

**Report of Deputy Director, Integrated Commissioning, Adults & Health Directorate
Report to Director of Adults and Health**

Date: 9 April 2020

Subject: Request to utilise regulation 32(2)(c) under the Public Contract Regulations 2015 on behalf of COVID-19 – To secure further additional ‘step down’ care home bed capacity through block purchasing arrangements

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open 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

1. Main issues

- Due to the COVID-19 virus outbreak there is a need to secure significant numbers of care home beds from the independent sector older people’s care home providers. These beds are needed as additional ‘step down’ capacity, over and above the usual numbers of care home placements, as many of these placements will be required for a short term period only until people are able to return to their own home or to a care home of their choice.
- On 24 March 2020, approval was given to commission approximately 60 independent sector care home beds across a number of care homes, as ‘step down’ provision, through block purchasing arrangements for a period of three months, at an estimated cost of £468k.
- Since this time, the 60 bed capacity has been secured and, in the main, this has been for nursing beds. However, in response to the scale of need arising from COVID-19, it is recognised that further bed capacity will be required over the next few weeks including a significant number of residential care beds and a small number of beds for people who have complex needs relating to dementia.
- In order to secure the required capacity, it is proposed that further block purchasing arrangements are put in place to secure additional beds for a period of three months, with an option to extend for up to a further three months.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- 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 have their needs met in a safe and appropriate environment once they are ready to leave hospital. The 'step down' provision should also enable people to eventually return to live at home after a period of convalescence following a stay in hospital.

3. Resource Implications

- In accordance with the guidance on COVID-19 Hospital Discharge Service Requirements issued by Central Government on 19 March 2020, it is envisaged that this provision is to be paid for from the NHS COVID-19 budget. Though initial discussions with the CCG have indicated this funding source, should there be any risk to accessing this funding there is an alternative funding source, specifically the monies the Council will receive to ease the burden caused by COVID-19. Central Government guidance provides the opportunity of utilising Regulation 32(2)(C) under these extreme times up until June 2020, however this report spells out the option to extend the contract up to an additional period of 3 months in case the Government extends the utilisation of the regulation under the Public Contracts Regulations 2015 and the COVID-19 Hospital Discharge Service Requirements.

Recommendations

1. The Director of Adults and Health is recommended to:
 - a) Grant authority for up to a further 60 nursing and residential care beds to be commissioned from independent sector providers under block purchasing arrangements with immediate effect, for a period of three months, with an estimated cost of £468k.
 - b) Grant authority to extend the block purchasing arrangements for up to a further 3 months, for both the initial 60 beds previously approved and the additional up to 60 beds. The estimated cost, for the full three month extension period, for the total of 120 beds, will be £936k.
 - c) To note that this decision is taken utilising the special urgency procedures under rule 2.6 of the Executive and Decision Making Procedure Rules and to exempt this decision from call-in under rule 5.1.3 of those Rules.

1. Purpose of this report

- 1.1 To seek approval to put in place further block purchasing arrangements to secure additional 'step down' bed capacity from a range of independent sector care home providers in Leeds for residential and nursing care provision.

2. Background information

- 2.1 On 19 March 2020, Central Government published the guidance on COVID-19 Hospital Discharge Service Requirements. This places a duty on local authorities to assume lead commissioning and contracting responsibilities for "expanding the

capacity in domiciliary care, care homes and reablement services in the local area".
[..\Covid-19\COVID-19 Hospital Discharge Guidance.pdf](#).

- 2.2 In response to the guidance, the Adults and Health Directorate's Integrated Commissioning staff are required to secure additional care home bed capacity on a short term basis for people who are ready to be discharged from hospital. This capacity is to be sourced from a range of independent sector care homes and will include residential care and nursing care, including for people with dementia.

3. Main issues

- 3.1 There are often difficulties in ensuring prompt discharge arrangements for people who require a care home placements following a hospital stay. The difficulties are compounded by the limited availability of care home placements, particularly for people who have dementia, and all the more where people require nursing care.
- 3.2 Delays frequently occur where people are awaiting a placement at a care home of their choice. The guidance that has been issued states that during the COVID-19 pandemic, individuals will not be able to wait in hospital until their choice of care home has a vacancy. People will be required to accept a care home placement on a short term basis until the care home of their choice is able to provide them with a bed. Additionally, some people are likely to only require a short term placement in a care home as a 'step down' from hospital until they are well enough to go back to their own home.
- 3.3 Care homes are frequently reluctant to offer placements to people on a short term basis as this impacts in their income due to frequency of voids as a result of a high turnover of the residents.
- 3.4 In order to support timely discharges at this critical time, there is a need to put new and different arrangements in place to commission a large number of beds on a short term basis, as 'step down' provision. A significant number of people placed in these beds will only need the placement for a short period, for recuperation or whilst they are awaiting a package of care to be put in place before they are able to go home. Other people will need the placement for a short period whilst they await a bed at a care home of their choice, or are moved to a care home placement which more appropriately meets their longer term needs.
- 3.5 In order to secure this 'step down' capacity and to support timely discharges from hospital, there is a need to offer some financial incentives to care home providers so that they are willing to make their bed capacity available for people on a short term basis. As such, in partnership with the CCG, the A&H Directorate has now commissioned some care home bed capacity under block purchasing arrangements with the providers being paid for the bed capacity for a period of three months.
- 3.6 To date, this arrangement has been put in place with a number of care home providers, for approximately 60 beds, and in the main, these have been for nursing care, including for people with dementia. A small number of beds have been block purchased from each of the homes which has meant that the beds are available in various locations across Leeds. This has also enabled good oversight and management of voids to ensure that these are kept to a minimum.
- 3.7 The bed capacity that has been secured to date is already being fully utilised and it is now necessary to block purchase further bed capacity, from residential and nursing care providers and in the main for people with dementia. A small number of beds will also be required for people who have complex needs arising from their dementia.

3.8 It is anticipated that the bed capacity that has already been secured, and any additional capacity, will be required beyond the initial three month period and so approval is also sought to extend the current arrangements beyond the three month period, on a month by month basis for a period of up to a further three months.

4. Corporate considerations

4.1 Consultation and engagement

4.1.1 Due to the urgency of securing this additional capacity, consultation and engagement has not been undertaken with members of the public. However, the views of third sector colleagues, including Carers Leeds and Age UK, have been sought and their feedback is reflected in the commissioning arrangements and the processes that have already been put in place to support these discharge arrangements.

4.2 Equality and diversity / cohesion and integration

4.2.1 This provision is being commissioned to meet the needs of older people with care and support needs. Securing additional 'step down' care home capacity will enable the Council to act swiftly in ensuring that older people are not delayed in hospital once they are deemed to be ready for discharge.

4.3 Council policies and the Best Council Plan

4.3.1 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 have their needs met in a safe and appropriate environment once they are ready to leave hospital. The 'step down' provision should also enable people to eventually return to live at home after a period of convalescence following a stay in hospital.

Climate Emergency

4.3.2 The recommendations in this report do not directly impact on the Climate Emergency however, in our overarching agreement with care homes, the providers are encouraged and supported to reduce their carbon footprint and to adopt greener working practices as and where possible.

4.4 Resources, procurement and value for money

4.4.1 The cost for a further 60 beds is estimated at £468k for a three month period. The cost of extending the initial 60 beds and a further 60 beds for up to a further 3 months is £936k.

4.4.2 In accordance with the guidance on COVID-19 Hospital Discharge Service Requirements issued by Central Government on 19 March 2020, it is envisaged that this provision is to be paid for from the NHS COVID-19 budget. Though initial discussions with the CCG have indicated this funding source, should there be any risk to accessing this funding the will be allocated from the monies the Council will receive to ease the burden caused by COVID-19.

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

- 4.5.1 This is a Key Decision as the total value of the original decision and this extension exceeds £500k. The funding source will be the NHS COVID-19 budget or the COVID-19 funding allocation to the Council. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 4.5.2 Due to the urgent need to secure additional beds to enable people to be discharged from hospital in a safe and timely way during the current COVID-19 crisis, this decision will be taken under the special urgency provisions set out in rule 2.6 of the Executive and Decision Making Procedure Rules. Any delay to the decisions could result in delayed discharge, blocking hospital beds, and potential loss of life. Approval for this has been given by the Chair of the Adults and Health and Active Lifestyles Scrutiny Board.
- 4.5.3 Due to the potential for delayed discharge, blocking of hospital beds and consequent loss of life if this decisions were to be delayed, the Director of Adults and Health is recommended to invoke rule 5.1.3 of the Executive and Decision Making Procedure Rules to exempt this decisions from call-in.
- 4.5.4 Regarding use of the negotiated procedure without the publication of a notice, it must be noted that there is the potential risk of challenge that there are no real technical reasons justifying the use of the negotiated procedure without publication of a notice under regulation 32 (2) (c) in accordance with the Public Contracts Regulations 2015, and that the Council is simply seeking to circumvent the application of the procurement rules. However, due to the reasons set out in Sections 2 and 3 of this report which set out the justifications that the Council would rely on to justify this decision, the risk of such a challenge is considered to be extremely low.
- 4.5.5 Regulation 32 (2) (c) of the Public Contracts Regulations (2015) states:-
- 4.5.6 In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.
- (2) The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:—
- (c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.
- 4.5.7 It is considered the above ground applies in this case as it is already clear that in these exceptional circumstances, Leeds City Council must procure this service with extreme urgency in responding to the current coronavirus, COVID-19 outbreak.
- 4.5.8 Central Government has placed a requirement on local authorities to ensure that there is increased care home capacity to enable prompt discharges from hospital during the COVID-19 outbreak.
- 4.5.9 The decision on the recommendations 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.
- 4.5.10 These comments should be noted by the Director of Adults and Health and in making the final decision should be satisfied that doing so represents best value for the Council under these circumstances.

4.6 Risk management

- 4.6.1 Processes will be put in place to ensure that the services are provided in accordance with the specific requirements of supporting swift and prompt discharges from hospital. Commissioning officers will monitor the usage of the 'step down' beds to ensure that providers are able to deliver the service in accordance with the stipulated requirements and to ensure that voids are kept to a minimum. If any of the providers are unable to continue to deliver the provision, the block purchasing arrangements will cease following due notice in accordance with the terms of the agreement.

5. Conclusions

- 5.1 It is critical that sufficient care home capacity is secured to meet the current and anticipated demand for short term care home placements to enable prompt hospital discharges. There is a need to provide financial incentives to care home providers, by way of block purchasing arrangements, at the Council's agreed fee rates, in order to secure the required capacity.
- 5.2 In order to secure a small number of beds for people with complex needs relating to dementia, it is likely that individual fees will need to be negotiated and agreed with the providers, above the Council's agreed fee rates, to reflect the higher levels of oversight and support needs of those individuals. This is likely to apply to only a small number of service users.

6. Recommendations

- 6.1 The Director of Adults and Health is recommended to:
- 1) Grant authority for up to a further 60 nursing and residential care beds to be commissioned from independent sector providers under block purchasing arrangements with immediate effect, for a period of three months, with an estimated cost of £468k.
 - 2) Grant authority to extend the block purchasing arrangements for up to a further 3 months, for both the initial 60 beds previously approved and the additional up to 60 beds. The estimated cost, for the full three month extension period, for the total of 120 beds, will be £936k.
 - 3) To note that this decision is taken utilising the special urgency procedures under rule 2.6 of the Executive and Decision Making Procedure Rules and to exempt this decision from call-in under rule 5.1.3 of those Rules.

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.