

From: Clair Bell, Cabinet Member Adult Social Care and Public Health

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To: Adult Social Care Cabinet Committee – 27 September 2019

Subject: **UPDATE ON CARE HOMES CONTRACTS FOR PEOPLE WITH A LEARNING DISABILITY, PEOPLE WITH A PHYSICAL DISABILITY AND PEOPLE WITH MENTAL HEALTH NEEDS**

Classification: Unrestricted

Past Pathway of Paper: Adult Social Care Cabinet Committee 4 July 2018
Adult Social Care and Health Directorate Management Team Meeting – 14 August and 11 September 2019

Future Pathway of Paper: Adult Social Care Cabinet Committee – 16 January 2020

Electoral Division: All

Summary: To update Cabinet Committee on the progress to date to establish new contracts for care homes for People with a Learning Disability, People with a Physical Disability and People with Mental Health Needs from April 2020 aligned with the commissioning of the Care and Support in the Home – Supported Living Contract.

Recommendation(s): The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **COMMENT** on the content of the report and the approach to sleep-in's and the costs incorporated to procure new contracts.

1. Introduction

- 1.1 Residential Care contracts for People with a Learning Disability and People with a Physical Disability were last let in 2002 and contracts for People with Mental Health Needs last let in 2004.
- 1.2 Recommissioning of these contracts comes with a risk in terms of financial impact, however when balanced with the risk to the Council on the legality of the existing contracts, it is necessary to understand full exposure of the Council's liability.
- 1.3 These contracts cover approximately £103m of spend on care home provision. The resource required to establish a contract with a suitable contractual term is substantial and includes representation from all areas of the business, led by the Strategic Commissioning Division.

- 1.4 The council has statutory duties to ensure that there is sufficient and fit for purpose provision of care services to Kent residents who are eligible under the Care Act 2014 and that a sustainable market is maintained. Residential Care Home Services contribute to the offer of services to meet assessed need.
- 1.5 On 6 June 2018 the Strategic Commissioning Board granted permission to commence market activity in establishing new contracts. The Adult Social Care Cabinet Committee endorsed the proposal to commence market engagement in relation to the re-commissioning and awarding of contracts in July 2018, delegating the authority to implement this decision to the Corporate Director of Adult Social Care and Health, or a nominated officer.
- 1.6 This document provides an update on progress to date and is intended to act as the basis for further and ongoing work to enable a forward-looking foundation for sustained change. The activity undertaken in the recommissioning of these contracts has required working with the market, both existing and potential, to encourage new and innovative ideas in order to ensure a sustainable and buoyant Kent based care economy.
- 1.7 It is recommended that these contracts are recommissioned alongside Care and Support in the Home Phase 2, with a commencement date in April 2020. This will support the alignment of benefits uplifts and client financial reassessments.

2. Key Issues

- 2.1 Existing contracts were last let 15-17 years ago, although some updated Terms and Conditions have been issued with negotiated Cost Models from 2014. However, the vast majority of placements are linked to contracts with out of date Terms and Conditions. The need to regularise this is high.
- 2.2 The current pricing of placements requires stabilising. Providers that do not have agreed Cost Model prices, have had their tendered prices increased through the years through the annual price review mechanism.
- 2.3 The current Cost Model required a fundamental review for issuing with the tender pack. With the review to take into account recent changes to costs such as, payments for Sleep in Shifts and to balance out all the costs to set a fair price.
- 2.4 Services continue to be developed in the county. With developing Supported Accommodation options for people, reliance on some of the care home services is reducing.

- 2.5 The future level of demand for care home placements will be for people with greater level of need and care homes are required to respond to the needs. Therefore, it was decided that this will require two contracts. A Framework Contract with Cost Model for providers of lower level services that are in ample supply and a Dynamic Purchasing System (DPS) Contract with Cost Model for specialist homes. Should a home wish to re-model, they will be able to access a specialist contract through the DPS.
- 2.6 The new contracts will include long and short-term residential placements including service for those under the former Transforming Care programme and those with autism and sensory needs.

3. Progress to date

- 3.1 The Adult Social Care and Health Directorate Management Team extended the timeline for the recommissioning of these Care Home Services from April 2019 to April 2020 to ensure the financial impact of recommissioning these services is understood. This work shows the best picture to date of potential costs, to enable the council to consider mitigations against potential budgetary and market risks and how to manage costs in its approach to commissioning these services.
- 3.2 This work took into account the outcome of in-depth detailed work carried out by Strategic Commissioning, Commissioners and Analytics and Finance Teams to identify what is currently being commissioned from providers, what is being delivered and at what costs. Commissioners managed a deep dive approach to a statistically relevant sample group to support broader commercial analysis. Without this approach we would be making assumptions on levels of client need without a sound evidence base.
- 3.3 The work also considered the council's approach to Sleep-in Payments in light of the markets varied interpretation of the original HMRC guidance and the pending further Court Appeal granted by the Supreme Court, with the continued uncertainty around the Sleep-in Payments and the potential pay liabilities. Therefore, it is proposed that the council changes Sleep-in Payments from the current customary fixed payment to an hourly amount, set at the National Living Wage (NLW) rate. The estimated financial impact to implement this change to sleep-in payments is £1,176K per annum.

3.4 The outcome of the finance work undertaken, with Finance and Analytics Teams identified a potential cost of £3,226k to recommission these services Table 1 shows the estimated combined cost to procure new contracts.

Table 1: Estimated cost pressure

Summary	Maximum Potential Increase
	£000's
Financial analysis	£3,226
Change to Sleep-in	£1,176
Total	£4,402

- 3.5 The identified cost pressures, including Sleep-in Payments will go through the appropriate budget governance cycle.
- 3.6 Work has been undertaken with stakeholder groups and forums to obtain their views on the use of Care Home Services in the future. Overall feedback received is for a wide range of options to be available in the market and to include some residential care.
- 3.7 In line with national strategy the aim of adult social care is to reduce the number of placements to care homes. The result of this work is the decision to continue with the existing aim, to reduce the number of referrals to residential care and to work with the market to develop and make available a range of other alternative options, including an increase in supported living options.
- 3.8 There is recognition that this is a journey that will require a significant level of work to ensure that the market is sufficiently robust and flexible to support individuals with complexity of need within their own homes.
- 3.9 To accelerate progress in a timely way the new Care Home Contract has been developed with the relevant stakeholders to ensure people are supported to move to alternative accommodation and lead a more independent life, where they wish to.
- 3.10 To further the progress in developing the offer of services, such as Supported Living, the new Care Home Contract will align and dovetail with the commissioning of phase two of Care and Support in the Home Contract - Supported Living. Therefore, the procurement process will work in parallel for both contracts. This will give a clear message to the market and also reduce unnecessary duplication internally as well as with providers who choose to tender for both service types.
- 3.11 Work is underway between the Adult Social Care and Health Directorate and the Strategic Commissioning Division to deliver a plan to grow a joint culture for change in approach and to review the current internal procedures and processes to support the new contract.

- 3.12 Work has also been completed on the Service Specification, Contract Schedules and the development of the New Cost Model, to include price profiling against need and market drivers, in consultation with the appropriate stakeholders and Trade Associations.
- 3.13 The commissioning strategy is aligned to the principles of the KCC's Commissioning Success and supports the recently reviewed Kent's Accommodation Strategy priorities. The new Care Home Contract will reflect any relevant changes.

4. Impact on individuals

- 4.1 Positive Impact: The recommissioning exercise provides the opportunity to review and update the contract documentation to place more emphasis on, Equality and the minimisation of discrimination; Protecting the service user's Human Rights; and reinforcing provider responsibility.
- 4.2 These positive impacts will contribute to raise the quality and standard of service delivery to the benefit of all service users. It is anticipated that there will be a more equitable provision of services across the county and services where gaps in provision have been identified.
- 4.3 Adverse Impact: In the event that, following discussions, a home does decide that it will not continue to provide a service for existing (current) residents, the council will work closely with the resident, their carers and relatives and the home, to ensure there is a smooth transition to a home which meets their needs.

5. Policy Implications

- 5.1 As with all project development activity, staff from the council's Strategic Policy and Corporate Assurance Division are part of the working group to make sure that the new contract is consistent with policy and practice and that, should any change be required, there is incorporate across into all the relevant policies and guidance.

6. Financial Implications

- 6.1 The most significant risk to implementing new contracts is the potential impact on price. With the likely change of how Sleep-in Shifts are measured, there will be impact on the overall price paid. The council currently commissions 109 homes with Sleep-in Support, the majority is waking support which the current cost model appropriately accounts for. The overall estimated worse case financial pressure in recommissioning these contracts is a £4,402K increase in costs.
- 6.2 To mitigate and control the current projected costs and any future cost implications, work has been carried out and other work is underway between the Strategic Commissioning Division and the Adult Social Care and Health Directorate to:

- Review the Cost Model and negotiating with the market for a transparent fair cost of care to remove any artificially inflated price and price levelling of historic and legacy placements
- Improve internal business processes and practice to include more thorough and robust review and approval processes
- Enhance the digital offer by working with the market to grow technology within services and reduce the reliance on direct staff support hours. With a focus on reducing and removing sleep-in and wake nights where appropriate
- Work with the market to develop and diversify supported living services to reduce the reliance on care home services in the future.

7. Legal Implications

- 7.1 The Strategic Commissioning Division will enlist the support of Legal Services through the development of the contract specification and Terms and Conditions, although the standard Care Services Terms and Conditions will be used. There will need to be resource allocated at the end point of the tender process for contracts to be signed and sealed.

8. Personnel and Training Implications

- 8.1 The resource for letting the contract is being led by the Strategic Commissioning Division.
- 8.2 Operational teams – support is being provided from Care Management, Social Workers and the Business Delivery Unit (Adults Placement Team) in ensuring that the contracts can meet their requirements.
- 8.3 Finance is part of the core team to make sure that the role of Budget management, Payments, Assessment and Income are factored in. There will be additional resource required short term to complete the relevant financial checks and make changes to establish the new contracts.
- 8.4 ICT is part of the project as it will coincide with the introduction of the new Adult Case Management System, MOSAIC. The aim is to move to regular systemised payments, although this will need to be implemented at a later stage as the start of the new contract does not coincide when this function will be available on the new system.
- 8.5 Policy staff to ensure that there is consistency with the proposals for the new contract, the legal requirements of the Care Act and translate that back into policy and practice and roll out to affected staff.
- 8.6 Training will be a key part of the new contract so that an end to end e-learning module can be developed for existing and new care management and social work staff.

9. Equality Impact Assessment

- 9.1 The Equality Impact Assessment is updated as part of the project plan when changes are proposed and can be fully considered. A Privacy Impact Assessment has also been completed.

10. Conclusion

- 10 The council has statutory duties to ensure that there is sufficient and fit for purpose provision of care services to Kent residents, who are eligible under the Care Act 2014 and that a sustainable market is maintained. Care home services contribute to the offer of services to meet assessed need.
- 10.2 These contracts were last let in 2002 and 2004. The vast majority of placements are linked to contracts with out of date Terms and Conditions. When balanced with the risk to the council on the legality of the existing contracts and in order to meet the requirements under the Care Act, it is necessary to recommission new contracts for People with a Learning Disability, People with a Physical Disability and People with Mental Health Needs.
- 10.3 Recommissioning these contracts comes at a high risk in terms of financial impact, however when balanced with the risk to the council on the legality of the existing contracts, a new contract is required through a full procurement process to meet strategic and legal requirements under Public Contract regulation (PCR15). Plans are in place between the Strategic Commissioning Division and the Adult Social Care and Health Directorate to mitigate and control the current projected costs and any future cost implications.
- 10.4 To accelerate the progress in developing the offer of alternative services, such as Supported Living, consistent with national strategy. The new Care Home Contract will align and dovetail with the commissioning of phase two of the Care and Support in the Home Contract - Supported Living. Therefore, the procurement process will work in parallel for both contracts. This will give a clear message to the market and also reduce unnecessary duplication internally as well as for providers who choose to tender for both service types.
- 10.5 Comprehensive work has been carried out in developing the new contract to minimise the disruption to individuals affected by these contracts and to minimise the risk to the Council.

11 Procurement Timetable

- 11.1 Feedback of tendered costs to support budget setting (maximum and minimum cost projections will be provided and discussed at the Adult Social Care and Health Directorate Management Team (ASCH DMT) Meeting on 13 November 2019) with more definite cost projections being provided for discussion at the January 2020 ASCH DMT and Adult Social Care Cabinet Committee Meeting.

11.2 Milestones are shared below and will need to be considered alongside the 2020-21 budget timetable, prior to finalising the timeline:

ASCH Cabinet Committee – update	27 September 2019
Tender Period	September to October 2019
Analysis and Evaluation	November 2019 to January 2020
SCB and ASCH Cabinet Committee	January 2020
Initial Award	March 2020
Contract Live Date	April 2020.

12. Recommendations

12.1 Recommendations: The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **COMMENT** on the content of the report and the approach to sleep-in's and the costs incorporated to procure new contracts.

13. Background Documents

None

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