

Request to approve the procurement of an Overarching Agreement for the provision of Residential and Nursing Care Services.

Date: 12th August 2024

Report of: Deputy Director, Integrated Commissioning

Report to: Director of Adults and Health

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

This report seeks approval to procure a new overarching agreement for the provision of Residential and Nursing Care services (Overarching Agreement) to commence on 1st December 2024 following the expiry of the existing overarching agreement on 30th November 2024. The report also covers the removal of the enhanced standards approach for new care packages (where providers meeting additional standards received a quality premium payment (QPP)), this is due to low take up and the approach not achieving its original objectives. The report sets out the plan to manage the reduction of any legacy quality premium payments created under the 2018 Overarching Agreement and focus commissioning support to deliver provider quality improvement across the whole market.

Recommendations

The Director of Adults and Health is recommended to approve:

- a) A further 2-month period of the pre-approved extension to the Overarching Agreement from the 1st of October 2024 to 30 November 2024 as permitted under the contract terms set out within Decision reference D56091
- b) The procurement of a new Overarching Agreement for the provision of Residential and Nursing Care Services, the value of this will be approximately £82.5m annually based on current demand. The agreement will be for the period of 1st December 2024 to 30th September 2028. The estimated value for the full duration will be £330M.
- c) Approve the removal of the Quality Premium Payment from the new Overarching Agreement.
- d) All existing residents as of the 30th of November 2024 will remain in situ with their current care provider being subject to the subsisting 2018 overarching agreement terms and conditions.

The Director of Adults and Health to note that the Head of Commissioning, Working Age Adults, Adults and Health Commissioning, will oversee the implementation of this decision.

What is this report about?

- 1 To seek agreement for a further 2-month period of the pre-approved extension to the Overarching Agreement from the 1st of October 2024 to 30 November 2024 as permitted under the contract terms set out within Decision reference D56091
- 2 To seek approval to procure a new Overarching Agreement for the Provision of Residential and Nursing Care Services commencing 1st December 2024 and end 30th September 2028.
- 3 To seek approval to remove the enhanced standards and quality premium payments for providers regarding new residents under the Overarching Agreement.
- 4 The current Overarching Agreement has been in place since 2018 and is due to expire on 30th September 2024.
- 5 In the City there are 92 independent sector older people's care homes. Leeds City Council (the Council) commissions residential care from the majority of these independent sector providers under an overarching agreement. Where homes are not part of the overarching agreement, spot placements are made based on the same terms and conditions.
- 6 A new Overarching Agreement will be set up using a Dynamic Purchasing System (DPS) approach under the Light Touch Regime of The Public Contracts Regulations 2015. This will offer an accessible application process for providers to gain entry to the Overarching Agreement with individual categories of care called off under the agreement. We anticipate the majority of applications will occur within the initial application period; however, the application process can be undertaken at any point following the procurement of the agreement until it expires 30th September 2028. This process facilitated 6 new care homes and introduced an additional 377 CQC registered beds to the market during the existing Overarching Agreement term. During the term of the current Overarching Agreement 10 care homes closed, which removed 514 CQC registered places from the market.
- 7 Notwithstanding these closures the current overall supply of beds managed under the agreement exceeds demand in all four categories of care specified. Capacity tracker monitoring indicates weekly vacancies are running at over 160 vacant residential beds, over 160 Residential dementia category vacant beds, 130 General Nursing vacant beds and 82 vacant Dementia Nursing beds. The replacement Overarching Agreement retains the Dynamic Purchasing System (DPS) model as an effective and flexible way to support providers to offer capacity.
- 8 The current service specification is supported by a set of 26 core requirements which added together form the 9 core quality standards. Under the current agreement in addition to the core standards there is a higher level of 12 enhanced standards which homes must meet to be eligible for a quality premium payment. The quality premium payment forms an additional payment per person per week of £28 for Residential, £29 for Residential dementia, £32 for Nursing and £32 for Nursing dementia to care homes who have successfully evidenced that they meet these enhanced standards.
- 9 The contract core standards have been the main mechanism within the contract to ensure the core elements of the contract are delivered as specified since the commencement of the overarching agreement. They have been the primary mechanism for promoting improvement in service quality and will remain so within the proposed new overarching agreement. Monitoring visits undertaken by contract officers measure against the core standards, and it is

these standards which are referenced in improvement action plans or in any report recommending a service provider may be suspended from the contract.

- 10 The new overarching agreement will increase the use of provider action plans to plan and monitor service improvement against core standards. This is an approach well established with providers and matches the approach taken by Care Quality Commission (CQC) to achieve provider improvement.
- 11 The enhanced standards have experienced low take up, and low impact on the general market, restricting the impact to a small group of providers. The scheme to meet enhanced quality standards and in return receive quality premium payment was applied for by only 21 homes since 2018 and are currently held by even fewer, 14 out of 92 homes. Of the 92 providers in the general market 55 are CQC rated good, 2 CQC rated outstanding, which makes up 61% of care homes, covering 57% of registered beds. Therefore, of the 55 care homes eligible for the scheme, only 14 have been assessed as achieving the standards. The remaining 38% of homes which are CQC rated requires improvement and offer 42% of registered beds are not eligible for the scheme.
- 12 The enhanced standards and linked quality premium payments are therefore not accessible to providers until they have already made improvements or may not be accessible in the foreseeable future due to CQC currently operating a reduced level of re-visiting. Commissioning considers that supporting all homes to make the improvement to good would be a better objective for the revised quality clauses in the contract and impact upon a greater number of residents.
- 13 It is therefore proposed to remove the enhanced standards and linked quality premium payments in the new 2024 Overarching Agreement but retain all the core standards. The core standards have in turn been refreshed in a similar manner to the specification to ensure they reflect current guidance. For the avoidance of doubt the removal of the quality premium payments will apply to all providers, for any future residents procured under the new Overarching Agreement.
- 14 The enhanced standards will not be included in the procurement of the replacement Overarching Agreement. The replacement contract will retain the core standards and core fees, the emphasis on quality assurance, and a home improvement plan.
- 15 The removal of the Enhanced standards/ quality premium payments from the new 2024 Overarching Agreement will ensure no new Care Home Individual Service Agreements will be put into place after the commencement of this new Overarching Agreement on 1st December 2024.
- 16 The 324 Care Home Individual Service Agreements created under the existing 2018 Overarching Agreement which still attract a quality premium payment will continue to exist after the 2018 Overarching Agreement closure on November 30th 2024. They continue to operate under the terms and conditions of that 2018 Overarching Agreement until the resident ceases their placement at that care home due to death or moving to an alternative service. It is estimated the numbers of active quality premium payments may decrease by 20% per year due to deaths and moves to other services. These 324 legacy Care Home Individual Service Agreements cannot be moved under the terms of the 2024 Overarching Agreement without the agreement of the provider of the care.
- 17 The 2018 Overarching Agreement contains clauses governing the review of core fee and quality premium payment fee rates on an annual basis, implemented each year. The 2018 Overarching Agreement also has the option to waive requirements to meet elements of the specification such as the enhanced standards. There is a contractual requirement to review the legacy quality premium payment and core rates, but no requirement to increase them by any set amount.

What impact will this proposal have?

- 18 The proposal to use a further 2-month period of the pre-approved extension to the Overarching Agreement from the 1st October 2024 to 30 November 2024 as permitted under the contract terms set out within Decision reference D56091 will offer additional time for providers to engage with the overarching agreement application process.
- 19 The proposal to procure a new Overarching Agreement will provide a stable contractual structure offering providers the confidence needed to invest in meeting the City's demand for Residential, Residential Dementia, Nursing and Nursing Dementia care. The Light Touch Dynamic Purchasing System Overarching Agreement offers the flexible opportunity for new providers to join the contract during the contract term thereby supporting the Council to meet the Care Act 2014 requirements to offer choice within a resilient residential care sector in Leeds.
- 20 The proposal will continue and strengthen the use of the core standards for assessing quality, strengthen the user and family engagement processes within the contract and promote improved management of complaints to increase learning and improvement from any issues. The proposal will remove the process for care homes to apply for the quality premium payment scheme under the new 2024 Overarching Agreement and thereby prevent the formation of any new claims for quality premium payments under that agreement.
- 21 The proposal to introduce the new 2024 Overarching Agreement does not prevent the continuation of quality premium payments for 324 residents with care currently managed by Care Home Individual Service Agreements established under the 2018 Overarching Agreement.
- 22 The immediate financial impact upon the 14 homes in receipt of quality premium payments is reduced in the short term due to the 324 legacy Care Home Individual Service Agreements attracting a quality premium payment continuing past the November 30th 2024 Overarching Agreement end date. It is calculated, based on estimated life span of residents within a care home, that residents would naturally cease to use the service at an approximate rate of 20% per annum. This gradual reduction in residents attracting a quality premium payment reduces the risk of sudden financial instability for the 14 care homes in receipt of quality premium payments.
- 23 The continuance of the 324 legacy Care Home Individual Service Agreements would not achieve any savings from the budget in financial year 2024-5 as the QPP fee of £265,776 would still need to be paid up until March 30th 2025.
- 24 Procurement legal have confirmed that a phased end of enhanced standards and quality premium payments can be achieved by the Council informing the 14 qualifying providers that the Council will cease to require the delivery of the enhanced standards under the contract from April 1st 2025. This would remove the obligation to deliver the enhanced standards and the additional work by providers this required.
- 25 The 14 impacted providers would only be expected to deliver against the core standards, which are almost identical in both the 2018 and 2024 Overarching Agreements. The continuance of QPP for 6 months until the end of the financial year is effectively phasing the scheme out over 6 months. A six-month phasing out time frame was the option which received the most positive feedback from providers during consultation.
- 26 Terms are in place within the 2018 overarching agreement to review fees. This can be used to align fee payments for both the 2018 and 2024 Overarching Agreements. This would result in the Council paying an aggregated core and quality premium payment fee rate under the 2018 Overarching Agreement which was equivalent to the total 2024 Overarching Agreement core

fee rate. This would provide equity between providers delivering under both the 2018 and 2024 overarching agreements.

- 27 The quality premium payment currently enhances the fee payable by approximately 4.17 %. Setting the fee rates for each contract is a separate process and decision however matching fee rates this way would result in the 14 providers receiving an aggregated quality premium payment and core fee equal to the core fee the other providers would receive after 1st April 2025. Not paying an additional sum for the quality premium payment would achieve an estimated saving of £493,584 in a 12-month period.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing Inclusive Growth Zero Carbon

- 28 The commissioning of Residential and Nursing service providers contributes to the Health and Wellbeing pillar of the Best City Ambition. The nature and ethos of the service contributes 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.
- 29 The Best Council Plan vision of Leeds being the best city for health and wellbeing is supported through the delivery of the Residential and Nursing service. This includes supporting more people to live safely and independently in an environment that they class as their own homes giving people choice and control over their health and social care services and providers contributing to carbon reduction through the social value initiatives.
- 30 The commissioning of Residential and Nursing service providers to operate within the Leeds boundary will encourage long term employment and investment in the Leeds economy which will support the Leeds Inclusive growth strategy 2023-30.

What consultation and engagement has taken place?

Wards affected: n/a – city wide service

Have ward members been consulted? Yes No

- 31 The Executive Member for Adult Social Care, Active Lifestyles and Culture has been briefed.
- 32 Providers have been extensively consulted on the refreshed specification, core standards, complaints and quality assurance process, brokerage process, 1 to 1 process, social value, and nursing guidance, with initial sharing of core standards for consultation occurring February 2024, with further consultation events held for providers on the 16th, 23rd and 30th of July and the 5th of August 2024. The consultation period ended 9th August 2024.

In addition, the draft specification, draft quality standards and other core draft documents being available on Yortender and emailed to providers for comments. 28 providers attended the two-hour sessions representing 53 care homes and 2748 beds, a participation rate of 57% of care homes. The Leeds Care association attended one session and made suggestions gathered from their members for amendments to the draft documents.

The revised specification and quality standards will include a greater focus on provider quality assurance processes, provider quality audit, complaints management and require each home to have a rolling improvement plan setting out how the quality of the service will be developed. The section previously named corporate social responsibility but within the new Overarching Agreement is titled Social Value was also clarified to include elements on recruitment, staff support and protecting the environment.

- 33 The consultation of providers on the specification refresh during the consultation events, also included providers specifically being asked for their views on the guidance for greater user involvement, improved complaint management, social value monitoring, improved processes for brokering and one to one care as well as two approaches to ending the enhanced standards:

Phased removal over a timeframe such as 6 to 12 months or the lifetime of existing recipients
or

To cease the scheme at the end of the current contract September 30th 2024.

- 34 Those providers attending supported the value of greater resident consultation, better complaint management, made valuable suggestions regarding brokerage and 1 to 1 management whilst acknowledging the impact the removal of the quality premium payment would have on the 14 providers currently awarded the quality premium payments. The providers whilst acknowledging the reasoning behind its failure to achieve widespread improvement and therefore its cessation, voiced clearly that removal would increase the financial pressure on the homes, some of whom had received it from early in the contract and received it for nearly all of their registered beds. It was expressed that this would reduce the resources for these homes with significant receipt of the premium payments, to maintain quality. Some providers expressed their view that the decision was unfair, that their success and future viability was being penalised because of the failure of other homes to improve and access the scheme.

The homes in receipt of the enhanced standards quality premium payment all preferred the phased removal option, with the 6-month timeframe getting most comments of support from this distinct group. The Leeds Care Association expressed on behalf of their members their opposition to the scheme removal and also that any resources should be reinvested in the fees for care homes.

The majority of the views expressed however were from providers who attended the sessions but did not have access to the scheme and therefore were not opposed to its ending immediately but suggested that the funds should be reinvested either in the core fee, or in a quality enhancement scheme accessible to all providers.

- 35 There were no providers who suggested the enhanced standards scheme should be kept as it is, with comments focussed on the best approach for the scheme cessation. The consensus was that it was achieving benefit for only a small section of care homes who would be financially impacted by withdrawal, but that the scheme was not benefiting the majority of residents or providers.
- 36 Consultation to refresh specific elements in the specification has also been completed with the Integrated Commissioning Board (ICB), nursing, social work and other relevant teams including medicines optimisation, infection prevention, emergency planning, organisational development, falls reduction, nutrition and hydration, pressure care, and teams working to reduce falls, the quality and speed of hospital discharges / admissions and finance / brokerage processes. The supply of equipment through the Leeds Community Equipment services is currently under review within a separate workstream and the results will be incorporated into the contract when completed.

What are the resource implications?

- 37 The fee rates for 2024-5 have already been established at the start of the financial year. The overall current budget for older people's care homes is £82.5m.
- 38 The procurement of a new 2024 Overarching Agreement without enhanced standards will prevent any further QPP applications under that contract.

- 39 The continuance of the 324 legacy Care Home Individual Service Agreements established under the 2018 Overarching Agreement will prevent any savings from the budget in financial year 2024-5 as the quality premium payment fee of £265,776 would still need to be paid up until March 30th 2025.
- 40 Procurement legal advice has confirmed that action can be taken before March 31st 2025 to reduce financial impact of the legacy quality premium payments on Council expenditure in 2025-6. Before this date the Council can announce the date the enhanced standards are no longer to be required under the contract. This offers the opportunity to use the fee review process to align fee payments for both the 2018 and 2024 Overarching Agreements. This would result in the Council paying an aggregated QPP and core fee rate under the 2018 Overarching Agreement which was equivalent to the 2024 Overarching Agreement core fee rate. This would result in the Council achieving an estimated saving of £493,584 in a 12 month period.
- 41 Under this arrangement the providers would receive the same aggregated payment whether there was a quality premium payment element or not.
- 42 As residential and nursing care is a statutory requirement for the authority to provide, the cost of the service is included within the Adults and Health base budget. There will not be any additional financial impact as a result of this decision. The directorate reviews fees paid for residential and nursing services annually through a separate decision-making process.

What are the key risks and how are they being managed?

- 43 There may be a risk of some providers being unable to afford to maintain some of the improvements they had financed through the scheme and as a consequence reduce the quality of care in those homes.
- 44 There is a risk of financial stress on those providers with a significant proportion of beds supported by quality premium payments and a high level of vacancies. Of the 14 impacted, two have less than 20% of registered beds receiving payments under the scheme, 9 have between 21% and 50% of their beds receiving quality premium payments, 3 homes have over 51% of beds affected.
- 45 There is a risk of 3 providers seeking to introduce top ups or the remaining 11 raise top ups for new residents to increase income for their homes. The two homes with under 20% of beds affected already charge top ups exceeding £244 per week up to £834. Within the group of 9 homes with between 21% and 50% of beds affected, two do not charge a top up, the remaining charge between £30 to £330. Within the group with over 51% of beds affected only one does not charge a top up, the other two charge £50 per week.
- 46 It is proposed that the continuation of payments above the core fee rate on legacy quality premium payment Care Home Individual Service Agreements until 30th March will offer providers the financial planning time to adjust to the reduction in income noted during the consultation.
- 47 In addition, homes most heavily affected will be approached to develop a plan to maximise placements through the brokerage to ensure the financial stress is reduced where possible and reduce the risk of top ups being increased or introduced.
- 48 There is a low risk that providers would not sign up to the new 2024 Overarching Agreement due to the removal of the opportunity to apply for quality premium payments and the attached additional income. The majority of homes were not accessing the scheme and homes which decline to join the new overarching agreement would reduce their opportunity to gain placements under the 2024 Overarching Agreement. Homes not on the agreement may still be

approached to request placements if no alternative provision is available under contract. A spot version of the overarching agreement will be prepared for this eventuality.

What are the legal implications?

- 49 Under the Care Act 2014 Leeds City Council has a statutory duty to provide residential care.
- 50 This is a Key Decision which is subject to call-in as the value of this contract is greater than £500,000. A notice has been published on the List of Forthcoming Key Decisions dated 1/7/2024 (Linked here - [Council and democracy \(leeds.gov.uk\)](#)). There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 51 The procurement of the new Overarching Agreement is in accordance the Council's Contract Procedure Rules (CPR) and Public Contract Regulations (PCR) 2015 which will ensure fairness, transparency and best value is achieved for the Council.
- 52 The new Overarching Agreement is a Dynamic Purchasing System structure as provided for under Regulation 34 of the PCR 2015 and the services being procured qualifies under the Light Touch Regime, specifically Schedule 3 of the PCR 2015 - Social and other specific services, meaning procurements are subject to more flexible procurement rules.
- 53 Following the completion of the tender exercise, successful providers will be appointed onto the Dynamic Purchasing Solution using the Overarching Agreement and this will be communicated in the Council's governance via a Publishable Administrative decision taken by the Director of Adults and Health.
- 54 The removal of the quality premium payments for the new Overarching Agreement commencing on 1st October 2024 is noted.
- 55 The continuation of the quality premium payments for providers providing care to patients appointed under the 2018 overarching agreement, is noted.
- 56 The above comments should be noted. In making their final decision, the Director for Adults and Health should be satisfied that the course of action chosen represents best value for the Council.

Options, timescales and measuring success

What other options were considered?

- 57 The only other option apart from procuring a new overarching agreement that was considered was to let the contract expire. However, this would mean there was no contractual arrangement in place with any provider and therefore management of provision and price of care could not be guaranteed.
- 58 The only other option for the ending of quality premium payments which was considered was to request a contract variation which would be unlikely to receive the agreement of the providers in receipt of quality premium payments.

How will success be measured?

- 59 There will continue to be a robust performance management process in place that includes regular analysis of both quantitative and qualitative data to assess whether the required core standards and contract outcomes are being met.
- 60 A continuation of good quality service provision without disruption, with a gradual improvement of quality within the market.

What is the timetable and who will be responsible for implementation?

61 The Head of Commissioning, Working Age Adults will be responsible for overseeing the implementation of this decision. This decision will be implemented by commissioning officers after the call-in period has lapsed.

Appendices

- Appendix 1 - Equality, Diversity, Cohesion and Integration screening tool.

Background papers

- None