

Report of: Deputy Director, Integrated Commissioning, Adults and Health

Report to: Director of Adults and Health

Date: 16th January 2019

Subject: Authority to proceed with a procurement process to appoint a suitable provider or providers to deliver community based short break services from 1st November 2019.

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s): n/a		
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input 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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: Appendix number: n/a		

Summary of main issues

1. A Community Based Short Break Service provides unpaid carers with a break from caring which is known to benefit their health and wellbeing which means they can continue to help to maintain the health and wellbeing of the person they care for, support that person's independence and enable them to stay in their own homes for longer.
2. A report to Executive Board on 19th December 2018 outlined the outcome of public consultation and made a number of recommendations which were approved by Executive Board.
3. A procurement process is now required to appoint a suitable provider or providers to deliver community based short break services from 1st November 2019.

4. A waiver of the Contract Procedure Rules (CPRs) is required to ensure that existing service-users continue to receive their community based short break service without disruption while the procurement process takes place.

Recommendations

1. This report recommends that the Director of Adults and Health:
 - a. Give authority to proceed with a procurement process to appoint a suitable provider or providers to deliver community based short break services from 1st November 2019. The budget per annum from April 2019 is £1,299,440 and the contract period will be 3 years and 5 months with options to extend up to 24 months.
 - b. Waive CPRs 8.1, 8.2, 9.1 and 9.2 using the authority set out in CPR 1.3. in order to award new interim contracts direct to the following organisations and up to the values set out below, for a period of 6 months commencing 1st May 2019:
 - Allied Health Services Limited to provide community based respite services in Leeds East for a period of 6 months: contract value of £114,959
 - Allied Health Services Limited to provide BME Citywide community based respite services for a period of 6 months: contract value of £46,605
 - Mears Care Ltd to provide community based respite services in Leeds West for a period of 6 months: contract value of £78,936
 - Mears Care Ltd to provide community based respite services in Leeds North West for a period of 6 months: contract value of £82,225
 - Leeds Jewish Welfare Board to provide community based respite services in Leeds North East for a period of 6 months: contract value of £120,120
 - Synergy Homecare to provide community based respite services in Leeds South for a period of 6 months: contract value of £121,875
2. This report asks the Director of Adults and Health to note that:
 - a. The Head of Commissioning (Integration) is responsible for the implementation of this decision which will be done in consultation with Procurement and Commercial Services (PACS)
 - b. A further report to approve the contract award to appoint a suitable provider or providers to deliver community based short break services from 1st November 2019 will be submitted for approval at the end of the procurement process and will be treated as a significant operational decision.

1. Purpose of this report

1.1. The purpose of this report is to seek:

1.1.1. Authority to proceed with a procurement process to appoint a suitable provider or providers to deliver community based short break services from 1st November 2019. The budget per annum from April 2019 is £1,299,440 and the contract period will be 3 years and 5 months with options to extend up to 24 months.

1.1.2. Waiver of CPRs 8.1, 8.2, 9.1 and 9.2, using the authority set out in CPR 1.3, in order to award new interim contracts direct to the following organisations and up to the values set out below, for a period of 6 months commencing 1st May 2019. The combined total value of the 6 interim contracts is £564,720.

- Allied Health Services Limited to provide community based respite services in Leeds East for a period of 6 months: contract value of £114,959
- Allied Health Services Limited to provide BME Citywide community based respite services for a period of 6 months: contract value of £46,605
- Mears Care Ltd to provide community based respite services in Leeds West for a period of 6 months: contract value of £78,936
- Mears Care Ltd to provide community based respite services in Leeds North West for a period of 6 months: contract value of £82,225
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- Synergy Homecare to provide community based respite services in Leeds South for a period of 6 months: contract value of £121,875

2. Background

2.1. The purpose of a community based short break service is to provide an unpaid carer with a break from caring. This is achieved by a paid worker providing a replacement care service to the person with care needs. The service is sometimes referred to as a 'sitting service' as it often involves sitting with the person with care needs in their own home.

2.2. There are currently five geographical based community based short breaks service contracts and a city-wide BME contract. The contracts were awarded for a period of 16 months from January 2018 in order that Adults and Health could undertake consultation and stakeholder engagement.

2.3. The number of carers in Leeds is growing and the number of carers who provide more than 20 hours of unpaid care per week is also growing. Within that context, the Adults and Health directorate set out a three tiered approach to carer's short breaks which was approved by Executive Board on 27th June 2018 and can be summarised as:

- **Tier 1: Universal short breaks**
Open access, community-based, may be free or may have a small charge
- **Tier 2: Targeted short breaks**
Open access but targeted for a specific group of people (e.g. dementia), may be free or may have a small charge
- **Tier 3: Eligibility-based short breaks**
Accessed via a Care Act assessment, for people with significant needs, subject to a financial assessment in line with the Council's policy on charging for non-residential services so may be free or may have a charge depending on individual circumstances

2.4. In the report to Executive Board, Adults and Health proposed that community based short break services should be for people with significant needs and accessed via a formal assessment of need and that subject to a financial assessment, the person with care needs (i.e. not the carer) may have to contribute towards the costs of the service. As this represented a change from the current arrangements Executive Board recommended that Adults and Health undertake further consultation on a revised specification, referral pathway and service criteria for the community based short breaks service.

2.5. A further report to Executive Board on 19th December 2018 outlined the outcome of that further consultation and made the following recommendations which were approved by Executive Board:

- Access to the commissioned community based short break service will be via a needs assessment or carer's assessment as laid out in the Care and Support (Assessment) Regulations 2014, and will be prioritised for people who meet the eligibility criteria for care and support as laid out in Care and Support (Eligibility Criteria) Regulations 2014.
- The person with care needs will be charged the amount they are assessed as being able to afford as laid out in the Care and Support (Charging and Assessment of Resources) Regulations 2014.
- People who are deemed not to have eligible needs will be supported to find other ways to have a break.

2.6. Executive Board also approved investment from April 2019, of a further £170k per annum to be added to the contract value of the Community-based Short Break service and a further investment of £30K to be made for Tier 2 Targeted Short Break services which is in line with changes in our overall approach to how we manage adult social care, for example, helping individuals and families to find solutions that build on their strengths and assets and harnessing the strengths of resilient individuals, families and communities. This additional investment demonstrates the Council's continued commitment to support carers to have access to regular breaks.

3. Main issues

3.1. Procurement

- 3.1.1. The service will be placed out to tender via an open procurement process which will be undertaken by Procurement and Commercial Services. A two month mobilisation period will allow for a contract start date of 1st November 2019.
- 3.1.2. A market consultation exercise will be undertaken to provide an opportunity for existing and potential service providers to contribute their views on the potential number, size and geography of service contracts as well as what constitutes a fair cost to provide the service.
- 3.1.3. A new service specification will be produced taking into account the changes to eligibility criteria and referral pathways as well as the feedback gathered via consultation and engagement.
- 3.1.4. The Adults & Health Commissioning Board will operate as the Project Board and will receive regular updates as to the progress of the procurement exercise.
- 3.1.5. Service-user and carer involvement will be in line with the councils 'Service User Guide' which explains the importance of involving service users in the procurement of goods, works and services, how service users can be involved and confidentiality issues.

3.2. Waiver

- 3.2.1. CPRs 8.1, 8.2, 9.1 and 9.2 require competition for procurements and the invitation of written tenders. A waiver of these CPRs is required to award contracts direct to the providers listed in section 1 above without seeking written tenders. Entering into direct contracts with these providers will ensure that there is the necessary timescale required to run a procurement process to appoint a suitable provider or providers to deliver community based short break services from 1st November 2019.
- 3.2.2. The contracts will only be for six months. The interim contracts will ensure that arrangements are in place between 1st May 2019 and 31st October 2019 in order that current customers continue to receive a service without disruption.
- 3.2.3. Allied Health Services Limited is a new entity created following the sale of Allied Healthcare to Health Care Resourcing Group (HCRG) which was completed on 30th November 2018.
- 3.2.4. If the waiver is not approved, there would be no Community Based Short Break service from 1st May 2019 until a new service is procured. This means that current customers would be left without appropriate support arrangements in place which would likely lead to an immediate increase in demand on Adults and Health for assessment and review of cared-for/carers needs.
- 3.2.5. 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.

3.2.6. 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 was undertaken to ensure that the views of current customers of community based respite services were taken into account prior to recommendations being made about the future provision of short breaks in Leeds.

4.1.2. A further period of consultation undertaken ensured that:

- It was explicit to people who may not have eligible needs that they would not be able to access community based respite services but would be supported to access Tier 1 and/or Tier 2 services as a way of carers having a break
- There was 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

4.2. Equality and diversity / cohesion and integration

4.2.1. An Equality, Diversity, Cohesion and Integration Screening Tool has been completed (attached at Appendix 1).

4.3. Council policies and Best Council Plan

4.3.1. Community based short break services supports the Best Council Plan priority on Health and Wellbeing and Leeds' Best City Ambition of a Strong Economy and a Compassionate City, by setting out how the council will meet the needs of carers. It also contributes to delivering the vision of the Health and Well-being Strategy including such key elements as:

- An age friendly city where people age well
- Strong, engaged and well connected communities
- Maximise the benefits from information and technology
- Promote mental and physical equality
- The best care, in the right place and the right time

4.3.2. The service also supports the Council's Breakthrough projects, notably Making Leeds the Best City to Grow Old In and Reducing Health Inequalities but the approach can have a positive impact across all the projects.

4.4. Resources and value for money

4.4.1. Unpaid carers help to maintain the health and wellbeing of the person they care for, support that person's independence and enable them to stay in their own homes for longer. Research undertaken by the University of Leeds estimates the

cost of replacing unpaid care with paid care to be around £1.4billion per year in Leeds. Effective support for carers which promotes their wellbeing and enables them to continue caring therefore makes economic sense as it helps to manage demand on health and care services.

4.4.2. The budget available for community based short breaks from April 2019 is £1,299,440 per annum. This includes the additional £170k per annum that the Adults and Health Directorate has allocated to increase the provision of community short breaks services, as outlined in paragraph 2.6 above.

4.4.3. The combined value of the interim contracts is £564,720. The average hourly rate for these contacts is less than the hourly rate paid for Homecare services, and the terms and conditions of the contracts mean that the council only pays for actual hours delivered.

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 Adults and Health in line with the officer delegation scheme as detailed in Part 3 of the Council's Constitution.

4.5.2. The total contract value of the new contract commencing 1st November 2019 will exceed the £615,278 EU procurement threshold for social and other specific services and as such the procurement will be subject to the full Public Contracts Regulations 2015 (PCR). Therefore competition will be sought through a tender process and the contract will be advertised in line with CPR 10.5.

4.5.3. The decision to give authority to commence the tender process will be classed as a key decision and will be required to be signed off by the Director of Adults and Health and will be subject to call-in. A notice was published on the List of Forthcoming Key Decisions dated 11th December 2018.

4.5.4. As this is a key decision, future decisions arising from this report i.e. decision to award a contract from 1st November 2019 will be at most a significant operational decision and therefore not be subject to Call In.

4.5.5. There are no grounds for treating the contents of this report as confidential under the Council's Access to Information Rules.

4.5.6. The decision to award interim contracts for a period of 6 months from 1st May 2019 without seeking competition 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. However, as per the comments set out in paragraph 4.5.8 below, this risk appears low.

4.5.7. The interim contracts are for social and other specific services as defined by section 7 of Part Two of the PCR. The combined financial value of the interim contracts is below the threshold for the application of the PCR. However, in terms of transparency it should be noted that case law suggests that the Council should always consider whether contracts of this value could be of interest to providers in other EU member states and, if it could, the opportunity should be subject 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.

- 4.5.8. Due to the nature of the services being delivered, the relatively low individual contract values and the requirement to be physically located in Leeds, it is the view of officers that the scope and specialist nature of the services is such that it would not be of interest to providers in other EU member states. This is an interim measure for only six months while a competitive tender process is scoped and prepared.
- 4.5.9. Although there is no overriding legal obstacle preventing the waiver of CPRs 8.1, 8.2, 9.1 and 9.2 using the authority set out in CPR 1.3, by awarding direct contracts without seeking competition, the above comments should be noted. In making their final decision, the Director of Adult 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 interim 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. A mobilisation period will be built into the procurement timetable to ensure that the new service can be fully mobilised before the contract start date as it is considered that TUPE will apply to this procurement and will involve contractor to contractor negotiations.

5. Conclusions

- 5.1. Community based short break services provide unpaid carers with a break from caring which is known to benefit their health and wellbeing which means they can continue to help to maintain the health and wellbeing of the person they care for, support that person's independence and enable them to stay in their own homes for longer.
- 5.2. A procurement process is required to appoint a suitable provider or providers to deliver community based short break services from 1st November 2019.
- 5.3. A waiver of the CPRs is required to ensure that existing service-users continue to receive their community based short break service without disruption while the procurement process takes place.

6. Recommendations

- 6.1. This report recommends that the Director of Adults and Health:
 - 6.1.1. Give authority to proceed with a procurement process to appoint a suitable provider or providers to deliver community based short break services from 1st November 2019. The budget per annum from April 2019 is £1,299,440 and the

contract period will be 3 years and 5 months with options to extend up to 24 months.

6.1.2. Waive CPRs 8.1, 8.2, 9.1 and 9.2 using the authority set out in CPR 1.3. in order to award new interim contracts direct to the following organisations and up to the values set out below, for a period of 6 months commencing 1st May 2019:

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- Synergy Homecare to provide community based respite services in Leeds South for a period of 6 months: contract value of £121,875

6.2. This report asks the Director of Adults and Health to note that:

6.2.1. The Head of Commissioning (Integration) is responsible for the implementation of this decision which will be done in consultation with Procurement and Commercial Services (PACS).

6.2.2. A further report to approve the contract award to appoint a suitable provider/s to deliver community based short break services from 1st November 2019 will be submitted for approval at the end of the procurement process and will be treated as a significant operational decision.

7. Background documents¹

7.1. None

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