

5 April 2017		ITEM: 19 (Decision 01104424)
Cabinet		
Renewing Contracts with Care Home Providers		
Wards and communities affected: All	Key Decision: Key	
Report of: Councillor Sue Little, Portfolio Holder for Children’s and Adult Social Care		
Accountable Head of Service: Les Billingham, Head of Adults and Community Development		
Accountable Director: Roger Harris, Corporate Director of Adults, Housing and Health		
This report is Public		

Executive Summary

The Care and Support Statutory Guidance issued under the Care Act 2014 stipulates that:

- Where the care planning process has determined that a person’s needs are best met in a care home, the local authority must provide for the person’s preferred choice of accommodation, subject to certain conditions.
- Where a local authority is meeting needs by arranging a care home, it is responsible for contracting with the provider.
- When commissioning services, local authorities should assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care.

For these reasons, in common with other local authorities with social services responsibilities, it has been the practice of the Council not to tender for residential care home services, and this report seeks a waiver from the Constitutional requirement to tender, and approval to follow a single sourcing arrangement for awarding contracts for care home services for both older people and working age adults.

This is consistent with the agreement reached by Cabinet in 2012.

1. Recommendations

- 1.1 That Cabinet approve a waiver from the constitutional requirement for competitive tendering for the provision of care home services for older people and working age adults, and approve a single sourcing arrangement for new contracts for care home placements commissioned by the Council.**
- 1.2 That Cabinet delegate to the Corporate Director for Adults, Housing and Health in consultation with the Portfolio Holder, the authority to award contracts for care home services to meet the assessed needs and preferences of older people and working age adults.**

2. Introduction and Background

- 2.1 Care and Support Statutory Guidance issued under the Care Act 2014 stipulates that where the care planning process has determined that a person's needs are best met in a care home, the local authority must provide for the person's preferred choice of accommodation, subject to certain conditions.
- 2.2 Service users, particularly older people (often assisted in their decision making by relatives and friends) commonly express a preference for a care home when assessed as requiring residential care. In the case of working age adults, the choice is often determined by the availability of care homes to meet quite specific assessed needs, including sensory impairments, physical disability, mental health needs and autism.
- 2.3 Where a local authority is responsible for meeting a person's care and support needs and their needs have been assessed as requiring a particular type of accommodation in order to ensure that they are met, the person must have the right to choose between different providers of that type of accommodation provided that:
 - the accommodation is suitable in relation to the person's assessed needs
 - to do so would not cost the local authority more than the amount specified in the adult's personal budget for accommodation of that type
 - the accommodation is available
 - the provider of the accommodation is willing to enter into a contract with the local authority to provide the care at the rate identified in the person's personal budget on the local authority's terms and conditions
- 2.4 The requirements of the Care Act effectively preclude the council from holding any form of competition for the provision of the care home services because the choice of the service user, or the availability of homes to meet their assessed needs, are the main factors which determine which care home is contracted to provide residential care. In consequence of this, Thurrock in common with other councils has tended to follow a single sourcing arrangement in contracting with the care home provider.

2.5 For this reason Cabinet are asked to agree a waiver from the requirement in Thurrock's Constitution for competitive tendering for contracts for care homes over £75,000 per annum.

3. Issues, Options and Analysis of Options

3.1 In order to be able to set a personal budget for a person who requires residential care a local authority needs to have regard to the cost of care in the care home. For placements outside Thurrock the Council should have regard to the cost of care in that area when setting a person's personal budget. This arrangement mainly applies to meeting the needs of people aged 65 years and over whose sensory, mobility and cognitive functions may be impaired as a result of the ageing process.

3.2 The local authority rates paid for care home places in Thurrock for people aged 65 and over from 1st April 2016 (per week) are as follows.

- Standard residential care £438.70 (shared room £416.76)
- High Dependency residential care £467.59 (shared room £444.21)
- Dementia care £490.93 (shared room £466.33)
- Nursing care £614.02 (shared room £583.32)
- Higher Need nursing care £641.82 (shared room £609.73)

3.3 The Council funds placements in 13 care homes for older people in the local area, owned and managed by 6 providers. The Council also funds placements in Essex and Southend, and to a lesser extent elsewhere, and in these cases the Council pays the rate established by those local authorities.

Personalisation

3.4 In addition to service users having the choice of care home (subject to the conditions in the Guidance and set out above), the service specification, developed in conjunction with other councils with social services responsibilities in the East of England, sets out how the service will address the requirements of the personalisation agenda.

3.5 In the context of commissioning for outcomes, the specific outcomes to be achieved for each service user are agreed between the care manager, the care home provider and the service user, and recorded in the care and support plan. The actual tasks related to the delivery of personal care in the care home will then be agreed between the service user and the care and support provider and recorded in the service user's individual service contract. The care manager must determine that the times and tasks appear appropriate to the delivery of the agreed outcomes.

Quality And Safety

- 3.6 The Council works closely with the Regional Association of Directors of Social Services Group to address quality and safety in Care Homes. The Group has developed systems, which incorporates risk rating, monitoring assessment tools and action planning functions.
- 3.7 The Council's Contracts Compliance Team conduct Quality Monitoring Inspections to develop and maintain quality standards in line with the Regional Group guidelines and contractual standards for Residential Care Services. During inspections the assessment tools are completed which will determine a rating for providers. The rating will establish the level of support and monitoring required to ensure quality standards are improved and maintained, which will include regular provider checks and visits.

Current Contracts For Care Homes

- 3.8 In order to renew the current contracting arrangements for care homes, the Council must address the requirement in the Council's Constitution, which would ordinarily require contracts of this value to be competitively tendered
- 3.9 The current contract for care homes was introduced in July 2012. In order to renew the contract, and for the reasons set out in paragraph 2.4 above, Cabinet are asked to agree a waiver from the Constitutional requirement for competitive tendering and to approve a single sourcing arrangement for contracting with care home providers.
- 3.10 The updated Regional Standard Contract for care homes which Thurrock developed in conjunction with the other councils in the East of England will be offered to providers. This will ensure that the terms and conditions of contract and the specification are up to date in relation to relevant legislative requirements, reflect good practice, and are consistent with the terms and conditions used by neighbouring councils.

4. Reasons for Recommendation

- 4.1 The Council's Constitution requires competitive tendering for contracts valued at over £75,000. This report requests a waiver of that requirement in respect of care home (residential care) services. It also seeks approval of the arrangements for the award of these contracts.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 Following approval, a letter will be sent to providers inviting them to enter into a contract with the Council for the provision of care home places for an initial period of 3 years which may, by mutual agreement, be extended for a further two 24 month periods up to a maximum of 7 years.

6. Impact on corporate policies, priorities, performance and community impact

6.1 The Community Strategy, the Corporate Plan and the Medium Term Financial Strategy (MTFS) require the Council to commission services at the highest possible standard whilst delivering value for money for the Council. The Council has set aside £ 1m growth in the MTFS for demographic and other pressures within adult social care. If any uplift in the local authority rate for care home placements is agreed it will need to be a call against this figure.

7. Implications

7.1 Financial

7.1.1 The financial implications are contained in the body of the report. Pressures relating to inflationary rate increases and adjustments to declared rates will form part of the 2017-18 budget allocation and funded through the extra revenue raised through the Council Tax ASC precept. These pressures will be monitored throughout the next financial year and reported through Directors Board.

Implications verified by: **Jo Freeman**
Management Accountant

7.2 Legal

7.2.1 The Council's Constitution requires a competitive tender to be completed for all contracts over £75,000. However, this requirement may be waived provided the Council complies with its duty to obtain Best Value pursuant to the Local Government Act 1999. The Council is unable to conduct the normal competitive procurement procedure for residential care providers because of the particular nature of the service provision and the service user choice. However, the Council is required to act transparently, fairly, proportionately and in a non-discriminatory manner when dealing with service providers.

7.2.2 By entering into legally binding contracts with care homes in the borough, the Council will be able to manage the relationship with the accommodation providers, including being able to monitor the standard of care being provided to the service users therefore ensuring the Council's safeguarding function is carried out.

7.2.3 The Council needs to ensure that a robust procedure is established for determining the local authority rate. It is essential that the procedure includes an evaluation of all relevant circumstances relating to the provision of the service and not just the Council's financial circumstances (although this is also a relevant factor).

7.2.4 Legal Services and Procurement Services will provide ongoing advice and assistance to the client in relation to the procurement process and the legal issues regarding setting the local authority rate.

Implications verified by: **Paul O'Reilly**
Projects Lawyer | Law & Governance

7.3 **Diversity and Equality**

7.3.1 The arrangements for contracting with care home providers for older people, and for working age adults, will be undertaken with due regard to equality and diversity considerations. This will include adherence to the relevant 'Equality' Codes of Practice on Procurement. These require consideration of the equality arrangements of all such providers; that they have relevant policies on equal opportunities and are able to demonstrate a commitment to equality and diversity. These arrangements will also be subject to a full review as part of the contract management of the services to be provided.

Implications verified by: **Natalie Warren**
**Community Development & Equalities
Manager**

7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None.

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

Care and support statutory guidance Updated 9 December 2016
<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

9. **Appendices to the report**

There are none

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