

## **Central Bedfordshire Council**

### **SOCIAL CARE, HEALTH & HOUSING OVERVIEW and SCRUTINY COMMITTEE 27<sup>th</sup> November 2017**

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#### **Award of Contracts for Residential and Nursing Home Placements**

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**This report relates to a decision that is Key**

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#### **Purpose of this report**

This report sets out the background to the procurement of care home places for older people. The outcome of this process and the award of contracts is due to be considered by the Executive on 5<sup>th</sup> December 2017.

#### **RECOMMENDATIONS**

**The Committee is asked to:**

- 1. Consider and comment on the approach set out in this report and advise the Executive of its views.**

#### **Background**

1. Under the Care Act 2014 the Central Bedfordshire Council has a duty to provide care services for vulnerable older people. The Council provides places in care homes for older people through direct service provision and through contractual arrangements with independent care providers.
2. The contract sets out the specification for care services, monitoring arrangements, fee rates and detailed terms and conditions.
3. The contract sets out a framework for the delivery of care home places. There is no obligation on providers to offer the Council any specific number of places nor any obligation on the Council to place any specific

number of places.

4. The Council has a strong record in working with care home providers and has the following overall objectives in doing so:
  - a. To manage overall care home capacity.
  - b. To manage costs – both council costs and customer costs
  - c. To maintain and improved choice for customers
  - d. To improve the quality of both care and accommodation in care and nursing homes
  - e. To improve transparency and information available to customers and their relatives including information about costs
  - f. To encourage diversity and innovation in the sector
5. On 1<sup>st</sup> November 2017, the Council had 627 older customers placed in care and nursing homes. The vast majority of these are placed in homes within the borders of Central Bedfordshire although some are placed in nearby authority areas or further afield in order to be closer to relatives.
6. The older persons care and nursing home market in Central Bedfordshire currently consists of 32 homes providing a total of 1297 places. Five of the 32 homes are owned and operated by Central Bedfordshire Council and the remaining 27 are run by independent organisations. Of the 27 homes 25 currently contract with the Council. The remaining two currently contract with Bedfordshire Clinical Commissioning Group (CCG).
7. In 2016/17 the Council spent £14.8M on care and nursing home placements for older people in the independent sector. This was partially offset by £4.4M of income from customers contributions. During the same period the Council spent £6.7M on in-house care homes for older people partially offset by £2.1M income from customer contributions.
8. The number of older people is forecast to rise significantly in the period to 2035 and this is especially the case in relation to those over 85, the group that is most likely to require care in a residential or nursing home. The contractual arrangements that the Council makes, therefore, need to be capable of responding to increased demand.
9. A feature of this marketplace is what is referred to as the 'choice of accommodation' regulations. These make provision for people entering residential care to exercise choice and the Council cannot act to limit choice to only those homes with which it has a contract.
10. The current contract was let in January 2014 for a period of four years and the process to retender the contract commenced earlier this year with engagement with current care home providers.
11. Although there was general agreement that the current contractual arrangements were satisfactory there were areas in which it was felt that

the retendering of this contract was seen as an opportunity to make improvements. In addition, the introduction of the Light Touch Regime into the procurement regulations allowed the Council more choice about the approach it adopted.

### **Contract Options**

12. The contractual models available to the Council are as follows:
  - a. Block contracting
  - b. Spot purchasing
  - c. A dynamic purchasing system (DPS)
  - d. Framework contracting
13. Block purchasing is where the Council purchases a number of places in care homes and funds those places whether they are utilised or not. This option is generally considered to be less cost-effective for Council's in the long term and also can result in reduced choice for customers.
14. Spot purchasing is where the Council contracts with a care home on a 'place-by-place' basis. This approach can be used for less common placements (such as ones outside the Council's area) but would be difficult to manage and maintain as the Council's default contracting method.
15. A DPS is where each placement would be 'bid for' by providers within an overall purchasing framework. This option has been used by a small number of councils but has not proved to deliver long term benefits and can be perceived as inappropriate for this type of purchasing.
16. Putting a framework in place requires the Council to follow a procurement process to admit (or not) providers to the contractual arrangements. These arrangements set out the terms and conditions but allow flexibility in terms of the number of placements purchased by the council and made available by the providers. This is the current arrangement and the general view is that it has worked well.
17. The framework model is therefore the preferred option with spot contracting as a fall-back option in circumstances where the framework cannot be used.

### **The Procurement Process**

18. Following engagement with the market at the regular provider forums, on 11<sup>th</sup> September 2017 the Council published the Invitation to Tender (ITT) and contract documents to the market setting out the terms and conditions and inviting submissions.
19. Providers were initially given 32 days to respond. Following representation from a number of providers this period was extended by

an additional 15 days.

20. During this period, the Council responded to questions from potential providers.
21. Providers were required to submit a completed Standard Selection Questionnaire (SSQ) and supporting financial information.
22. Evaluation of the submissions took place during November. The evaluation panel consisted of officers of the Council and representatives of Bedfordshire Clinical Commissioning Group (CCG). The CCG members were involved as part of the process set out in paragraph 27 and Appendix A.
23. The recommendations of the evaluation panel will be reported to the Executive at its meeting on 5<sup>th</sup> December 2017 and prospective providers notified of the decision of the Executive following the 'call-in' period.
24. The new contract will commence on 6<sup>th</sup> January 2018. A transitional period of three months following this date has been included in the arrangements.

### **Main Features of the New Contract**

25. The new contract uses the ADASS Regional Contract as its basis. This has been developed in conjunction with neighbouring authorities and has the benefit of being 'tried and tested' and subject to continuous improvement. It also serves to deliver consistency across the region and enable accurate comparison in relation to costs.
26. Because of the legal requirement set out in paragraph 9 there is general benefit in maximising the number of providers that are signed up to the contractual arrangements. Whilst there will be arrangements for providers who fail to provide adequate standards of care to be managed, the aim is that all providers in the area will apply for inclusion on the contract and there is no intention to try to manage overall capacity by excluding any providers who wish to provide services under the contract.
27. Although the majority of public sector contracting for care and nursing home places is conducted by the local authority, the NHS also contracts for places (mainly focussed on nursing homes). During this procurement the Council worked with Bedfordshire CCG to deliver a better alignment of contractual relationships with providers and to provide a basis for future shared commissioning arrangements.
28. The tender process has been open to providers who have homes in Central Bedfordshire or located within three miles of the Central Bedfordshire border.

29. The new arrangements will have provision for new providers to join during its currency (at the discretion of the Council) as the market expands and new and replacement homes are constructed. If the Council reopens the framework in this way any new provider(s) will need to meet the original award criteria specified by the Council.
30. The other key points of the new contract were set out in the ITT, the relevant section of which is attached as Appendix A to this report.

### **Next Steps**

31. The outcome of the retendering process will be reported to the Executive at its meeting on 5<sup>th</sup> December 2017 and prospective providers notified of the decision of the Executive following the 'call-in' period.
32. The new contract will commence on 6<sup>th</sup> January 2018.

### **Council Priorities**

33. This activity supports the Council's priorities to protect the vulnerable, and to become a more efficient and responsive Council.

### **Corporate Implications**

34. This award of contracts has followed a procurement process which is governed by the Public Contract Regulations. The provisions of the 'Light Touch Regime' apply to this procurement and are being utilised.

### **Legal Implications**

35. The legal implications are focused in three areas:
  - a. The duty the Council has under the Care Act 2014 to manage the care market and provider failure whilst providing choice for customers.
  - b. The requirement for the Procurement to follow due process under the Public Contract Regulations.
  - c. The duties placed upon the Council and providers by the terms of the contract.

### **Financial and Risk Implications**

36. The new contract does not contain provisions that significantly change the overall financial position of the Council.
37. The move to the Council collecting Third Party Top-Ups and Customer Contributions will require additional staff resources but it is estimated that in the medium term this cost will largely be offset by reduced bad debt and a lower risk of provider failure.

38. The collection and payment of 3<sup>rd</sup> Party Top Ups does not increase the debt exposure or liabilities of the Council as regulations make it clear the Council is ultimately liable for 3<sup>rd</sup> Party debt even if it has had no involvement in making the arrangements with the 3<sup>rd</sup> Party. It is considered by taking control of the whole process we do not worsen the Council's position in respect of potential bad debt but have the opportunity to be aware of payment issues very early on and to take action to deal with them.
39. There are significant risks to the Council in the area of care and nursing homes for older people. These include financial, legal and reputational risks. Many of these risks are unavoidable but where they can effectively be avoided or reduced then the Council takes action to do this. The provisions in the new contract result in a small reduction in the overall risk to the Council compared with the current arrangements.

### **Equalities Implications**

40. An Equalities Impact Assessment has been prepared and this will be available to the Executive when considering the matter. This document will identify the equalities impacts and matters to be addressed.

### **Conclusion and Next Steps**

41. The Committee is invited to comment on the content of this report ahead of the meeting of the Executive on 5<sup>th</sup> December 2017.
42. The Committee may also wish to request that a report is brought to a future meeting of the Committee setting out the progress made in implementing the new contract.

### **Appendices**

**Appendix A: Extract from Invitation to Tender – changes to existing contractual arrangements.**

### **Background Papers**

None

Report author: Tim Hoyle: Head of Service: Meeting the Accommodation Needs of Older People.

## Appendix A:

### **Extract from Invitation to Tender – proposed changes to existing contractual arrangements.**

#### **Key Provisions:**

The following areas set out the key contractual changes envisaged in the new arrangement (compared with the 2013 Contract) and their purpose:

**The Contract period will be 15 years to 2033.** This is to demonstrate the Council's commitment to the market avoid the need to retender the contract sooner than necessary. There are Contract Variation provisions and a 'break' clause in the Contract that allows the Council to retender the Services prior to the end of the Contract by giving not less than six months notice.

**The Contract will support the development of innovative additional and enhanced services** – especially short-term services and those which have specific outcomes. Such services will be specified and offered to Service Providers within the general Contract terms. Where the requirement for such services is limited (as will be the case more often than not) then the Council will set out the process for determining which Service Provider(s) will be selected to provide the additional or enhanced service. Any process will be open and transparent.

**The Contract will align arrangements with Bedfordshire CCG** and allow for the Council and the CCG to jointly develop new services and enhancements to existing services. The provisions of the Contract also clarify that where a Service User becomes entitled to CHC funding then the terms and conditions of the Bedfordshire CCG contract shall apply.

The Contract will support Service Providers by moving to paying Service Providers the full contracted rate and the Council taking responsibility for collecting the Service User's contribution to the cost of their care (also known as '**paying gross**' rather than 'paying net'). The Council will link this change of practice to the **regularisation of the position in relation to any 3<sup>rd</sup> Party Top Ups**, where the Council will also take responsibility for the arrangements and collection of 3rd Party Top Ups and paying these across to the Service Provider.

**The Contract will simplify the current payment rates whilst retaining the incentives Service Providers have to achieve good quality services.**

Following a transition period from January 2018 to April 2018, the Contract rates will be revised to contain only two quality-based rates – one for homes that achieve 'Good' or 'Excellent' and a lower rate for other homes. This change will coincide with the annual pricing amendments in April 2018.

**Monitoring of the Contract will involve use of the online PAMMS system** to simplify and streamline reporting and assessment.

**The Council will continue to support and value the achievement of Dementia Quality Mark (DQM)** by homes but will phase out the fee premium in the current contract and recycle savings into basic fee rates and/or other initiatives within care homes.

**The Council intends to build on existing good practice in terms of engagement and partnership working with Service Providers** and to share supply, demand and commissioning information with Service Providers on a regular basis to enable Service Providers to plan their operations and to contribute to the Council's duty to shape the care market. It intends to do this through both direct engagement activity with Service Providers and by providing support for the establishment and/or development of trade association(s) representing Service Providers.

**The approach to annual fee setting may include elements of independent data collection and analysis.** Service Providers will be expected to cooperate with such processes and the Council will keep commercial data confidential.

**The Council will collect occupancy data from the Service Providers on a regular basis** to inform the placement process and to monitor the market.

**The Council will work with Service Providers to enable the online publication of care home vacancy and fee information** to allow potential customers to be able to more effectively choose a care home.

**Transitional Arrangements:** The Council does not wish to disrupt individual Customers' existing placements or the local market as a whole and will therefore make appropriate transitional arrangements for the period January 2018 to April 2018. It will engage with existing and future Service Providers in the course of determining these arrangements.