) The modification does not alter the overall nature of the contract.

(iii) Any increase in price does not exceed 50% of the value of the original contract or framework agreement.

3.6.4 Procurement and Commercial Services, legal officers have also advised that if a variation is made pursuant to Regulation 72(1) (c) then care must be taken to ensure that the variation falls within (i), (ii) and (iii) set out in clause 3.6.3 above.

3.6.5 The conditions set down in Regulation 72 (1) (c) (i), (ii) and (iii) (as set out in Clause 3.6.3 above) have been considered as follows: (i) At the time of the procurement the market was consulted and payment for hospital admissions was not raised, and the Council did not consider this to be a problem. Therefore it is a situation that has changed that the Council could not have diligently foreseen. (ii) This proposed variation does not alter the overall nature of the contracts and framework agreements as the service will be provided in the same way as procured. (iii) This variation will also not increase the price in excess of 50% of the value of the original

contracts and framework agreements (see Clause 3.4 above as to details of values). However, it must be noted that there is a risk that these justifications may be challenged.

3.6.6 Procurement and Commercial Services, legal officers have further advised that if a variation is made pursuant to Regulation 72(1)(c) a notice must be published in OJEU alerting the market to the variation, so there is a possibility any variation entered into under this ground could be challenged.

3.6.7 This decision has been placed on the list of forthcoming key decisions and is subject to call-in. The report does not contain any exempt or confidential information.

### **3.7 Risk Management**

3.7.1 Risk management for the contracts and framework agreements for externally commissioned care is undertaken as part of the contract management process and is governed under the oversight of Home Care/Personal Assistance Commissioning Board.

## **4 Conclusions**

4.1 The additional funding for providers will significantly lessen the loss of pay for staff experienced during hospital admission and contribute to retaining staff in the sector.

## **5 Recommendations**

5.1 The Director of Adults and Health is recommended to approve the option set out in Clauses 3.4.2 to 3.4.4 to vary the contracts and framework agreements to enable a payment of up to 14 days to a provider to continue to cover a period when a service user has been admitted to hospital.

5.2 The Director of Adults and Health is asked to note that the variation to the contract and framework agreement will be implemented by the Commissioning Manager in Adults and Health in conjunction with the legal officers in Procurement and Commercial Services

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

6.1 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.