

From: Richard Smith, Corporate Director Adult Social Care and Health

To: Dan Watkins, Cabinet Member for Adult Social Care and Public Health

Subject: **SS14142 Older Persons Residential and Nursing Contract Extension**

Key decision: 24/00002

Classification: Appendix (Exempt from publication by Schedule 12A to the Local Government Act 1972, as it contains commercially sensitive information)

Past Pathway of report: Adult Social Care Cabinet Committee – 18 January 2024

Future Pathway of report: Cabinet Member decision

Electoral Division: All

Summary The current Older Persons Residential and Nursing (OPRN) contract is due to end on 31 March 2024, with no further provision for extension.

The report sets out the anticipated activity required to ensure future care services for older people are fit for purpose and deliver on the council's ambitions of developing new models of care, as prioritised Framing Kent's Future and Securing Kent's Future and the Adult Social Care Making a Difference Everyday Strategy Kent. This is within the context of a complex and fragile care market reflecting cost of living and inflationary pressure, workforce pressures and an increase in complexity of need.

External expertise has been procured to carry out a detailed assessment of the cost of care while exploring and determining the best contracting models that support an integrated approach to future health and social care models. The outcome of this exercise, which will not be completed until March 2024, will support the redesign of regulated adult care and support services, including residential and nursing care accommodation for older people, while ensuring appropriate engagement regarding the new transformative service models with both the care market and people who draw on care and support.

Given the scale of the current contract and the anticipated impact of new models of care, it is recommended that the current Older Persons Residential and Nursing contract is extended for a maximum of up to two years from 1 April 2024 to 31 March 2026. This will secure the safe continuation of provision whilst the assessment and review are undertaken, the findings are fully considered, and a new service put in place no later than 1 April 2026.

Recommendation(s): The Cabinet Member for Adult Social Care and Public Health is asked to:

- a) **EXTEND** the current Older Persons Residential and Nursing contract for up to a maximum of two years (1 April 2024 to 31 March 2026); and
- b) **DELEGATE** authority to the Corporate Director Adult Social Care and Health to take other 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 The current Older Persons Residential and Nursing Care contract commenced on 1 April 2016, for an initial period of four years, with the option to extend for two 24-month periods. Both extension periods have been exhausted and the contract has no provision for a further extension beyond 31 March 2024.
- 1.2 There is an opportunity to utilise external expertise to reshape the service following an external assessment, in order to achieve the council's ambitions on New Models of Care as set out in the council's strategy Securing Kent's Future.
- 1.3 A contract extension of up to a maximum of two years, will enable the council to take best advantage of this opportunity.
- 1.4 External legal advice has been sought and the risk of extending an open Dynamic Purchasing System (DPS) is considered to be relatively low with the application of the principle in Regulation 34 (28). The council will ensure that existing and new suppliers are treated equally.
- 1.5 A contract Waiver (attached as exempt Appendix 1) report was considered at Commissioning and Procurement Oversight Board (CPOB) and agreed by Finance, Legal and Procurement.

2 Background

- 2.1 The total cost of the contract (1 April 2016) was set at £800m (£100m p/a). However, as the paper sets out, various market pressures and increase in demand and complexity of care have resulted in an increased spend on the service. Robust actions are being put in place to reduce this spend wherever possible.
- 2.2 There are currently 270 residential and nursing care homes in Kent, of which, 66% (179 care homes) are on the Dynamic Purchasing System (DPS). There are also an additional 16 out of county care homes that are on the DPS.
- 2.3 Kent County Council (KCC) is presently supporting over 3370 people across both contracted and non contracted care homes. The proportion of placements to contracted and non-contracted homes has remained even over time. In 2022/2023 79% of KCC placements were made to contracted providers,
- 2.4 The contract is by way of an open DPS which allows the council to add new providers during the lifetime of the contract having passed the relevant selection criteria. The DPS and contract Lots provide a high level of flexibility that allows

for market development and new purchasing opportunities if, and when required. For example, the block purchase of Designated Beds to support hospital discharge during the Covid-19 pandemic.

- 2.5 The contract includes five Lots and each Lot has a separate specification and terms and conditions that sit under the terms and conditions of the main contract.
- i. Lot 1 Care Quality Commission (CQC) Registered Residential Homes or “Care Homes without Nursing” for the provision of Long Term, Short Term and respite care services;
 - ii. Lot 2 CQC Registered Nursing Homes or “Care Homes with Nursing” for the provision of Long Term, Short Term and respite care services;
 - iii. Lot 3 Providers of Bariatric care services (including Physical Disability);
 - iv. Lot 4 Call off Block Contract for the provision of multiples of two beds for short term respite care services across Kent; and
 - v. Lot 5 Residential or Nursing Care Home providers able to offer ‘day’ services.
- 2.6 The service should be considered in the context of the significant external and internal pressures on the service which have significantly changed from when the contract was initiated in 2016. These pressures include:
- The demand for care and support for people with a greater level of complexity of need.
 - Inflationary pressures and financial sustainability issues.
 - Increased placement costs seen across Kent and nationally.
 - Workforce pressures and the recruitment and retention of high-quality staff
 - Quality issues resulting in poor CQC rating and contract suspensions.

3 The current position

- 3.1 The Care Act 2014 gave local authorities in England, the NHS and the Care Quality Commission clear legal responsibilities for managing different elements of the adult social care market that include considering need, provider sustainability, value for money and integration.
- 3.2 Framing Kent’s Future and Securing Kent’s Future and the Adult Social Care Making a Difference Everyday Strategy Kent identify New Models of Care and Support as a key priority by recognising the importance of health and social care integration, building effective strategic partnerships with our providers through coproduction whilst being innovative in the way we look to redesign services to improve quality and importantly respond to budget constraints.
- 3.3 To help achieve this, the council has procured external expertise to undertake three distinct pieces of work that will help with the redesign of a new service:
1. A comprehensive assessment, along the lines of the ‘cost of care’ exercise to examine the pattern of current and future demands. This will lead to determination of the appropriate fee setting mechanism and

contractual models for supporting needs and aspirations, which will be more in line with peoples' preferences but at the right price.

2. To determine how a new service will support the delivery of the ambitions of the Integrated Care Board (ICB) to embed collaboration across the health and social care system and to support sustainability and efficiency within the sector by considering factors such as pooled budgets and contracting models.
3. To consider a joined-up contract model that aims to reduce the residential care market while considering associated pressures and demand for other adult social care service provisions such as the homecare market.

3.4 Outcomes to be achieved:

- The Older Person: To ensure people of Kent are in the right place with the right care and receive seamless high-quality, cost-effective care and positive outcomes.
- Quality of Care: Sustainable range of regulated care services that provides consistent high quality, safe and supportive care that meets people's needs in a regulated care service that is rated by CQC as outstanding or good.
- Value for Money: Ensures competition within the market that drives up quality alongside achieving cost efficiencies and ensuring value for money.

3.5 This will help inform the commissioning intentions for adult social care services and provide commissioners with the required information to design new specifications and a robust commissioning and procurement process.

3.6 The commissioning exercise will include extensive engagement with people who use care and support services to develop a new specification which ensures high quality and cost-effective services in the future.

3.7 The council will develop alternative care and support offers which support people to remain in their own home for longer. These include an enhanced technology offer, integrated reablement service, homecare offer, increasing direct payments and support that can be purchased such as personal assistants and niche services delivered by the voluntary sector and micro providers.

3.8 Following on from the cost of care review a new pricing model and contract fee mechanism will be developed to ensure best value for future placements. The extension will allow this activity to be completed.

3.9 The council will work closely with the market to ensure better value for the council and achieve savings where appropriate. This will include consider how to best utilise the Lots as part of the present contract model to make cost efficiencies for example, the utilisation of block contracts.

3.10 We will work to increase membership of the current framework and will review all off-framework placements regarding price, volume and value for money and seek to negotiate on this basis.

- 3.11 An extension to the current contract is required to allow the external consultants to complete the assessment and for the new service to be procured. However, it is anticipated that the exercise carried out by external experts will not be finalised until March 2024. This will enable a full procurement process to commence April 2024 once the extension to the contract has been implemented.
- 3.12 The proposed extension period will be put in place for a maximum of up to two years. However, a robust reprocurement exercise is to be completed as quickly as possible and break clauses will be written into the contract extension to allow the council to terminate the contract when appropriate and to fit in with the mobilisation of a new contract.
- 3.13 Subject to the outcome of the work currently being undertaken by consultants, we expect to commence the procurement process in April 2024 with a view to implement from early in 2025.
- 3.14 A programme plan detailing the re-design and procurement timeline will be developed and shared with members of the committee once the consultancy project has been completed.

4 The consequences of not extending the contract

- 4.1 The council can choose not to extend the current contract. However, there are significant risks to choosing this option and no benefits have been identified.
- 4.2 Risks are set out below and detailed further in Exempt Appendix 1 Waiver Report.
- 4.2.1 Legal and Policy: The council commissions residential and nursing care services for older persons from the independent sector to meet the needs of individuals deemed to be eligible in accordance with and following a Care Act assessment. If the contract ends the council will be pressured to fully meet its statutory obligation under the Care Act with regards to providing a high quality, safe service that is at an affordable price.
- 4.2.2 Financial: A lack of robust fee setting mechanisms and contractual leverage may result in a significant increase in placement costs which will be challenging to control. Savings targets set out by the council and to be met through greater partnership working and negotiation will be difficult to achieve through spot purchasing agreements and providers will be within their right to give notice on individual placements that may be hard to source at an affordable price.
- 4.2.3 Reputational: A shift to partnership working with providers will be challenged as the expectation from providers is that the contractual arrangements with the authority will be maintained due to the mutual benefits to both parties. People using this service expect a robust oversight of the service and the perception will be that this is not the case if the service is not part of a KCC Contract.

4.2.4 Resource Implications: If the contract ends there will be a requirement for the review, renegotiation and repurchasing of all individual placements with new contract and terms and conditions established. This will also require significant system and process updates.

5 Financial Implications

5.1 The total cost of the current Older Persons Residential and Nursing contract was set at approximately £800m (£100m per annum). However, due to the factors set out above, the annual cost has increased to £160m per annum. The approximate total cost of the proposed two-year extension period therefore is £304m (this takes account of the savings target on the spend on Older Persons Residential and Nursing Care Home services of 5% set for 2024/2025).

5.2 Dedicated commissioning and finance resources will be required to ensure a collaborative approach to determine a robust fee model and pricing guide and the identification of any financial risk.

5.3 This is a demand driven service and due to increases in complexity, increased demand and fee rates in excess of inflation, spend has increased year on year. Mitigations will be put in place to help limit the increased spend through the development of a robust savings action plan during the contract extension period. This will require a collaborative approach across KCC and NHS Kent and Medway ICB colleagues and proactively engaging with providers to determine fair costs for both legacy and new placements.

6 Legal implications

6.1 The Older People Residential Care, Nursing Care and Respite Care Services was procured as a Dynamic Purchasing Framework. The original Contract Notice which was advertised in the Official Journal of the EU, allowed for a contract term of four years, from 1 April 2016 to 31 March 2020. It also allowed for two 24-month extensions, from 1 April 2020 to 31 March 2022 and 1 April 2022 to 31 March 2024.

6.2 Both contract extensions have been exercised and the current extension period is due to expire on 31 March 2024.

6.3 Under Regulation 34 (Dynamic Purchasing Systems), Contracting Authorities, are permitted to extend the period of validity of Dynamic Purchasing Systems (DPS). Regulation 34 (27) requires that Contracting Authorities to indicate the period of validity of the dynamic purchasing system in the call for competition, and Regulation 34 (28) requires Contracting Authorities to notify any change in the period of validity, using the following standard forms: —

(a) where the period of validity is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;

- 6.4 As the UK has now exited the EU, there is no requirement for Contracting Authorities to notify the Commission. However, a change to the period of validity of the DPS, may be notified through a contract award notice under Regulation 50.
- 6.5 Additionally, the period for Expressions of Interests for the DPS in the original tender was from 5 April 2016 to 5 April 2024. By extending the DPS, the intention is to extend the Expression of Interest window further, thus ensuring that new suppliers will be able to apply to be placed on the DPS, thereby ensuring that no potential supplier is deprived of the opportunity to participate in the DPS.
- 6.6 Regulation 72 (Modification of Contracts during their term) permits Contracting Authorities to modify contracts and framework agreements, without a new procurement procedure, 72(1)(b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor—
- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or
 - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority,
- provided that any increase in price does not exceed 50% of the value of the original contract. The value of the original contract was £800m
- 6.7 An extension to the DPS is necessary to enable the council to undertake a detailed Cost of Care review of residential, nursing and respite care provision, which is likely to be completed by 28 February 2024. As such, the council will not be in a position to undertake a reprocurement, based on the outcome of the review, in time for a new service to be in place by 1 April 2024. Therefore, a change is not proposed at this time for economic or technical reasons. Any procurement of the service, prior to the completion of the Cost of Care review, will cause significant inconvenience and substantial duplication of cost, as the procurement will need to be undertaken again on completion of the Cost of Care review. It is also unlikely that a procurement will attract market interest, as providers may be reluctant to bid, prior to the completion of the Cost of Care review.
- 6.8 Commissioners received legal advice stating there remains a certain level of risk highlighted in terms of extending. However, provided the council ensure that existing and new suppliers are treated equally in terms of the extension the likelihood of a risk of a provider challenging the extension of an open DPS may be considered relatively low with the application of the principle in Regulation 34 (28).

7. Equalities implications

- 7.1 To ensure KCC's statutory obligations under the Equalities Act 2010 are met, a full Equality Impact Assessment has been undertaken for recommissioning purposes (attached as appendix 1). This has also been considered for the purposes of the contract extension and no major issues were identified. This will be refreshed to encompass any new negative or positive impacts identified due to the new service model.
- 7.2 New providers joining the DPS during the contract extension will need to continue to demonstrate that they have policies and procedures in place that ensure their compliance with Equality Act 2010.

8 Data Protection Implications

- 8.1 A Data Protection Impact Assessment (DPIA) has been completed and no anticipated new data protection implications have been identified. Providers tendering for the contract extension will be expected to undertake a DPIA as part of their tender submission.

9 Conclusions

- 9.1 The current Older Persons Residential and Nursing contract commenced on 1 April 2016, for an initial period of four years, with the option to extend for two 24-month periods. Both extension periods have been exhausted and the contract has no provision for a further extension beyond 31 March 2024.
- 9.2 External expertise has been procured to support the redesign of accommodation services for older people in Kent. Given the scale of the current contract and the anticipated impact of new models of care, it is recommended that the current Older Persons Residential and Nursing (OPRN) Contract is extended for a maximum of up to two years from 1 April 2024 to 31 March 2026. This will secure the safe continuation of provision whilst the proposed findings from the consultants are fully considered, and a new service put in place no later than 1 April 2026.

10. Recommendations

10.1 Recommendation(s): The Cabinet Member for Adult Social Care and Public Health is asked to:

- a) **EXTEND** the current Older Persons Residential and Nursing Care contract for up to a maximum of two years (1 April 2024 to 31 March 2026); and
- b) **DELEGATE** authority to the Corporate Director Adult Social Care and Health to take other 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.

11. Background Documents

None

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