

**From:** Graham Gibbens, Cabinet Member Adult Social Care  
Penny Southern, Corporate Director of Adult Social Care and Health

**To:** Adult Social Care Cabinet Committee - 4 July 2018

**Decision No:** 18/00031

**Subject:** **RESIDENTIAL CARE 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 Directorate Management Team – 6 June 2018  
Strategic Commissioning Board - 8 June 2018

**Future Pathway of Paper:** Cabinet Member decision

**Electoral Division:** All

**Summary:** To inform Cabinet Committee of the intention 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 2019.

A key decision will be required for contract award and any price related decisions.

**Recommendation(s):** The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make a **RECOMMENDATION** to the Cabinet Member on the proposed decision (Attached as Appendix A) to:

- a) enter into market engagement with the aim to **PROCURE** new contracts for care homes for People with a Learning Disability, People with a Physical Disability and People with Mental Health Needs; and
- b) **DELEGATE** authority to the Corporate Director of Adult Social Care and Health, or other nominated officer to, undertake the necessary actions to implement the decision.

## 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 Re-letting 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, it is necessary to understand full exposure of the Council's liability.

- 1.3 This contract covers approximately £90m of spend on care home provision. The resource required to establish a contract with a suitable contractual term is substantial and will include representation from all areas of the business, led by Strategic Commissioning.
- 1.4 The Council has a statutory duty to provide residential care services to Kent residents who are eligible under the Care Act 2014. To maintain sustainability of the residential markets, who support in discharging this duty, the Council needs a greater and deeper understanding of the marketplace, so that decisions that impact the market are measured and commercially astute.
- 1.5 This document provides an overview of the findings to date and is intended to act as the basis for further and ongoing analysis to enable a forward-looking foundation for sustained change. The market activity required to re-let these contracts will mean working with the market, both existing and potential, to encourage new and innovative ideas to ensure a sustainable and buoyant Kent based care economy.
- 1.6 It is recommended that these contracts are re-let with a start date in April 2019 to align with the benefits uplifts and financial reassessments.

## **2. Key Issues**

- 2.1 Existing contracts were last let 14-16 years ago, although some updated Terms and Conditions have been issued with negotiated Cost Models from 2014. However, the 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 have not agreed Cost Model values have had their tendered prices increased through the years through the annual price review mechanism.
- 2.3 The current Cost Model requires a fundamental review for issuing with the tender pack. The review needs 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 for services.
- 2.4 With the development of Supported Accommodation options, reliance on some of the services is reducing and providers are looking more to other local authorities for placements.
- 2.5 It is therefore considered that this will require two contracts. A Framework contract for providers of lower level services that are in ample supply and a Dynamic Purchasing System (DPS) contract for specialist homes. Should a home wish to re-model, they would be able to access a specialist contract through the DPS.

### 3. Commissioning Strategy

3.1 The commissioning principles underpin all activity to align with the Council's strategic outcomes and the commissioning and delivery of services as required by Adult Social Care and Health. This is Strategic Commissioning's interpretation of the requirements from Adult Social Care and Health.



- **Offer real choice and give control to the users:** Residents and their families will be given choice and good quality information about the types of care homes available to them. This will include transparent and accurate information regarding the cost of the placement and any additional contributions that may be expected of them as well as an indication of the quality of the care home as assessed by the Council and the Care Quality Commission. This principle will be implemented through the Council's Online Care Directory which will be a comprehensive source of information, advice and guidance on all available services, not just those contracted to the Council.
- **Reduction in bureaucracy:** A joint approach to commissioning and contracting for outcomes will lead to a reduction in duplication of effort across health and social care statutory and public agencies. This will mean that these agencies should agree to collect one set of Key Performance Indicators from care home providers and share them across health and social care agencies.
- **Promote dignity and quality:** Providers should have a clearly laid out set of quality expectations in the revised contract that promote the dignity and well-being of all residents.

- **Develop and use an evidence base:** Commissioning will require accurate, up-to-date data on the purchasing patterns for long and short-term care placements across the sector to enable commissioners and providers to easily establish what is being purchased in terms of the level of need of residents being referred for residential care placements, at what price and in which areas of Kent. This management information will be an invaluable tool to inform providers business strategy and planning and for KCC to fulfil its market shaping duty under the Care Act.
- **Coproduce, listen and act:** The Council will listen to the views of those that are using the services i.e. residents of care homes and their families in developing a set of outcomes for residential care in Kent. These will be an integral part of the new service specification and contract from April 2019.
- **Innovate, be bold and think differently:** commissioning for outcomes will need to consider that the model of care and types of provision will need to change during the lifetime of any contract. Therefore, in the contract from April 2019, flexibility will be required to allow providers to deliver new models of care that cross the traditional boundaries. It will not be desirable to set prescriptive and restrictive service specifications or contract terms and conditions that could stifle service innovation.
- **Ensure diversity, sustainability and quality of the market:** The commissioning strategy will support the Council in its Market Shaping Duty under the Care Act 2014
- **Incentivise and pay for results:** The Council will explore with providers a system whereby they can be rewarded for evidence of improved quality during the first year of the new contracts.
- **Ensure Value For Money (VFM) and that 'Every Penny Counts':** The centralised purchasing model will ensure that price is clearly linked to the needs of the individual, families and residents. We will ensure they are given clear information about any financial contribution that is expected of them and that there is a clear auditable process to agree and collect any contributions due to the Council. This system will need to be underpinned by investment in ICT to ensure that there is an efficient and robust Purchase to Pay process to track each individual placement and report on outcomes.

3.2 The commissioning strategy is aligned to the principles of the Council's Commissioning Success and supports Kent's Accommodation Strategy priorities.

#### 4. Strategic Intent

4.1 Kent's Accommodation Strategy, launched in July 2014, sets the direction of travel in relation to future commissioning and, along with the Care in the Home Strategy, the vision for enablement and prevention is clear. The Clinical Commissioning Groups are also investing in community services which will have an impact on the future level of demand for care home placements. This does mean that those requiring care in future will have greater level of need and care homes are required to respond to the needs as well as demand. The

Council has to align all commissioning activity with a distinct recognition on the price of purchasing care. Activity required in this area includes:

- Focused work on the model of care and commissioning activity for Supported Accommodation including an operational focus to redirect people that previously would have required a care home placement
- Forecasting work on the demand making sure that any reduction in need is balanced with the increase in population and requirement of particular types of care
- Workforce strategy to make sure the recruitment and retention of care staff, particularly for positive behavioural support, is reflected in the services that need to be commissioned
- Price profiling against need and market drivers – a Cost Model was introduced in 2006 for services for People with a Learning Disability and was fundamentally reviewed in 2014 for all client groups covered in this report. The Cost Model requires a further review in light of the changes of measured time and the impact on Sleep-in Shifts
- How care homes can be incentivised to promote an individual's independence and to support people to move home with greater independence if in a short-term placement
- Reviewing how quality assurance is incorporated into both contract monitoring and the wider role of safeguarding all of Kent's vulnerable adults

#### **4. Strategic Commissioning Strategy**

- 4.1 A Strategic Commissioning Strategy has been developed with four possible options for structuring the contract. These are:
- Do nothing
  - Provider Framework with Cost Model
  - DPS with Cost Model
  - DPS and Framework Agreement with Cost Model
- 4.2 The reason for using the Cost Model in all of these is because other options for pricing have been discounted. These are:
- a) Set Guide Prices for the services – discounted as this is where most challenge is found from the sector and is not suitably flexible for location, size of home and other key factors
  - b) Allow providers to tender their fee – discounted as does not demonstrate the component parts of the fee and providers could build in increases to the front end of the contract in the event they do not receive what they perceive to be the correct level of uplift annually
- 4.3 The new contract will include long and short term residential placements including services for those under the Transforming Care Programme and those with autism and sensory needs.
- 4.4 The tender 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.

- 4.5 The tender also provides an opportunity to raise the quality and standard of service delivery for 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.
- 4.6 In the unlikely 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, Policy colleagues will be part of the working group to make sure that the contract is consistent with policy and practice and that, should any change be required policies and guidance are updated accordingly.
- 5.2 This will include Finance Policy linking in the Direct Payments, should people purchase short term care with these and any future change for use of Direct Payments for long term care.

## **6. Financial Implications**

- 6.1 The significant risk to letting these contracts is the impact on price. With the change of how sleep-in shifts are measured, there will be impact on the overall price paid. The Council currently commissions 180 homes with sleep-in support, the majority is waking support which the current cost model appropriately accounts for.
- 6.2 The review of the Cost Model and engagement with the market will provide the detailed information required to work with finance colleagues to scope the potential financial impact balancing the pressure from providers, good outcomes for service users, legal requirements, transparency of a fair cost of care, artificially inflated price and price levelling of historic and legacy placements.

## **7. Legal Implications**

- 7.1 Strategic Commissioning will enlist the support of Legal Services through the development of the contract specification and terms and conditions, although will be using the standard Care services Terms and Conditions. There will need to be resource allocated at the end point of the tender process for contracts to be signed and sealed and there has to be a separate work-stream to look at how contracts can be awarded, including spot contracts, making sure the most efficient process is undertaken in signing and sealing the contracts.

## **8. Personnel and Training Implications**

- 8.1 The resource for letting the contract will be led by Strategic Commissioning.
- 8.2 Operational teams - support will be required from Care Management and the Operational Support Unit (Adults Placement Team) in ensuring that the contracts can meet their requirements and contributions will be sought to input into the work stream activity.
- 8.3 Finance will be part of the core team to make sure that the role of Budget management, Payments, Assessment and Income are factored in. This forms significant input every April and there may be additional resource required short term to complete the changes to establish the contracts.
- 8.4 ICT will be part of the core project as it will coincide with the introduction of MOSAIC, the new Adult Social Care Management Information System. The proposal is to include a work-stream to move to a regular payments system and it is planned as part of the new system development at Phase 2.
- 8.5 Policy staff will need 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 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 staff. There will be additional costs to develop this package of training.

## **9. Equality Impact Assessment**

- 9.1 The Equality Impact Assessment (attached as Appendix 1) will be updated as part of the project plan when the changes are proposed and can be fully considered. A Privacy Impact Assessment will also be completed.

## **10. Conclusion**

- 10.1 The Council has a statutory duty to provide residential care services to Kent residents who are eligible under the Care Act 2014.
- 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 re-commission new contracts for People with a Learning Disability, People with a Physical Disability and People with Mental Health Needs

## 11. Recommendations

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

- a) enter into market engagement with the aim to **PROCURE** new contracts for care homes for People with a Learning Disability, People with a Physical Disability and People with Mental Health Needs, and
- b) **DELEGATE** authority to the Corporate Director of Adult Social Care and Health, or other nominated officer to, to undertake the necessary actions to implement the decision.

## 12. Background Documents

None

## 13. Report Author

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