

Report to Cabinet

20 October 2021

Subject:	Extension of Domiciliary Care Framework Agreements
Cabinet Member:	Cllr Hartwell Cabinet Member for Adults, Social Care and Health
Director:	Rashpal Bishop Director of Adult Social Care
Key Decision:	Yes
Contact Officer:	Daljit Bhangal Operations Manager Daljit_bhangal@sandwell.gov.uk

1 Recommendations

It is recommended that Cabinet;




- 1.1 Give approval to an exemption to the Council's Procurement and Contract Procedure Rules to allow an extension to the existing Community Care (Domiciliary Care) Framework Agreements for the period 1 March 2022 to 31 August 2022 to allow for a Contract extension to be affected given no further extension provisions exist within the existing contract terms.
- 1.2 That the Director of Adult Social Care, subject to approval of 1.1, be authorised to to extend the existing Community Care (Domiciliary Care) Framework Agreements from 1 March 2022 to 31 August 2022 if the new model of purchasing domiciliary care is not deliverable by 1 March 2022.

- 1.3 That the Director - Law and Governance and Monitoring Officer, or their designated representative, be authorised to execute any documents necessary within a reasonable time to give effect to the proposal in recommendation 1.1 should the enactment of the recommendation be necessitated.

2 Reasons for Recommendations

- 2.1 It is the intention of the Council to secure a new model of delivering Domiciliary Care by 1st March 2022 and a procurement is underway to achieve that objective. However, approval for an extension to existing arrangements, as a contingency measure, is sought should the new model not be delivered for service commencement by 1 March 2022.

3 How does this deliver objectives of the Corporate Plan?

	<p>People live well and age well</p> <p>Domiciliary Care Services will support people to live longer, healthier lives and maintain independence to remain in their own home with the care and support they need.</p>
	<p>Strong resilient communities</p> <p>The overall aim of domiciliary care is to maintain independence and prevent or delay the need for long term care away from the home.</p>
	<p>A strong and inclusive economy</p> <p>Given the nature of the service and delivery of it to vulnerable people who reside in Sandwell, the successful organisations are very likely to employ people from the local area, supporting the local economy.</p>

4. Context and Key Issues

- 4.1 The Council is statutorily required under the Care Act 2014 to carry out an assessment of anyone who appears to require care and support.

The Local Authority role is seen as critical, and under section 5 of the Care Act 2014, the duty to shape and maintain an efficient and effective market of services for meeting care and support needs in the local area is firmly placed with them. The duty applies in relation to services that the Local Authority commissions directly, but also to other non-commissioned services in its area (including those used by self-funders), universal services and services provided by partners (such as health or charitable services) that together create the marketplace.

- 4.2 Domiciliary care is one of the services that the Council commissions to ensure that people with assessed needs under the Care Act 2014 have provision to support them to continue to live independently in the community, and thereby delaying or preventing the need to access residential care.
- 4.3 Currently the Council commissions domiciliary care using a hybrid approach; it has a framework of providers who receive the bulk of referrals for non-specialist care packages, and where the providers on that framework are unable to pick up the referral within the timeframe or geography required, the Council also has an Approved List of Non - Residential Providers it uses as a contingency measure should it be necessitated.
- 4.4 On 23 May 2021 Cabinet approved (minute reference 94/21) the procurement of a new model of domiciliary care to secure alternative contracting arrangements for when the existing framework contracts end on 28 February 2022. Approval was also given for the award of contracts to successful bidders once the procurement has been completed.
- 4.5 It remains the intention of the Council to secure alternative contracting arrangements by 1 March 2022 and a procurement is underway to achieve that objective. However, as a contingency measure should the new model not be delivered by 1 March 2022, it is proposed that a six-month extension be secured to existing framework arrangements. This option will not need to be effected if the new model is delivered by 1 March 2022, but given the time lag to achieve Cabinet authority, Commissioners consider it prudent to have in place an approval should it be necessary to invoke it quickly, which provides incumbent providers sufficient notice of the Council's plans.

4.6 There are a number of reasons for why a new model of commissioning domiciliary care may not be operational by 1 March 2022 that include:

- insufficient interest and successful bids being processed, thus jeopardising the ability of the Council to effectively meet its statutory obligations to provide care to those whom it has assessed as being in need. If there is not a wide pool of providers to choose from there is a risk that there will be delays in commencement of services, putting vulnerable people at risk. Therefore, when the procurement is completed, an assessment will take place to establish that the number of successful providers to join the new list is sufficient for the Council's purposes.
- The complexity of the model because it is contracting with a high volume of providers to deliver a new model from 1 March 2022 (potentially 80 or more providers) means that there may be logistical challenges to operationalise it from the proposed start date given there are interdependencies around systems and resources. It should be noted that a plan to mitigate these challenges is in place.
- there may be a delay as a result of pressures in the system due to the Covid-19 pandemic, or as a result of the Covid-19 pandemic, which may impact mobilisation, and therefore a start date of 1 March 2022.

The above risks were identified at the outset and were assessed as low. These risks continue to be assessed as low, however the recommendation being sought is purely to mitigate these risks further in the unlikely event that they materialise.

5 Alternative Options

5.1 An options appraisal has been completed by Commissioners to consider alternative options should the new model of domiciliary care not be delivered for service commencement on 1 March 2022 and option 3 in the below table is the preferred solution.

	Option	Risks	Strengths
1	Allow the framework to lapse and close the approved list and encourage service users to take direct payments	<ul style="list-style-type: none"> • Service users/representatives unhappy with having to commission their own care • Inability for some customers to receive a Direct Payment where they are unable to manage / have no one to take responsibility • Risks from an unregulated market and increased undetected safeguarding • The Council would have difficulty in holding providers to account without a contractual relationship, notwithstanding safeguarding procedures. • Providers becoming unviable with a rate that lags the Council set rate • Capacity to increase Direct Payment numbers within tight timelines • Cost of infrastructure within the sector • Loss of economies of scale within the market 	<ul style="list-style-type: none"> • Increases choice and control • Increases the Council's figures around people taking a direct payment • Reduces pressure on the Adult Social Care Budget as the direct payment rate lags a year behind the framework rate, but this is not without risk
2	Allow the framework to lapse and procure services	<ul style="list-style-type: none"> • There may be delays in sourcing and therefore potential risk of starting packages later than having a 	<ul style="list-style-type: none"> • Preferable to encouraging people to take a direct payment • Contracts already in place for Approved Providers,

	Option	Risks	Strengths
	from the Approved Provider list until such time the new model starts	<p>framework, which has more favourable terms</p> <ul style="list-style-type: none"> • No uniform rate and providers can charge what they like, thus this has a pressure on the Adult Social Care budget • Unable to hold providers to account if they can't provide packages as there is no contractual compulsion for them to do so given they are on approved provider contracts 	and therefore to some extent, there remains a continuity that both providers and Brokers and Care Management Teams are familiar with
3	Extend the current framework – will need an exemption to be approved by Cabinet. Under this option, the Approved List of providers would also continue to be used as a contingency where	<ul style="list-style-type: none"> • Providers (all or some) may not want to extend contracts, and therefore this is not necessarily guaranteed 	<ul style="list-style-type: none"> • This would allow a continuity of current arrangements for service users and providers • A uniform set rate that allows more budgetary certainty • More efficient sourcing as there are less providers on the Framework for brokers to contact • Provides business certainty to providers

	Option	Risks	Strengths
	framework can't meet the care package needs,		

6.0 Implications

Resources:	<p>Based upon current fees and the volume of commissioned care the cost of a 6-month extension is projected to be £4.756 million and these costs would be funded from the Community Care Placement budget.</p> <p>Packages of care commissioned will be paid for on an agreed set rate on a 'spot' basis, therefore there will be no guaranteed volume of service commissioned from prospective providers and the Council will only pay for what has been delivered.</p> <p>There are no anticipated human resource implications for the Council arising from the award of the Agreements.</p> <p>There are no implications for the Council's material assets.</p>
Legal and Governance	<p>The Council has responsibilities under the Care Act 2014 to assess people who appear to have care and support needs and provide or commission services to meet these needs. The service proposed to be commissioned will support people to remain living in their own homes.</p> <p>The contracts proposed to be extended fall under the Light Touch Regime of the Public Contracts Regulations (PCR) 2015 and also the Council's Procurement and Contract Procedure Rules, both of which need to be complied with.</p>

The notice published in the Official Journal of the European Union ('OJEU notice') identified a value of £24million against each lot for the lifetime of the contract.

Legal Services has been consulted on the proposed extension and advice indicates that Regulation 72 (1)(c) of PCR 2015 allows for modifications without a new procurement procedure where:

(i) the need for modification has been brought about by circumstances which a diligent contracting authority could **not have foreseen**. In this regard, recital 109 to the Directive provides: *"The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting authority, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value."*

(ii) the modification does not alter the overall nature of the contract. There is no suggestion that the nature of the contract will be altered.

(iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement. The phrase "value of the original contract" is not defined anywhere in the PCR 2015, and the Crown Commercial Service guidance does not explicitly deal with this point. However, the context and other provisions (and the fact that the Crown Commercial Service guidance refers to "contract price") strongly suggest that this refers to the value of the contract as awarded (that is, the figure in the contract award notice (subject to indexation)) and not the value in either the contract notice or the tender documents.

	<p>The estimated extension is well below 50% of the £24 million original value.</p> <p>Due to the £24 million value and the extension value, it is unable to be considered a low value variation under Regulation 72 (5) of PCR 2015.</p> <p>As a result, the Council will seek to rely on Regulation 72 (1)(c) of PCR 2015 to potentially proceed with the proposed extension. In accordance with Regulation 72 (3) of PCR 2015, there will be a need to publish the relevant notice should an extension be necessitated in reliance upon Regulation 72 (1)(c) of PCR 2015.</p> <p>The Corporate Procurement Service Manager is satisfied with the course of action being proposed subject to Regulation 72 of PCR 2015 being met and Cabinet authority being sought given that at exemption to Procurement and Contract Procedure Rules is needed for an extension to be affected of the value proposed.</p>
Risk:	<p>The plan to seek an extension to the framework is to mitigate risk and enable continuity of service provision until such time the new model is operationalised. It is not an option that the Council would wish to exercise.</p> <p>Section 5 of this report identifies the risks and benefits of each option. If Cabinet agree to the recommendation, it is not without risk should it be necessitated because providers will need to agree to it, but there is no current indication that they would not as it provides business certainty and continuity for them.</p> <p>The separately completed risk assessment contains several risks that were initially identified at the outset and were assessed as low. These risks continue to be assessed as low, however the recommendation being</p>

	<p>sought is purely to mitigate these risks further in the unlikely event that they materialise.</p> <p>The support that a domiciliary care service provides enables a reduction of risks to service users who are supported to live in their homes for longer.</p> <p>In addition to the above, the recommendations being sought, if approved, will assist in the mitigation of the directorate risk 8 in relation to the implementation of Discharge to Access which is rated Amber.</p>
Equality:	<p>An Equality Impact Assessment has been undertaken and the outcome of the same suggests there are no negative or adverse impacts on any protected groups.</p> <p>There are no significant equality issues arising from this report. The commissioning of this provision will ensure that vulnerable people in need of care, including protected groups, will benefit from timely support, and therefore there are benefits to some of the protected characteristics.</p>
Health and Wellbeing:	<p>The recipients of the Domiciliary Care Service will be supported and cared for to remain in their own homes and remain as independent as possible for as long as possible.</p> <p>To support the easing of pressure on acute hospitals through admission avoidance this service is required to assist vulnerable people for whom the Council has a statutory duty through the provision of timely care and support in their own homes.</p> <p>Given the nature of the service and delivery of it to vulnerable people who reside in Sandwell, the successful organisations are very likely to employ people from the local area, supporting the local economy.</p>

Social Value:	<p>Providers of the Domiciliary Care Service do not need to be based in Sandwell. Providers are supported and encouraged to recruit locally and engage with Colleges/Universities, and to procure local goods and services to support local communities.</p> <p>Social value has a fixed minimum % amount in the tender scoring process to allow an assessment of how bidders propose to achieve outcomes that promote social value.</p>
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7. Appendices

Nil

8. Background Papers

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