

## **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**

The report advises the Executive on the outcome of the re-procurement of the contract for care homes places for older people and seeks approval to award contracts to the recommended providers.

### **RECOMMENDATIONS**

**The Executive is asked to:**

- 1. Approve the award of contracts for the provision of care in Residential and Nursing Homes for Older People to the providers listed in Appendix A of this report as having been successfully evaluated.**
- 2. Authorise the Director of Social Care Health and Housing, in consultation with the Executive Member of Social Care Health and Housing to approve the future addition of one or more new providers to the contract by following the process set out in paragraph 34 of this report.**

### **Background**

1. Under the Care Act 2014 Central Bedfordshire Council has a duty to commission or provide directly 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 Council has a strong track record in actively 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 improve choice for customers
  - d. To improve the quality of both care and accommodation in care and nursing homes
  - e. To improve transparency and the amount and quality of information available to customers and their relatives, including information about costs
  - f. To encourage diversity and innovation in the sector
3. The current contract sets out a framework for the delivery of care home places which includes the specification for care services, monitoring arrangements, fee rates and detailed terms and conditions. Under this framework there is no obligation on providers to offer the Council a specific number of places nor any obligation on the Council to take up a specific number of places.
4. In the period following the letting of the current contract, officers have worked hard to establish a collaborative approach with care providers and as a result the Council is in a position to further develop services in the future.
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 were 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 people 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 legislative requirement that impacts on the Council's relationship with independent care home providers is what is referred to as the 'choice of accommodation' regulations. These make provision for people entering residential care to exercise choice and prohibits the Council from acting 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 in 2017 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 could be 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 procurement and contracting approach it adopted.

### **Contract Options Considered**

12. The main 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 is a fairly recent innovation and has been adopted by a small number of councils but their feedback is that these arrangements have not delivered long term benefits and can be perceived as inappropriate for this type of purchasing.

16. Framework contracting 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 around 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 approach with spot contracting as a fall-back option in circumstances where the framework cannot be used.
18. The proposed contract uses the Association of Directors of Adult Social Services 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.
19. Due to the legal requirement set out in paragraph 9 there is general benefit in maximising the number of providers that are within 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. There is therefore no intention to try to manage overall capacity by excluding any providers who wish to provide services under the contract.
20. 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 has worked with Bedfordshire CCG to deliver a better alignment of contractual relationships with providers and to provide a basis for future shared commissioning arrangements. This included members of the CCG taking part in the evaluation of tenders. This collaborative working has improved transparency for all concerned. It has also motivated care providers and the CCG to continue the positive dialogue with the Council as we continue to sustain the quality of care in our market.

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

21. Paragraphs 22 to 34 below set out the most significant differences between the proposed contract and the existing one.
22. The current contract is limited to homes within Central Bedfordshire. Given that there are customers who may have a preference for a home nearby but outside Central Bedfordshire, the tender process was open to providers who have homes in Central Bedfordshire or located within three miles of the Central Bedfordshire border.

23. The contract period will be for 15 years from 2018 to 2033. This is to demonstrate the Council's long-term commitment to working with care home providers to develop and improve services for older people. 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.
24. 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.
25. The contract will support providers by moving to paying them the full contracted rate and the Council taking responsibility for collecting the customers' contribution to the cost of their care (also known as 'paying gross' rather than 'paying net'). This change was proposed by providers and will improve their cash flow and reduce their administrative costs.
26. The Council will link the change to paying gross 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 these and paying these across to the provider.
27. Taken together the changes in paragraphs 25 and 26 will also lead to more consistent and transparent charging arrangements for customers.
28. The contract will simplify the current payment rates whilst retaining the incentives providers have to achieve good quality services. Following the transition period, the fee rates will be revised to contain only two quality-based rates.
29. The Council will continue to support and value the achievement of Dementia Quality Mark (DQM) but will phase out the payment of a premium to homes which achieve this and will recycle the funding for this into other initiatives and/or the overall fee levels.
30. The proposals set out in paragraphs 28 and 29 have been developed in consultation with current providers, who are content that the objectives of these changes are the simplification of the payment system and greater clarity for providers. Officers have made it clear that there is no plan to use these changes to deliver a reduction in overall fee expenditure.
31. The Council intends to build on existing good practice in terms of engagement and partnership working with providers and to share supply, demand and commissioning information with providers on a regular basis to enable them 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 providers and by providing support for the establishment and/or development of trade association(s) representing them.

32. The approach to annual fee-setting may include elements of independent data collection and analysis. Providers will be expected to cooperate with such processes and the Council will keep any commercially-sensitive information confidential.
33. The Council will work with 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.
34. The new arrangements will have provision for additional providers to join during its currency (at the discretion of the Council) in response to demand and as new and replacement homes are constructed. If the Council reopens the framework in this way it will conduct a fair and transparent procurement process and any provider(s) added will need to meet the original award criteria specified by the Council (or equivalent thereof). If it wishes to reopen the framework then the Council will also need to have due regard to any changes in the regulatory regime that have taken place in the intervening period.

### **The Procurement Process**

35. Following engagement with the existing providers at regular provider forums arranged by the Council, 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.
36. Potential providers were initially given 32 days to respond. Following representation from a number of providers this period was extended by an additional 15 days.
37. Providers were required to submit a completed Standard Selection Questionnaire (SSQ) and supporting financial information in addition to their tender submission.
38. The Council received acceptable responses to the ITT from 24 providers. As some providers operate more than one home in Central Bedfordshire or within three miles of the border, this represented submissions in respect of 31 homes, four of which are located outside Central Bedfordshire.
39. Evaluation of the submissions took place during November 2017.
40. All of the bidders who made submissions are listed in Appendix A along with the recommendations of the evaluation panel as to whether or not they should be admitted to the contract.
41. Following consideration for this matter by the Executive bidders will be notified of the outcome following the 'call-in' period.

42. For successful bidders, 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 to ensure a smooth transition to the new contract and to avoid unnecessary disruption to existing customers.

### **Next Steps**

43. Following the decision of the Executive all bidders will be advised of the outcome of their bid and provided with feedback about their evaluation.
44. Contracts will be issued to successful providers and work will commence on implementing the changes to contractual arrangements as set out in paragraphs 22 to 33, focussing initially on the arrangements to move to gross payments and the regularisation of 3<sup>rd</sup> Party Top Ups.
45. If a provider's bid has been unsuccessful but the Council has one or more customer(s) placed in the provider's home(s), then the Council will work with the provider and the customer(s) to agree the way forward, with the aim of minimising any unwanted or unnecessary disruption to the customer.

### **Council Priorities**

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

### **Corporate Implications**

47. 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**

48. 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.
49. It is considered that approach, processes and outcomes set out in this report adequately take account of the legal implications.

## **Financial and Risk Implications**

50. The new contract does not contain provisions that significantly change the overall financial position of the Council.
51. 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.
52. The collection and payment of 3<sup>rd</sup> Party Top Ups does not increase the debt exposure or liabilities of the Council. The 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 the Council's position will not worsen in respect of potential bad debt because of the opportunity and awareness of any payment issues very early on and to take action to deal with them.
53. 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**

54. Central Bedfordshire 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.
55. A detailed Equalities Impact Assessment has been undertaken for this work and the issues identified have generally been addressed within the service specification and the procurement process.
56. The assessment concludes that the proposed changes will have either positive or neutral impacts and no negative impacts.
57. The assessment notes the benefits to be gained by achieving a consistent approach to 3<sup>rd</sup> Party Top Ups. It also recommends monitoring and future research into the topic of the degree to which care home customers from groups with one or more protected characteristics are able to get their individual needs met.



## **Appendices**

**Appendix A (Exempt): Outcome of Tender: List of Bidders and the  
(To follow) Outcome of the Evaluation of their  
Submissions**

## **Background Papers**

Equalities Impact Assessment