

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

**To:** Clair Bell, Cabinet Member for Adult Social Care and Public Health

**Subject:** **CARERS' SHORT BREAKS SERVICE – DIRECT AWARD**

**Decision no:** **22/00093**

**Classification:** Unrestricted

**Past Pathway of report:** Adult Social Care and Health Cabinet Committee – 28 September 2022

**Future Pathway of report:** Cabinet Member decision.

**Electoral Division:** All

**Summary:** Kent County Council has a statutory responsibility under The Care Act 2014 to deliver access to support and information for unpaid Carers, older people (over 55 years) and people with complex issues/frailty (under 55 years). This is delivered through a number of contracts.

The current Carers' Short Breaks Contract arrangements end on 31 March 2023. This paper sets out proposals for an additional one-year contract with the incumbent provider via a Direct Award, to run from 1 April 2023 to 31 March 2024, allowing time for Commissioners to explore options for the future recommissioning strategy for this service from April 2024.

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

a) **APPROVE** a Direct Award contract for a period of twelve months for Carers' Short Breaks, from 1 April 2023 to 31 March 2024, in accordance with the relevant justifications set out in Regulation 32 of the Public Contract Regulations 2015; 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 (KCC) 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. KCC meets this duty through the provision of its Carers' Short Breaks Services.
- 1.2 The Carers' Short Breaks Contract commenced in April 2018, as an initial interim contract. It is currently in an extension period via a previous Decision to Direct Award. Following this decision, the contract is currently due to end on 31

March 2023. There are currently no provisions to extend this contract. The annual contract value for Carers Short Breaks is £3,087m.

## **2. Background**

- 2.1 The Carers' Short Breaks Service provides replacement care for Carers for a short period (typically three hours a week) to allow them a break from their caring role. There are also a number of specific support elements within this contract; to provide replacement care when a carer is in Crisis or needs to attend a health appointment.
- 2.2 This service is open access, and Carers accessing support through this contract may not be known to Adult Social Care; or receive a formal Carers Care Act assessment.
- 2.3 This contract is jointly funded by the previous Kent and Medway Clinical Commissioning Group (CCG) and Adult Social Care. However, the funding from the previous CCG is only for certain activities and in certain areas. This has led to an inequity of service availability across Kent.
- 2.4 KCC has recently completed significant engagement in developing and launching a new Carers Strategy, setting the strategic direction for Carers Support for the next 5 years.
- 2.5 The Kent Carers' Strategy 2022-2027 ensures a commitment to working together to ensure essential roles are valued, supported and people's lives maintained and valued.

## **3. Options considered and dismissed, and associated risk**

- 3.1 The Kent Carers' Strategy 2022-2027 ensures a commitment to working together to ensure essential roles are valued, supported and people's lives maintained and valued.
- 3.2 This report should be considered alongside the report setting out the proposals to extend the Community Navigation Services Contracts by a further year. These contracts, which contain a significant requirement to deliver community navigation for unpaid carers, have been operating for just over three years, with Covid19 national restrictions having had a significant impact. An additional year of provision for both contracts would allow an opportunity to further understand the services, including how best to re-design them in line with wider system objectives such as the Social Prescribing and Navigation Strategy and the Kent Adult Carers' strategy.
- 3.3 Further engagement will be required to coproduce a new offer for Carers, covering the offer provided through the Community Navigation Services and Carers' Short Breaks contracts.
- 3.4 To progress developing the offer of Carers' Short Breaks, it is recommended sufficient time to review and refine the following:

- Key Performance Indicators (KPIs) -ongoing management and monitoring of quality ensures that all providers remain compliant to their contractual commitments
- Purchasing -a requirement for the continued support for Carers, a more efficient, streamlined purchasing function, that minimises bureaucracy and is responsive to the levels of demand. Efficiency could be enhanced with improved procedures and processes.
- Contract Management – continue the existing contract management system with the jointly developed enhanced Locality contract management to support the contract, ensure KPIs are collected and with regular partnership working across all the contract providers. Regular review of the KPIs and management information for quality of care and improved contract monitoring.

3.5 The following options were considered (detailed in Appendix A)

- Option 1: Direct Award the contract for 12 months
- Option 2: Reprocure the contract within a short timeframe
- Option 3: Split the contract into smaller geographical locations and reprocure within a short timeframe
- Option 4: End the contract on 31 March 2023

3.6 In consideration of Option 4, 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
- 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.

3.7 Splitting the contract into smaller geographical locations (Option 3) and reprocuring within a shorter timeframe was dismissed, owing to a lack of clarity as to funding without scope of the redesign, long term Integrated Care Board (ICB) funding sustainability, workforce implications, and the additional pressures on Adults Strategic Commissioning resource.

3.8 Option 2 was disregarded owing for similar reasons to Option 3.

3.9 A Direct Award to the incumbent provider, is the recommended option. This will allow 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. The Direct Award will be made in accordance with stipulations within Regulation 32 of the Public Contracts Regulations 2015.

3.10 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. 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”*

3.11 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) Technical reasons/no reasonable substitute:*

- 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.
- disruption to vulnerable people served by the current service provider if the provider was changed for this 12-month period (especially since it is likely that a further provider change will take place following a wholistic procurement once the Kent Social Prescribing and Navigation Strategy has been developed and aligned with the Kent Carers' Strategy 2022-2027).
- The availability of any reasonable alternative provider is also inhibited by the excessive costs in mobilising a change in provider for such a complex 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 (12 month) 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, resulting in a better and more wholistic approach to the market in due course.

3.12 Approval is sought to the use of Regulation 32 of the Public Contracts Regulations 2015 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 6.4 do not satisfy Regulation 32.

- 3.13 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.

#### **4. Financial Implications**

- 4.1 The Carers' Short Breaks Contract is jointly funded by KCC and NHS Kent and Medway Integrated Care Board (NHS K&M ICB).
- 4.2 The current Adult Social Care (ASC) budget is subject to an identified saving in 2023/24; the NHS K&M ICB funding will be requested for the recommended option. The Council is working in partnership with the ICB to ensure funding is secured for the option. The ICB Commissioners have made enquiries to the ICB Committee Teams to provide more information regarding the governance process for the recommended option.
- 4.3 The total value of the one-year contract extension will be £3.087m. (ASC £2.5m/ICB £585k).

#### **5. Legal implications**

- 5.1 The Council has a statutory duty to ensure that there is sufficient and fit for purpose provision of social care services to Kent residents, who are eligible under the Care Act 2014 and that a sustainable market is maintained which the Carers' Short Breaks contributes to. The direct award of the contract is in line with PCR Regulation 32 (2)(b)(ii).

#### **6. Equalities implications**

- 6.1 An Equality Impact Assessment (EQIA) was completed as part of the original commissioning of these services; and will be revised and updated for any future recommissioning. The EQIA is attached as Appendix B

#### **7. Data Protection Implications**

- 7.1 A Data Protection Impact Assessment was developed and will be updated with the contract extension.
- 7.2 Data Protection is monitored within the contract management function of the contract; there were no issues highlighted and no data breaches.

#### **8. Conclusions**

- 8.1 KCC has a statutory responsibility under The Care Act 2014 to meet the needs of people who identify as unpaid Carers'. Kent County Council meets this duty in part through the provision of the Carers' Short Breaks Service
- 8.2 The proposal for a Direct Award Contract for one year from 1 April 2023 to 31 March 2024, will allow time for Commissioners to explore options for the future recommissioning strategy for this service from April 2024. Also for Strategic Commissioning in partnership with the NHS K&M ICB to develop the work that 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 contract in line with the development of the Kent Social Prescribing and Navigation Strategy.

## 9. Recommendations

9.1 Recommendations: The Cabinet Member for Adult Social Care and Health on the is asked to:

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- 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.

## 10. Background Documents

Community Based Wellbeing Services and Carers' Short Breaks Contracts  
[Decision - 21/00110 - Community Based Wellbeing Services and Carers' Short Breaks Contracts \(kent.gov.uk\)](#)

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