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**Meeting:** Executive

**Date:** 5 November 2013

**Subject:** Framework Agreement for Care Homes in Central Bedfordshire

**Report of:** Cllr Carole Hegley, Executive Member for Social Care, Health and Housing

**Summary:** This report provides an overview of the approach to be undertaken to implement the framework agreement and quality monitoring system that were approved by the Executive on 6 November 2012.

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**Advising Officer:** Julie Ogley, Director of Adult Social Care Health and Housing

**Contact Officer:** Elizabeth Saunders, Assistant Director Strategic Commissioning

**Public/Exempt:** Public

**Wards Affected:** All

**Function of:** Council

**Key Decision:** Yes

## **CORPORATE IMPLICATIONS**

### **Council Priorities:**

1.
  - Promote health and wellbeing and protecting the vulnerable.
  - Value for money – freezing council tax.
2. The framework agreement deals with the purchasing of accommodation within care homes across Central Bedfordshire for older people over 65 years of age.
3. It will apply at any one time to 350 of the most vulnerable older people within Central Bedfordshire and approximately 1,000 people will receive the service over the four years of the framework agreement. This number will increase over time as we move away from the BUPA block contract and transfer the services provided to care homes that are on the framework agreement.

### **Financial:**

4. The financial implications of the framework agreement have been extensively assessed by comparing the current costs of the service with the costs of a number of options for implementing the agreement.

5. The main conclusion of this analysis is that the financial impact of implementing the framework agreement is relatively minor in relation to the budget of £8.7m.
6. Depending on the effect that the framework agreement has on the behaviour of both customers in choosing to move into higher quality care homes and providers in increasing their quality performance rating there is likely to be either a small saving to or a small increase in the budget.

**Legal:**

7. The Conditions of Contract and other documents under which this framework agreement will be let are based on the Regional Standard Terms and Conditions of Contract for Adult Social Care and Housing Related Support Services in the East of England (version 3.2 produced in October 2012).
8. The Regional Standard is a common set of processes and documents that has been approved by the Association of Directors of Adult Social Services (ADASS) – Eastern Branch and adapted by the Council for this framework agreement.
9. These Conditions of Contract and supporting documents are acceptable to the Council, include the clauses that it would wish to see within such an agreement and do not include anything that would be prejudicial to its interests.

**Risk Management:**

10. There is a full Risk Register to identify, assess and mitigate risks to the successful delivery of the quality monitoring system and the framework agreement. All risks have been identified and treated as necessary to reduce their impact.
11. These include any financial and legal implications of introducing the framework agreement and potential disruptions to the care home market resulting from these new arrangements. They will continue to be monitored throughout the implementation and operation of the framework agreement.

**Staffing (including Trades Unions):**

12. Not applicable.

**Equalities/Human Rights:**

13. The Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

14. The framework agreement will provide accommodation within care homes for a number of the groups with protected characteristics under the public sector equality duty. It is directed at people over the age of 65 who have a range of conditions including dementia, physical and sensory disabilities, learning disabilities, mental health needs, physical frailty, vulnerability and temporary illness.
15. This approach will advance equality of opportunity and have a positive impact on some of the most vulnerable people in Central Bedfordshire. It is focussed on improving the quality of care that the Council purchases within care homes so that they not only carry out the personal care tasks required such as washing, dressing and feeding but also deliver outcome-focussed care that maximises people's independence, health and wellbeing and supports their social, spiritual, emotional and healthcare needs.
16. The framework agreement also includes requirements relating to staff recruitment, staffing and staff deployment and supporting staff in the working environment.
17. The Equality Impact Assessment (which is available as a background document on request) has considered the impact of this policy and sets out how the introduction of the framework agreement addresses the Council's public sector equality duty. It concludes that the procurement of these services includes a thorough consideration of equality and diversity which will ensure the provision of high quality accommodation to a number of groups with protected characteristics.

**Public Health:**

18. The framework agreement will commission accommodation services in care homes to some of the most vulnerable people within our community who, because of their frailty or ill-health, are unable to remain living safely within their own homes.
19. It will be focussed on maximising each customer's independence and take a preventive approach to maximise their health and wellbeing and achieving the outcomes set out in their care and support plans.

**Community Safety:**

20. Not applicable.

**Sustainability:**

21. Not applicable.

**Procurement:**

22. The procurement approach set down in this report is the most effective method of procuring these services providing value for money contracts.

23. The corporate procurement team has been involved throughout the process of developing this policy to ensure that the steps followed are rigorous, legal, in accordance with the Council's procurement policies and procedures and designed to attract sufficient qualified and experienced providers that are able to supply the services.
24. This has included the production of the contract documentation and the invitation to tender as well as the design of the procurement process, including the evaluation criteria. This tender has been advertised both electronically and in selected local newspapers to ensure that this process is fair, transparent and open to all skilled and experienced providers in this area.
25. The procurement team is now managing the procurement and evaluation stage of the project and will continue in this role until the contract is let.

#### **Overview and Scrutiny:**

26. This matter was discussed by the Social Care, Health and Housing Overview and Scrutiny Committee on 9 September 2013 and their recommendations are set out in Appendix A.
27. As recommended the six month period in which poor performing providers are able to rectify the causes of any serious concerns will be kept under review and amended if necessary.

#### **RECOMMENDATIONS:**

**The Executive is asked to approve the proposed approach to procuring these accommodation services:-**

- 1. to establish a framework agreement as recommended in paragraphs 43 and 44 (The Options) the specific elements of which are contained in Appendices B (The Framework Agreement) and C (The Tender Process);**
- 2. to implement the quality monitoring system set out at Appendix E (Quality Monitoring System) at the same time as the framework agreement;**
- 3. to implement the framework agreement on the basis described at method 2 paragraph 49(b) (Implementing the Framework Agreement) and set down in detail in Appendix D (The Operation of the Framework Agreement); and**
- 4. to let the contract to those providers that have been successful within the tendering process (details of the successful providers will be provided at the meeting).**

Reason for Recommendations:	So that the Framework Agreement and Quality Monitoring System, as described within this report, can be let to those providers who have been successful within the tendering process.
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## **Executive Summary**

28. The Executive on 6 November 2012 approved a report that established a strategic approach to commissioning services for older people within care homes in Central Bedfordshire. Specifically this included:
  - a) an accreditation scheme for dementia care so that a minimum of 60% of dementia care will be rated as 'good' or 'excellent';
  - b) a quality monitoring system which assesses the quality of each care home and allocates it to a quality performance band; and
  - c) a framework agreement for commissioning places in care homes that links the quality of care to an agreed and fixed contract price.
29. The dementia accreditation scheme is now in place.
30. The new quality monitoring system will evaluate the quality of care homes and allocate them to a performance band. This will become the basis for determining the fees that care homes will receive for local authority funded customers across Central Bedfordshire.
31. The framework agreement will establish new contracting arrangements which will link the contract price to the performance band of each care home so that providers are encouraged to improve their quality in return for an increased contract price.
32. The framework agreement will also encourage new providers to develop care homes in Central Bedfordshire to take advantage of the market opportunities available especially in the northern part of the Council area.
33. The recommendations of the Overview and Scrutiny Committee on 9 September 2013 are attached at Appendix A and addressed in paragraphs 26 and 27 above.

## **NATIONAL RATING SYSTEM**

34. The Nuffield Review which reported in February 2013 recommended that a national rating system for care homes with and without nursing is set up and managed by the Care Quality Commission (CQC). This was endorsed in general terms by the government in March 2013 and has since been included within the Care Bill 2013. To implement this, the CQC will have to design the rating system and establish the information collection processes needed to operate it. This will have to be approved by the government and probably piloted in a few areas before being introduced across the board.
35. Whilst the Council needs to be aware of the details of a national rating system and how it is to be implemented it is unlikely to be in place before April 2015. A robust quality monitoring system has been developed by the ADASS Eastern Region group and piloted within Central Bedfordshire over the last 12 months, the details of which are included at Appendix E. The roll out of this quality monitoring system will be continued as planned alongside the framework agreement.

36. On the commencement date of the framework agreement in January 2014 each care home of those providers accepted onto the framework agreement plus the 8 BUPA managed care homes will be allocated to one of four quality performance bands. This will enable the Council to link the quality of services within these care homes to an agreed contract price that it will pay for each publicly funded customer.
37. When a national system is in place at a later date the current processes will be reviewed and merged with the new system as necessary.

## **CONSULTATION AND COMMUNICATION**

38. The Council has undertaken a comprehensive engagement programme with providers from 2011 consisting of a series of workshops, a questionnaire and a separate focus group with invited providers. The intention behind this was to understand and collate evidence in relation to the current and future costs faced by providers and to identify additional areas of concern for Central Bedfordshire residents in relation to the provision of accommodation within care homes.
39. A further meeting with providers, setting out the broad principles behind the introduction of a framework agreement, was held in November 2012. Additional clarifications on the procurement process and the transition arrangements were provided at a later briefing meeting on 28 May 2013. New providers were also invited and advised that if they were interested in building in the area they should go through the procurement process as the framework agreement will be closed for its contract period.
40. There is a Communication and Engagement Plan to ensure that all stakeholders are able to engage in a meaningful way throughout the duration of the project. A letter has been sent to customers to inform them of the quality monitoring system and the framework agreement and to reassure them that they will continue to receive the care of their choice whilst these new arrangements are put in place.

## **RISK ANALYSIS**

41. There is a full Risk Register to identify, assess and mitigate any risks to the successful delivery of the quality monitoring system and the framework agreement. The key high risks for this project are:
  - (a) customers and their relatives may be concerned if they find out that the accommodation services within care homes are being retendered. This is being addressed through communication and engagement with customers, families, providers and staff to inform them of the changes and provide reassurance that customers will not be required to move if their existing provider is not included on the framework agreement;
  - (b) there may have been insufficient applicants for the framework agreement. This was addressed through communication and engagement with providers, widely marketing the tender and ensuring the procurement process was not too time consuming or complicated to complete.

As a result 17 of the 21 current providers have applied for the tender. This covers 20 of the 24 existing care homes and 90% of the available places. In addition 3 new providers have also responded to the invitation to tender.

- (c) The framework agreement will drive up quality which will raise costs which could make it unaffordable within the current budget. This risk has been mitigated through a thorough financial analysis of the options (see paragraphs 53 to 58 below).

## **OPTIONS**

- 42. A number of different contractual options were considered before the preferred option was recommended. These were:

### **Option 1: Tender for a Framework Agreement**

- 43. This is the preferred option approved by the Executive and outlined in the current report. It will deliver the following benefits for the Council, its customers and the providers:
  - (a) delivering high quality services to all customers through a quality monitoring system and contract pricing policy that rewards high quality and consistent performance;
  - (b) allowing existing customers to remain with their current providers, minimising disruption to customers and their families whilst providing transparent and market competitive rates which achieve value for money;
  - (c) providing more choice of personalised care and access to information to those self directing support;
  - (d) enabling the shaping and development of a robust market to achieve stability and resilience of supply across Central Bedfordshire and greater capacity within the market;
  - (e) identifying the best care home for each customer's requirements with the ability to award a contract without re-opening competition; and
  - (f) establishing a framework for greater collaborative relationships with providers which enhance opportunities for innovation and business development.
- 44. The following disadvantages have been identified, all of which are being mitigated through the risk management strategy:
  - (a) there may be insufficient applicants for the framework agreement (see paragraph 41(b) above;

- (b) new providers that enter the market within 3 years of the commencement of the framework agreement will be unable to get onto the framework agreement as it will be closed for the duration of the contract period (see Appendix B section titled 'Contract Period');
- (c) the Council needs to ensure that there are sufficient finances available as the framework agreement will drive up quality which will raise costs (see paragraphs 53 to 58 below); and
- (d) existing providers may not get onto the framework agreement and may not be willing to retain Council customers at the current rates. This could result in either the Council paying an inflated price for these customers or them having to move into a care home that is on the framework agreement (see paragraph 41(b) above and Appendix D section titled 'The Allocation of Contract Prices').

## **Option 2: Retain the Current System of Block and Spot Contracts**

- 45. The Council has a block contract in place with BUPA which pays for a set number of beds whether or not they are occupied. Alongside this there are a number of spot contracts with providers who provide services as and when required.
- 46. The disadvantages of the current system are:
  - (a) there is no link between the quality of the services and the contract price to give an incentive for providers to improve quality and deliver value for money;
  - (b) the current supply of accommodation is not sustainable to meet the longer term demand in Central Bedfordshire;
  - (c) a lack of transparency in the contractual arrangements as the providers have not gone through a tendering process or been assessed against standard requirements such as data protection, insurance and financial viability; and
  - (d) customers are not able easily to choose from the widest range of care homes to meet their requirements based on their quality and location.

## **Option 3: Establish a Preferred List of Providers**

- 47. A preferred list of providers is operated in the same way as a series of spot contracts except that these providers will have gone through a selection process to be accepted onto the preferred provider list.
- 48. The disadvantages of a preferred list of providers are:
  - (a) the arrangement does not encourage the providers to be as competitive as the Council would like, which may have a detrimental impact on quality and price;



- (b) the providers would be less stringently assessed in terms of the quality of their services and their financial stability; and
- (c) pricing and any other terms can be changed at any time as the conditions of each contract are negotiated and agreed when each specific service is established and not at the beginning of a contract period.

## **IMPLEMENTING THE FRAMEWORK AGREEMENT**

49. There are a number of ways in which the framework agreement can be implemented. The three methods that have been considered in detail are:

- (a) new fees are implemented for all customers from the beginning of the agreement irrespective of their current fee levels.

This method is most advantageous to the Council and relatively onerous on the providers as it reduces those fees paid for existing customers that are higher than the Council will pay to the contract price for the care home's performance rating;

- (b) new fees are implemented for all customers who are currently funded on existing Council rates or lower so that those on lower fees than their quality performance band go up and those on higher fees go down. Customers on higher non standard fees are protected and remain as they are.

This is fairer to providers as it implements new fees for all customers at the beginning of the framework agreement. It also protects providers from having to bear price reductions by honouring those fees that are higher than the standard Council fees; and

- (c) new fees are implemented only for new customers. Existing customers stay on their current rates.

This would result in a series of differential payments for customers with the same needs within the same care home. It would also discriminate against those care homes that have improved their quality rating as the additional payments that they will receive as a result of this will only be paid for new customers and not existing ones.

50. The preferred methodology for implementing the framework agreement is method 2 described at paragraph 49(b) above.

51. It is fairer to the providers as they will have sufficient time to adjust their business operations to accommodate or mitigate any long term reductions in income that might occur as a result of implementing the framework agreement.

52. This methodology also enables us to implement the new quality performance bands as soon as possible, paying providers from the beginning of the framework agreement on the basis of their current quality performance rating rather than implementing it over a longer period.

## FINANCIAL IMPLICATIONS

53. The financial implications of implementing the framework agreement have been extensively assessed by comparing the current costs of the service with five sets of assumptions about the ability of providers to improve the quality of their care homes and thus attract higher contract prices which will increase the overall costs to the Council.
54. Option 1, which compares the current costs with what the Council would pay if all providers were paid on their assessed performance band rather than the old CQC star ratings, would result in a saving to the Council. This is because a number of providers are currently on lower performance bands than their CQC star rating and would thus be paid a lower contract price. Although the 6 month transition period would provide time for them to improve their performance.
55. At the lower end of the financial spectrum option 2 assumes that up to 5 of the 24 care homes increase their quality rating by moving up a performance band from their current position. This increases the number of customers living in care homes that are either 'excellent' or 'good' from 60% which is the current level to 65%. It also achieves a cost saving to the Council.
56. Option 3 in which 12 of the 25 care homes move up a performance band will result in a smaller saving to the Council. This is a relatively easily achievable outcome with customers and providers behaviour changing so that the number of customers living in care homes that are either 'excellent' or 'good' increases from 60% to 75%.
57. Further up the scale option 4 has all 24 care homes moving up a performance band. This will result in all customers being in an 'excellent' or 'good' home at a small increase to the budget. This is possible but unlikely to happen in the foreseeable future. Finally option 5 has all 24 care homes improving their performance rating to 'excellent'. This is the maximum possible exposure to implementing the framework agreement and would cost an additional £150,000, however it is very unlikely to happen.
58. The most likely outcome lies somewhere between options 3 and 4 in which around 80% of customers would be in either 'excellent' or 'good' homes. Depending on the effect that the framework agreement has on the behaviour of both customers in choosing to move into higher quality care homes and providers in increasing their quality performance rating there is likely to be either a small saving to or a small increase in the budget. Given this the financial implications of implementing the framework agreement are relatively minor in relation to the budget of £8.7m.

**Appendices:**

Appendix A – The Recommendations of the Overview and Scrutiny Committee

Appendix B – The Framework Agreement

Appendix C – The Tender Process

Appendix D – The Operation of the Framework Agreement

Appendix E – The Quality Monitoring System

**Background papers and their location:**

1. “Commissioning for Outcomes: Approach to Standards and Quality of Dementia Care, Fee Levels for Care Homes and Planned Withdrawal from Existing Block Contract Arrangements.”

Report to the Executive on 6 November 2012.

2. “Care Home Provision Central Bedfordshire – Strategic Business Case”

Equality Impact Assessment, 16 November 2012. (Available on request)