

<b>REPORT TO:</b>	<b>MAYOR'S ADVISORY BOARD 22 JUNE CABINET 06 JULY</b>
<b>SUBJECT:</b>	Care & Support Provision for Older People: Procurement Strategy
<b>LEAD OFFICER:</b>	Annette McPartland, Corporate Director, Adult Social Care & Health  Bianca Byrne, Interim Director Commissioning, Policy & Improvement
<b>CABINET MEMBER:</b>	Cllr Yvette Hopley, Cabinet Member for Health & Adult Social Care
<b>WARDS:</b>	All
<b>Contract &amp; Commissioning Board Number</b>	CCB1747/22-23

#### **SUMMARY OF REPORT:**

This report sets out the proposed procurement strategy for the recommissioning of care and support provision at three Croydon residential and nursing homes - Heavers Court, Langley Oaks, and Addington Heights – and at one extra care facility – Fellows Court.

Three of the sites are owned by the London Borough of Croydon pursuant to a PFI contract which concludes in 2038, at which point will be returned to full ownership of the Council. There is the option to own the remaining site if a final payment is made at the end of the contract term. The PFI contract is separate to the care and support contract.

The current nursing and residential care and support contract ends in March 2023 with initial demand and capacity analysis indicating additional nursing, support for challenging behaviour, and intermediate care bed-based capacity is required due to supply issues in the external market.

The approved contract term for the extra care provision ended in May 2021; there is a gap in the audit trail regarding extension following this date. The incumbent provider has continued to deliver and has engaged with the commissioning team recently to discuss future plans.

In addition to the care and support recommissioning, a review is currently underway of the contractual arrangements in relation to the PFI provision to ensure the London Borough of Croydon is maximising it's investment and that it is delivering the best outcomes for the people of Croydon.

#### **FINANCIAL IMPACT:**

Delivery of the care and support provision across these four sites represent a significant investment from the London Borough of Croydon into local services for local people.

In order to deliver value for money from the care and support provision, benchmarking has been undertaken to ascertain comparisons with current market rates. There is an allocated saving against this provision in the Medium Term Financial Strategy (MTFS).

However, the current rate of inflation, cost of living challenges, and Fair Cost of Care exercise (as mandated by the Department of Health & Social Care), are all anticipated to have an impact on the recommissioning exercise and cost of provision in the future contract term.

**KEY DECISION REFERENCE NO.: 3822EM**

**RECOMMENDATIONS:**

The Contracts & Commissioning Board recommends to the Executive Mayor in Cabinet to approve the procurement strategy for the recommissioning of residential and nursing care provision in Addington Heights, Heavers Court and Langley Oaks and extra care provision at Fellows Court, for a period of 5 years with an option to extend for up to 10 years in two 5 year periods for a maximum estimated value of £113,455,000.

The Executive Mayor, in Cabinet, is recommended to:

- i. Approve the commissioning intentions and procurement strategy detailed in this report for the recommissioning of residential and nursing care provision in Addington Heights, Heavers Court and Langley Oaks and extra care provision at Fellows Court, for a period of 5 years with an option to extend for up to 10 years in two 5 year periods for a maximum estimated value of £113,455,000.

**1. DETAIL OF YOUR REPORT**

- 1.1 The Council entered into a PFI contract with Caring for Croydon (the Special Purpose Vehicle) to build new social care assets and provide ongoing facilities management (FM) for a period of 30 years. This was signed in December 2006.
- 1.2 The PFI contract covers the design, build and operation of four facilities:
  - **Heavers Court:** registered nursing home for over 65s, dementia, learning disabilities, mental health conditions and physical disabilities
  - **Addington Heights:** registered nursing home for over 65s, dementia, learning disabilities, mental health conditions and physical disabilities
  - **Langley Oaks:** registered residential home for over 65s, dementia, learning disabilities, mental health conditions and physical disabilities
  - **Fellows Court:** an extra care facility for over and under 65s, dementia,

learning disabilities, mental health conditions and physical disabilities, sensory impairment, and substance misuse.

- 1.3 While all the above facilities are designed, built and maintained (including hard and soft FM) through the PFI contract, the care and support for residents is commissioned separately and currently provided by Care UK at Heavers Court, Addington Heights and Langley Oaks, and by London Care at Fellows Court. This report sets out the commissioning intentions and procurement strategy in relation to the care and support element across these four sites.
- 1.4 A review of the PFI contract is underway to clarify what the contract covers in terms of the services and their performance standards, the risk allocation of the parties and the flexibility of the PFI contract to accommodate changes to deliver better outcomes for residents. This will be subject to a separate report.
- 1.5 The approved contract term for extra care provision at Fellows Court ended in May 2021. There is a gap in the audit trail regarding extensions following that date, and as such the contract is not compliant with our Tender & Contract regulations. The incumbent provider has continued to deliver and is engaging positively with the commissioning team regarding this proposal. The provider has agreed to work in partnership on managing a procurement process and complying with any required tasks / actions.
- 1.6 The care and support contract at the residential and nursing units expires in March 2023.
- 1.7 The current commissioned provision at each of the services is as follows:
  - **Heavers Court:** 10 x nursing dementia, 46 x residential dementia, 4 x residential respite
  - **Addington Heights:** 20 x residential, 10 x residential dementia and 20 x nursing (no allocated respite)
  - **Langley Oaks:** 36 x residential dementia, 4 x residential respite
  - **Fellows Court:** 32 x 1 bedroom and 8 x 2 bedroom social rented flats.
- 1.8 Occupancy is currently running at 97% in the residential and nursing care services with managers of Heavers Court and Addington Heights, both of which are registered for nursing care, reported that vacancy periods were generally short as there is high demand for placements. At Fellows Court the occupancy currently stands at 95%. All services are currently rated 'Good' by the Care Quality Commission (CQC).
- 1.9 It should be noted that the structure of the PFI contract means that after 30 years the three nursing and residential homes will return to Council ownership (which is not the case when purchasing placements from other providers). For the Council to acquire full ownership of the extra care property - Fellows Court; there is a final payment required at the end of the contract term.

## **Commissioning Intentions**

- 1.10 The existing quota of residential to nursing beds has been reviewed against current market conditions and health and social care system requirements, this has identified the following (which will inform development of the specification for the new contract):
- There are increasing capacity issues in the market relating to nursing care, exacerbated by the pandemic period during which we have seen increasing numbers of registered nurses exiting the workforce and increased demand for nursing home placements arising from an increase in acuity of need of those people being discharged from hospital.
  - Supply of residential and nursing placements for people with challenging behaviour due to dementia or other cognitive impairments remains limited, and as such can result in delays in suitable placements being identified.
  - The limited availability of bed-based intermediate care supply is impacting flow from hospital, and resulting in increased length of stay and an increased number of permanent admissions to residential and nursing care.
  - Extra care provision for working age adults with disabilities or mental health conditions remains challenged due the added complexity of need and/or challenging behaviour which extra care communities can struggle to accommodate.
- 1.11 In addition to the above, the review identified a number of areas of improvement and development in relation to the existing arrangements that will inform the specification for the new contracts:
- Eligibility and admission criteria for the services to ensure they are able to meet the needs of our more complex clients.
  - Improved processes in relation to NHS-funded nursing care (FNC) assessments and contributions for nursing bed placements.
  - Clear protocols for interaction with the FM provider and a duty to cooperate from both sides to ensure the provision of a holistic service.
  - Combined contract management for the care and support contracts and the PFI contract to support the above.
  - Risk share arrangements on a proportion of vacancies.

## **Proposed Procurement Route**

- 1.12 This is a social care service provision which falls under the PCR2015 regulations 74 to 77 for Light Touch Regime for Health, Social, Education and other Service contracts. The proposed procurement route is a competitive Light Touch procedure akin to the open procedure.

## **Contract Terms and Conditions**

- 1.13 The use of the Council Terms and Conditions will be reviewed to ensure that these align with any relevant conditions to the PFI contractual arrangements. There may be a requirement for partnership agreements between the care and support provider and Caring for Croydon as the FM provider. Legal advice will be sought.

## Evaluation

### Tender Evaluation

- 1.14 The Quality / Price ratio applied will be 60% Quality and 40% Price, which will ensure we have a focus on the quality of treatment and care and positive outcomes, but still deliver value for money.
- 1.15 The mandatory evaluation criteria questions on Social Value will be included in the tender response document. Social Value will be given a 10% of weighting in the method statement. We will be utilising the National Themes, Outcomes and Measures (TOMS) Framework to guide bidders on what themes we would like social value responses to be focused upon, e.g. supported employment opportunities for people with disabilities who are resident in Croydon.
- 1.16 Scoring of the tender will follow the usual rating of 0 – 5 (0 being Unacceptable, 5 being Excellent). If any method statement question scores a 0 we reserve the right to disqualify that bid which we will be including in our invitation to tender documentation so that bidders are aware. A minimum threshold level for quality will also be included.
- 1.17 The evaluation panel members will be representatives from:
- Adult Social Care & Health; with social work operational expertise
  - Commissioning and procurement colleagues; with expertise on contract management and placements
  - Health colleagues, with expertise on intermediate care
  - Resident & Carer representation, who are experts by experience. We will aim to have a resident/ carer who would be able to complete the whole evaluation however it may be more appropriate to have a separate mini panel made up of multiple residents and/or carers that could review certain questions due to their experience.

### 1.18 Procurement Timeline

<b>Activity</b>	<b>Estimated completion date</b>
Bidders Briefing	26 July 2022
Publish Tender	08 August 2022
Deadline for tender submission	06 September 2022
Evaluation Period	07 September – 30 September 2022
Approvals	October – December 2022
Intention to award notification	13 December 2022

Standstill period	13 December – 22 December 2022
Contract Award notice	23 December 2022
Mobilisation period	28 December 2022 – 31 March 2023
Service commencement date	01 April 2023

## 1.19 Risks

Risk	Risk Description	Risk Rating	Risk Mitigation/Management
Completing the procurement within the timescales.	Delays in procurement/contracting process meaning new arrangements are not in place as per the deadline.	High	Detailed procurement timetable has been developed and will be shared with the relevant stakeholders including Heads of Service. Should there be a delay, we may need to request a short extension to cover the mobilisation period.
Risk to service delivery.	There must be continuity in the delivery of this service.	High	Conversations with the incumbent provider are ongoing and possible need for short extensions have been explored if any delay in procurement occurs.
Increase in cost.	Bidders proposing more expensive rates than current care provision.	High	Fair Cost of Care exercise results will be incorporated into pricing decisions. Price cap to be included within tender documents.
Challenge/poor performance from incumbent provider.	Incumbent provider could start performing poorly with the view that the contract is ending.	Low	The incumbent provider has been encouraged to apply for the new tender during discussions about the end of the contract, incentivising good performance and minimising risk of poor performance.
Potential reluctance to bid.	Providers reluctant to bid due to current financial climate and associated reputational damage to Croydon.	Low	Ongoing engagement with the provider market; initial provider forum held 19 May 2022.
HR/TUPE.	TUPE implications for the incumbent provider.	Low	There are likely to be TUPE implications if a new provider is successful. TUPE has

			been accounted for within the procurement timetable.
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## Performance Monitoring

- 1.20 Performance will be consistently monitored and reviewed via regular contract monitoring reports and meetings with the provider to ensure the service meets their targets and the desired outcomes. We will continually work alongside key partners such as the Care Quality Team, CQC and Healthwatch to benchmark the service against similar care provision and to ensure that the service user voice is represented.
- 1.21 We are developing an outcomes-based approach to our specification and corresponding Key Performance Indicators (KPIs), based on the Think Local Act Personal 'I Statements'.

Outcome	I Statements	Measures
Living the life I want, keeping safe and well	<ul style="list-style-type: none"> <li>I can live the life I want and do the things that are important to me as independently as possible</li> <li>I am treated with dignity and respect</li> <li>I feel safe and am supported to understand and manage any risks</li> <li>I have people in my life who care about me – family, friends and people in my community</li> </ul>	<ul style="list-style-type: none"> <li>Resident engagement, surveys and forums</li> <li>Feedback from family and friends</li> <li>Community engagement – in-reach and outreach</li> <li>Schedule of activities and events appropriate to resident communities</li> </ul>
Having the information I need, when I need it	<ul style="list-style-type: none"> <li>I can get information and advice about health and how I can be as well as possible – physically, mentally and emotionally</li> <li>I know about the activities, social groups, leisure and learning opportunities in my community, as well as health and care services</li> <li>I know how to access my health and care records and decide which personal information can be shared with other people, including my family and care staff</li> </ul>	<ul style="list-style-type: none"> <li>Personalised care and support plans</li> <li>Advanced care plans</li> <li>Delivery of agreed reablement outcomes</li> <li>Response to complaints/compliments</li> <li>Health and social care practitioner feedback</li> <li>CQC inspections</li> <li>Incident records and response</li> <li>Safeguarding records and response</li> </ul>
Keeping family, friends and communication	<ul style="list-style-type: none"> <li>I have people who support me, such as family, friends and people in my community</li> <li>I feel welcome and safe in my local community and can join in community life and activities that are important to me</li> <li>I can keep in touch and meet up with people who are important to</li> </ul>	<ul style="list-style-type: none"> <li>Staff retention, reward and recognition policies</li> <li>Healthwatch surveys and reports</li> </ul>

	me, including family, friends and people who share my interests, identity and culture	
My support, my own way	<ul style="list-style-type: none"> <li>• I have care and support that enables me to live as I want to, seeing me as a unique person with skills, strengths and personal goals</li> <li>• I have care and support that is coordinated and everyone works well together and with me</li> </ul>	
Staying in control	<ul style="list-style-type: none"> <li>• I am supported to plan ahead for important changes in life that I can anticipate</li> <li>• If my medication has to change, I know why and am involved in the decision</li> </ul>	
The people who support me	<ul style="list-style-type: none"> <li>• I am supported by people who see me as a unique person with strengths, abilities and aspirations</li> <li>• I am supported by people who listen carefully so they know what matters to me and how to support me to live the life I want</li> <li>• I am supported to make decisions by people who see things from my point of view, with concern for what matters to me, my wellbeing and health</li> <li>• I have considerate support delivered by competent people</li> </ul>	

## 2. CONSULTATION

2.1 Drawing on the work undertaken by HealthWatch on the experience of residents, family and friends and staff in Croydon Care homes during the pandemic we have worked their recommendations into the key performance indicators which are based on the Think Local Act Personal 'I Statements'. We are aware that it can be very unsettling to residents and friends and family when there are changes to services, therefore we are working closely with the incumbent provider to appropriately manage this process and to seek the views of the home's residents throughout the re-procurement process. We plan on attending residents' forums to gather views on what is important to them, this feedback will be included within the new service specification.

2.2 Recent feedback from a provider forum held with Care Homes on 19<sup>th</sup> May indicated some of the workforce, recruitment and retention issues that the market experienced, especially during the pandemic. The London Borough of Croydon has partnered with Croydon Works to offer a free recruitment service directly to Croydon care providers in support of the recruitment of care staff (this opportunity can save up to £12,000 in recruitment fees). As part of this procurement, we will also be continuing to promote the ‘Proud to Care’ scheme which is a partnership formed of Councils, Clinical Commissioning Groups, NHS Trusts, GP practices and independent care providers. The focus of the scheme is getting people into jobs within the health and social care sector. The scheme promotes the range and different types of roles that are available alongside career progression routes and the benefits of working in social care such as rewards scheme available to staff for discounts on everyday activities.

### 3. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

3.1 The recommended option is to undertake a competitive open tender procurement process for the care and support provision across the four sites. This option will ensure that the service is operating within the Tender and Contract Regulations and there is contractual compliance across all provision.

3.2 The analysis from the service review has identified that the cost of the care and support element of the nursing and residential bed provision is higher than anticipated when compared to the external market. However, we are already seeing the impact of rising inflation on rates in the market and need to be mindful of the possible impact of the ‘Fair Cost of Care’ exercise. In addition, capacity and demand analysis indicates the current mix of residential and nursing beds does not meet current demand or future system requirements. The proposed procurement process will present the opportunity to test the market, developing a service that reflects the requirements for residential, nursing and intermediate care, whilst also demonstrating value for money.

### 4. OPTIONS CONSIDERED AND REJECTED

4.1

Option	Pros	Cons	Conclusion
1. Do nothing - Allow the current provision to conclude at the contract	None: under the Care Act, Local authorities have a responsibility to meet eligible need and ensure residents receive services that	Failure to discharge responsibility under The Care Act.  The Council will still be liable to pay back the loan to the PFI, without the	This option was rejected due to not being a viable way forward.

<p>end and close the care sites.</p>	<p>prevent their care needs from becoming more serious or delay the impact of their needs.</p>	<p>generation of income from the usage of the sites.</p> <p>The site closures will result in residents needing to be moved to alternative care sites and lead to a disruption in care provision and potentially impacting on needs.</p> <p>Capacity in the market to take on the high number of residents concerned would need to be explored.</p>	
<p>2. Procure via the DPS Framework for Care Homes and Extra Care.</p>	<p>This would ensure that the Council has a compliant contract and has adhered to the Tender &amp; Contract Regulations.</p> <p>The DPS providers will be pre-approved and the process to award the contract could be shorter.</p>	<p>The contract would be subject to both the DPS terms and conditions (T&amp;Cs) as well as the PFI T&amp;Cs. These T&amp;Cs may not be complimentary.</p> <p>Only providers on the DPS will be able to bid, restricting the market and only presenting minimal competition between providers. As a result, the successful provider may not represent best value for money and may still result in higher cost placements than if we went out to the whole market.</p> <p>A clear matrix would have to be developed as to how we would successfully award</p>	<p>This option was rejected due to the it not being the most appropriate procurement process.</p>

		the contract to an individual provider in a fair and transparent way as the DPS is currently organised to help with the placements of individuals needing care rather than awarding providers for a whole service.	
3. Bring the Service in-house.	<p>This would ensure that the Council is compliant with the Tender &amp; Contract Regulations.</p> <p>The Local Authority will meet it's responsibility to meet eligible needs and ensure residents receive services that prevent their care needs from becoming more serious or delay the impact of their needs.</p> <p>The Council will have a higher level of control over the service delivery.</p>	<p>The cost of mobilising and maintaining the in-house provision will be higher.</p> <p>This will require additional resourcing to mobilise the service, including the recruitment of care and support staff and management teams.</p> <p>Less opportunity to produce savings over the length of the service.</p> <p>Lack of opportunity to test the market.</p>	This option was rejected as it is high cost and could put pressure on resources.
4. Undertake a Competitive open tender Procurement Process.	<p>This would ensure that the Council has a compliant contract and has adhered to the Tender and Contract Regulations.</p> <p>Undertaking a competitive process allows for the</p>	<p>Current inflationary pressures, workforce issues and the upcoming Fair Cost of Care exercise may impact on the anticipated cost of provision in the future contract term.</p>	This is the preferred option.

	<p>opportunity to test the market since the last contract was procured 10+ years ago.</p> <p>Opportunity to potentially deliver savings and ensure that the contract demonstrates value for money.</p>		
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## 5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

### 5.1 Revenue and Capital consequences of report recommendations

	Current Year	Medium Term Financial Strategy – 3 year forecast		
	2021/22 £'000	2022/23 £'000	2023/24 £'000	2024/25
<b>Revenue Budget Available</b>				
Expenditure Income	6,984	7,255	7,530	7,530
<b>Effect of decision from report</b>				
Expenditure Income	6,979	7,255	7,530	7,530
<b>Remaining Budget</b>	5	0	0	0
<b>Capital Budget available</b>		N/A	N/A	N/A

### 5.2 The effect of the decision

Once the procurement exercise has taken place, we will ensure that service provision remains in budget and is effectively delivering against outcomes.

### 5.3 Future savings/efficiencies

We will continue to explore further savings and efficiencies, including options with partner agencies and looking at different use of the building facilities which have the potential to generate additional income.

(Approved by: Mirella Peter, Head of Finance Adult Social Care)

## **6. LEGAL CONSIDERATIONS**

- 6.1 The Director of Legal Services comments that the report sets of proposals to undertake a competitive procurement exercise in line with the Public Contracts Regulations 2015 and the Council's Tenders and Contracts Regulations. Undertaking a competitive process should assist the Council in complying with its general Duty of Best Value to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007)).

(Approved by: Kiri Bailey, Head of Commercial and Property Law on behalf of the Director of Legal Services)

## **7. HUMAN RESOURCES IMPACT**

- 7.1 This report makes recommendations involving a service provision change which may invoke the effects of TUPE (Transfer of Undertakings (Protection of Employment) 2006 Legislation (amended 2014)). The application of TUPE would be determined by the incumbent and any new service provider, for which the Council is the client. On that basis, the role of the Council would usually extend no further than facilitating the process.
- 7.2 Where TUPE applies, the affected staffing group would transfer to the new service provider on their existing terms and conditions of employment.
- 7.3 TUPE arrangements have been built into the procurement timeline. The incumbent providers are also aware of the potential of TUPE and have both agreed to work alongside the Authority to mitigate any associated risks and to ensure that staff and residents remain informed and assured of the process.

(Approved by: Debbie Calliste, Head of HR for Adult Social Care & Health on behalf of the Director of Human Resources)

## **8. EQUALITIES IMPACT**

- 8.1 An Equality Impact Assessment (EIA) has been carried out as part of this review (attached at appendix 1). The EIA has identified that those potentially impacted by the proposed changes fall into the following categories:
- **Age** – residents are over 65

- **Disability** – residents have a physical disability and/or dementia. Some residents have additional Nursing needs

The EIA identified the following possible negative impacts, along with corresponding mitigating actions

Protected characteristic	Negative impact	Mitigating action(s)	Action owner	Date for completion
Age; Disability	<p>1: A change of service provider may mean that residents may need to adjust to new procedures.</p> <p>2: The standard of care is not guaranteed.</p> <p>3: If the cost of the care bed increases, the increased cost could get passed on to the client if they are a self funder, which would be determined through a financial assessment. Those who are not self-funders would not be affected.</p>	<p><b>(Although there are no major changes. The following actions will be taken as precaution.)</b></p> <p>1: Regular engagement with residents and families to keep them updated about the relevant changes and stages of the tender process. An implementation period is written into the procurement timeline, allowing transition from old provider to new provider and to allow the Council to have oversight of the transition.</p> <p>2: At the point of tender, providers would be required to submit a range of documents relating to policies and practices and CQC inspection/rating giving an indication of their quality. References will be obtained from other Local Authorities. The tender will be weighted at 60% quality/40% price.</p> <p>3: A price cap will be included in the tender documents based on the range indicated in the cost of care exercise that is taking place nationally.</p>	Older People & Carers Commissioning team.	<b>July 2023</b>

(Approved by: *Gavin Handford* on behalf of the Director of Equalities)

## 9. ENVIRONMENTAL IMPACT

9.1 The tender will require an environmental and sustainability policy in place to ensure their commitment to the use of recyclable products and promotion of forms of travel that support a reduction in carbon emissions, where possible.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

10.1 There are no associated crime or disorder impacts within this service.

## **11. DATA PROTECTION IMPLICATIONS**

### **11.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

#### **YES**

The contract will involve the sharing of personal client information through the referral process initially. This will include identity and financial information as well as care plans. The provider will be expected to liaise with the social work team regarding reviews and changes to client needs on an ongoing basis.

### **11.2 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

#### **YES**

The DPIA has been completed and has been reviewed by the Information Management Team. Once the successful provider has been identified, the DPIA will be updated and progress through the review process. The successful provider will also be asked to confirm that they comply with current GDPR legislation as well as providing their data protection policies and procedures.

(Approved by: Ola Adeniran on behalf of the Director)

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**CONTACT OFFICER:** Leanne Bobb – Interim Head of Strategic Commissioning and Improvement, Adult Social Care & Health.

## **APPENDICES TO THIS REPORT:**

1. Equality Impact Assessment