

From: Clair Bell, Cabinet Member for Adult Social Care and Public Health
Richard Smith, Corporate Director Adult Social Care and Health

To: Adult Social Care Cabinet Committee – 6 July 2023

Subject: **CARERS' SHORT BREAKS SERVICE**

Decision no: **23/00061**

Classification: Unrestricted

Past Pathway of report: None

Future Pathway of report: Cabinet Member decision

Electoral Division: All

Summary: Kent County Council has a statutory responsibility under The Care Act 2014 to meet the needs of people who are 18 years or older and identifying as unpaid carers. The council meets this duty through the provision of its Carers' Short Breaks Services.

The current contract 'Carers' Short Breaks' delivers services to support carers and is held with Crossroads Care Kent, this will expire on 31st March 2024. Further engagement will be required to co-produce a new offer for carers, covering the offer provided through the Community Navigation Services and Carers' Short Breaks Service contracts. As a consequence a further twelve-month extension of this contract until 31 March 2025 is required.

Recommendation(s): The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make **RECOMMENDATIONS** to the Cabinet Member for Adult Social Care and Public Health on the proposed decision (attached as Appendix A) to:

- a) **APPROVE** a Direct Award Contract to Crossroads Care Kent for a period of twelve months (1 April 2024 to 31 March 2025) for Carers' Short Breaks Services; and
- b) **DELEGATE** authority to the Corporate Director Adult Social Care and Health to take relevant actions, including but not limited to finalising the terms of and entering into required contracts or other legal agreements, as necessary to implement the decision.

1. Introduction

- 1.1 Kent County Council's (KCC) has statutory responsibilities under The Care Act 2014 include assessing the needs of any adult (cared for or carer) with an appearance for care and support, and arranging services, where appropriate meeting the unmet eligible needs of adults living in Kent.
- 1.2 In Kent, an estimated 148,341 adults aged 16+ provide hours of unpaid care each week. Of those 94,640 provide 1-19 hours of care a week, 18,131 provide 20-49 hours of care a week, and 35,570 provide 50 hours of care or more a week.
- 1.4 The Carers' Short Breaks Service provides support in providing practical help through planned and unplanned breaks in the home which are delivered to the person who is 'cared for' for the benefit of the carer. Carers' Short Breaks Services have been identified as a crucial service for preventing carer breakdown, which avoids more costly residential, nursing and hospital admissions.
- 1.5 The service provides personalised responses to meet the needs of carers. Users of any future service should be able to choose the nature of the support received and when it is delivered to support their personal outcomes.
- 1.6 The service is underpinned by the philosophies of personalisation, flexibility, choice, and control. Support should be tailored to meet the carer and individual's needs, enabling the carers most in need of this service to maintain a balance between their caring responsibilities and a life outside of caring, whilst enabling the person they support to be a full and equal citizen.
- 1.7 This service sits alongside several other commissioned services with the purpose of preventing people's needs from escalating and promoting people's well-being and independence. These services include community well-being, community navigation and adult mental health services. The intention is to strengthen integrated working between these services.
- 1.8 To this end we endeavour to ensure that co-production is embedded for the redesigned service thus aligned with the Adult Social Care Strategy Making a Difference Every Day (MADE) and the Kent Adult Carers' Strategy.

2. Background

- 2.1 The Carers' Short Breaks Service provides replacement care for carers to enable them to have a break from their caring role, attend medical appointments and/or if they are unable to care for their loved one due to illness or other unforeseen circumstance have the peace of mind that their loved one will be looked after. The service is jointly funded by the Kent & Medway Integrated Care Board (ICB) and KCC.
- 2.2 KCC currently commission Crossroads Care Kent to deliver the Carers' Short Breaks Service. The current contract has been extended until 31 March 2024.

- 2.3 To co-produce a new offer for carers which ensures a seamless interface between the Community Navigation Service and Carers' Short Breaks Service contract sufficient time is required to complete that work.
- 2.4 A project team has been set up and will continue working with multiple stakeholders including people with lived experience to embed co-production with the Assistant Director West Kent leading as the Senior Responsible Officer. This will be co-ordinated with the current work on the Carers' Strategy implementation to avoid unnecessary duplication and draw on the time of people with lived experience.

3. Options considered and dismissed, and associated risk

- 3.1 Further engagement with stakeholders including people with lived experience will be required to coproduce a new offer for Carers' Short Breaks. This engagement has not been possible in early 2023 due to restructures occurring in both Adult Social Care and Strategic Commissioning moving to a locality based operating model including the development of 24 place- based locality teams in adult social care and the future merging of Adult Social Care Commissioning into the Adult Social Care and Health Directorate. This has had an impact on the resource that can be dedicated to this piece of work.
- 3.2 To progress developing the offer for Carers' Short Breaks, it is recommended sufficient time is given to co-produce a new offer for carers which ensures a seamless interface between the Community Navigation Service and Carers' Short Breaks Service contract.
- 3.3 The following options were considered:
- Option 1: Direct Award the contract for a further twelve months
 - Option 2: Reprocure the contract within a short timeframe
 - Option 3: End the contract on 31 March 2024
- 3.4 In consideration of Option 3, whilst it is recognised that ending these contracts could deliver a significant saving to the council, ending the contract was dismissed at this point for the following reasons:
- Loss of current support to vulnerable people at a time when other services are being reduced.
 - People accessing the contract may fall into crisis resulting in a high financial pressure on Kent County Council operational services (negates possible benefit of saving on the contract value)
 - Increased isolation and loneliness to unpaid carers.
 - Statutory duties non-compliance under the Care Act 2014.
- 3.5 Reprocuring within a short timeframe was dismissed, owing to a lack of clarity as to funding in the present financial climate, current Integrated Care Board (ICB) financial pressures, current workforce implications, and the additional pressures on Adults Strategic Commissioning resource at present. The council is also not assured there are currently reasonable alternatives in the

market that could mobilise in such a short space of time.

- 3.6 A Direct Award to the incumbent provider, is the recommended option. This will allow the outcomes of the Kent Adult Carers' Strategy to be embedded within the future service design, whilst keeping consistency of service for unpaid carers in the interim. It will also allow the opportunity to understand the performance and trends of the contract to better inform and scope the design and recommissioning of the service in a truly co-produced way. The Direct Award will be made in accordance with stipulations within Regulation 32 of the Public Contracts Regulations 2015.
- 3.7 Regulation 32 sets out limited circumstances in which contracting authorities may use the negotiated procedure without prior publication of a notice (otherwise known as a direct award). Relying on Regulation 32 to make a direct award brings an increased risk of facing a procurement challenge from an aggrieved service provider as compared to the situation where the council carries out published procurement process in the normal fashion. Following legal advice, the council will therefore be taking a risk-based approach in deciding to proceed with the direct award. This risk is mitigated (although not altogether eliminated) by the justifications and procurement mitigation strategy set out below.

Regulation 32(2)(b)(ii) justifications

Regulation 32(2)(b)(ii) of the regulations specifically states that a direct award may be made:

“where the... services can be supplied only by a particular economic operator [because]... competition is absent for technical reasons

But only... where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement”

- 3.8 Having regard to the contents of this report and the statutory duties that the Carers' Short Breaks Service fulfils, consideration is required for the following reasons for approval of the direct award:
- (i) *Competition is absent for technical reasons*
 - based on Officers' knowledge of the local market for services of this nature (particularly noting the fact that these services were innovative and bespoke when first implemented in 2018), Officers reasonably believe that there is no alternate provider that is able to deliver these services for the period required.
 - The availability of any reasonable alternative provider is also inhibited by the excessive costs in mobilising a change in provider for such a complex and large-scale service by 1 April 2024 and the excessive cost to providers (and therefore the Council) in attempting to do so.

- (ii) *No artificial narrowing down of the parameters of the procurement*
- the services required are those activities that are needed to fulfil the council's statutory duties to carers and so have not been artificially narrowed to suit any one particular service provider.
 - the relatively short-term (twelve months) requirement has not been artificially selected to favour the incumbent service provider but rather to enable the development and alignment of the strategies mentioned above, giving time for co-production with stakeholders, specifically people with lived experience. This should result in a better and more holistic approach to the market in due course.

3.9 In addition, there is a risk to vulnerable people served by the current service provider if the provider was changed for this twelve-month period (especially since it is likely that a further provider change may take place following a holistic procurement once the Kent Social Prescribing and Navigation Strategy has been developed and aligned with the Kent Carers' Strategy 2022 – 2027.

4. Financial Implications

4.1 At the present time the value of the contract is expected to remain the same, although this may be subject to change given current budgetary pressures. The current total annual value of the service is £3,087,241 of which KCC contributes £2,501,894 and the Kent and Medway ICB contributing the remainder, £585,347.

5. Legal implications

- 5.1 The council is in a similar position to last year in that it will be taking a risk-based approach in relying on regulation 32(2)(b). In summary, the services are necessary and will allow KCC to align its procurement of future services with the ICB's future strategy and also to ensure coordination with the providers of carers' assessments.
- 5.2 Therefore Regulation 32 of the Public Contracts Regulations 2015 will be used on the basis that it is rational to rely on the justifications listed above. The risk to the council is that an alternate service provider will bring a legal challenge, arguing that the justifications in paragraph 3.7 do not satisfy Regulation 32.
- 5.3 Officers will mitigate the risk of such a challenge by publishing a Contract Award Notice on the central government "Find a Tender Service". This will notify the market of the council's intention to award this contract under Regulation 32 and start the 30-day time limit in which procurement challenges must be brought. This will have the effect of flushing out and/or time-barring any procurement challenge, allowing the Council to make the direct award with confidence once the 30-day time period has expired.

- 5.4 Commissioners will follow the Public Contract Regulations (2015) and the Spending the Council's Money in relation to any procurement that is undertaken.
- 5.5 This service helps to enable Adult Social Care and Health (ASCH) teams to meet their requirements under the Care Act (2014), under which KCC has a statutory duty to provide respite care for carers.

6. Equalities implications

- 6.1 An Equality Impact Assessment (Attached as Appendix 1) has been undertaken for this proposed extension and this indicates no negative impacts on carers as the continuity provided to people who draw on care and support with an extension to the contract allows the outcomes of the Kent Carers' Strategy to be embedded within the future service design, whilst keeping consistency of service for unpaid carers in the interim. It will also allow the opportunity to understand the performance and trends of the contract to better inform and scope the design and recommissioning of the service in a truly co-produced way.

7. Data Protection Implications

- 7.1 A Data Protection Impact Assessment is in progress and will be updated as this work progresses, and further details are known.

8. Conclusions

- 8.1 Kent County Council's (KCC) has statutory responsibilities under The Care Act 2014 for assessing the needs of any adult (cared for or carer) with an appearance for care and support. This includes arranging services, where appropriate and meeting the unmet eligible needs of adults living in Kent.
- 8.2 This is currently delivered through the contract 'Carers' Short Breaks Service' which delivers services to support carers countywide and is held with Crossroads Care Kent, this will expire on 31 March 2024.
- 8.3 A Direct Award to the incumbent provider will allow the opportunity to co-produce a new offer for carers which ensures a seamless interface between the Community Navigation Service and Carer's Short Breaks Service contract sufficient time required to complete that work.

9. Recommendations

9.1 Recommendation(s): The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make **RECOMMENDATIONS** to the Cabinet Member for Adult Social Care and Public Health on the proposed decision (attached as Appendix A) to:

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10. Background Documents

None

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