

Report to Cabinet

Monday 24 May 2021

Subject:	Award of Agreements for Domiciliary Care Services.
Cabinet Member:	Cllr Shaeen Cabinet Member for Living Health Lives
Director:	Katharine Willmette
Key Decision:	Yes
Contact Officer:	Daljit Bhangal – Operations Manager daljit_bhangal@sandwell.gov.uk Ria Palmer – Commissioning Manager ria_palmer@sandwell.gov.uk

1 Recommendations

It is recommended that Cabinet;

- 1.1 Authorise the Director of Adult Social Care to complete a procurement exercise for the delivery of Domiciliary Care to secure alternative contracting arrangements for when the existing framework contracts end on 28 February 2022.
- 1.2 That a further report is presented to Cabinet to authorise approvals to award and enter into Agreements with all successful bidders, on terms to be agreed with the Director of Adult Social Care, for the provision of a Domiciliary Care service to commence on 1 March 2022. The term of the Agreements will be for as long as the successful contractors remain as an approved provider on the proposed new Domiciliary Care list.






- 1.3 That the Director - Law and Governance and Monitoring Officer, or their designated representative, execute any documents necessary within a reasonable time to give effect to the proposals in recommendation 1.2 for the provision of a Domiciliary Care Service.
- 1.4 Authorise the application of the costing model used in the existing Community Care framework contract (Appendix 1) for use in the proposed Agreement, which will be subject to review during the lifetime of the Agreement.
- 1.5 That Cabinet approve the proposed new Domiciliary Care model.

2 Reasons for Recommendations

- 2.1 There is no further extension option available in the existing framework contract and therefore the authorisation to commence the procurement process and award contracts to successful bidders will ensure there are appropriate agreements in place from 1 March 2022.
- 2.2 Establishing a longer- term agreement to enable individual packages to remain with contractors at the end of the period allows the mitigation of risk when service users are compelled to either change care provider or forced to take a direct payment to stay with them.
- 2.3 The term of the agreements will afford additional security for providers in the market, consistency for service users, as well as for internal teams in Social Work and Brokerage.
- 2.4 The proposal will create more providers to enable greater availability and increased choice for service users.



3 How does this deliver objectives of the Corporate Plan?

	<p>People live well and age well 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 Commissioning recommendations suggest the model of care should be more outcomes focused, person centred and integrated. The overall aim of domiciliary care for the future, 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 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 The Council over the last decade has commissioned domiciliary care using a two - tier 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 to address the deficit. Rates paid vary between the two approaches, with the framework having a set rate agreed annually, and the providers on the Approved List set their rates at the point a package is commissioned. Over recent years this rate has not been automatically uplifted, creating market distress.
- 4.4 There has over the last decade been between 6 and 11 providers on the domiciliary care framework, with the current framework having 7 providers. The current framework contract started on 1 March 2018 and ends on 28 February 2021, with the option to extend for a further year to 28 February 2022 having been used.
- 4.5 The Council has also commissioned a fast response, hospital discharge service by offering a block contract to providers to ensure there is the guaranteed provision available that can meet the demands for a more expedited timeframe given the need to ensure that delayed transfers of care from hospital are minimised. More recently, given the expansion of the Council's in-house service, STAR, the commissioned fast response service from the independent sector has also been used as a prevention service where community social work teams refer service users to it to enable a period of assessment to take place to assess whether a long- term package is required.
- 4.6 The Council has over the years put framework agreements in place for domiciliary care generally for a period of 4 years or so, and therefore the Council is faced with the prospect of retendering for a new domiciliary care framework every 3 – 4 years. This creates a significant amount of work in re-designating care packages to new agencies while simultaneously creating significant disquiet amongst service users and their families when they are told their agency may change, with an increase in complaints, threatened media coverage, and potential safeguarding ensuing.



There is also an increase in direct payments where agencies are unsuccessful in securing a new contract because service users don't want to change agency. While this is positive in increasing the take up of direct payments, the impact on vulnerable people who feel obliged to take a direct payment when they would not ordinarily choose to do so cannot be underestimated. The option of managed accounts can mitigate some of these challenges.

- 4.7 Having a domiciliary care framework in place has historically been seen as preferable as it spreads the work across a finite number of providers thus enabling them to maximise their economies of scale to manage the competitive rate the Council pays (lowest in the region). It also supports a more stable market in an increasingly challenged social care environment. Further, given the framework has not met all the Council's needs for a number of years as a result of the challenges of recruitment, retention, quality and finance that is inherent within the sector, the increasing use of the Approved List as a backup demonstrates that an alternative approach is necessary.
- 4.8 Commissioners have reviewed the approach to the commissioning of domiciliary care and identified that the current model is no longer viable. Instead, the Council has explored the option of establishing one list that providers would seek to join that is advertised via a Contract Notice in compliance with procurement regulations, which has a set fee for all providers, but which has a number of tiers. The contract notice will be able to be reopened at set intervals to add new providers to the Tier 2 list and to refresh the Tier 1 list. The approach has been discussed and agreed with legal representatives.
- 4.9 The current contract value is £28,579,200 (for 4 years) with an hourly rate for 2020/21 in the sum of £14.92 increasing to £15.16 on 1 April 2021.
- 4.10 The pricing mechanism in the current framework contract was approved via Cabinet in 2017 and it is recommended that it is used in the new proposed agreement too, but with the option for review should that be necessary.



Any uplifts will be determined using this mechanism in future years during the term of the proposed new agreement and will take into account increases to the National Minimum Wage and provide some capacity to absorb additional increases. An annual increase to the rate is essential to prevent provider failure and mitigate against safeguarding as a result. This pressure will be managed within the Adult Social Care budget.

- 4.11 In addition to the existing framework, many individuals purchase services to meet their own support needs using a Direct Payment (DP) provided to them by the Council.

Market Engagement

- 4.12 Initial engagement with the market was via a virtual event. All framework and approved list providers were invited (51 in total), 18 attended the event where the plans for the development of a new model were discussed, how this would progress and how Providers could be involved.
- 4.13 During the survey period, an engagement event was held with the West Midlands Care Association (WMCA) representative to discuss the approach with the market. This early engagement was welcomed by the WMCA, with it being identified that Providers would appreciate the chance to be involved at such an early stage of the process whilst the specification is still in development.
- 4.14 A survey was sent to all 51 Providers which included specific questions about delivering a borough wide service, a model based on a Tiered approach of Tier 1 / 2, response times, costing model and a free text space for additional comments.
- 4.15 Nine surveys were completed and returned. The responses were analysed, and a summary report is attached as Appendix 2 for information.



4.16 To summarise; six Providers were in favour of a borough wide service, the others were more sceptical in terms of resourcing a larger area.

The Tier1/2 approach raised some concerns with how Tier 2 Providers could manage unknown demand.

The response times ranged from 1 hour being acceptable to 2-3 days required to respond.

Five out of the nine Providers stated the rate in Sandwell is too low.

The free text box included comments around the requirement of additional travel costs, tender process support for smaller providers and the rate being too low.

4.17 Adult Social Care Commissioners have considered the feedback in shaping a future model and in relation to the concerns shared, the following observations are made:

- While the Tier 1 / 2 approach raised some concern, this is to a large extent the process at the moment in relation to referrals initially going to framework providers before to the Approved List, with no guarantee of work being commissioned.
- While response times varied for how quickly providers suggested they can respond, there is an imperative to secure services quickly when need has been assessed, so achieving a response within an hour is important. Providers will understand the requirements when any tender is advertised by looking at the opportunity and would hopefully have time to implement processes to enable them to achieve the timeframes required.
- The rate is reviewed each year according to a costing mechanism built into the contract, it is the view of the Council that services can be delivered at this rate, with increased costs according to the costing mechanism taken account of annually.



Moreover, currently, not all of the Approved List of Providers automatically have their rates uplifted each year, but under any new model, all providers will have and therefore this should create additional stability in the market.

- The hourly rate paid to domiciliary care providers is inclusive of travel time and providers are expected to pay travel costs to comply with National Minimum Wage obligations.
- The Council will look to provide tender support through the West Midlands Care Association and including some information within the tender documentation.

Proposed Model

4.18 The proposed model will be the default source of provision of domiciliary care for eligible adults aged 18 and over, including older adults, adults with dementia, learning disabilities, physical disabilities, mental health and sensory impairment. Currently, the Approved Provider list is used to source specialist care for learning disabilities, physical disabilities, mental health and sensory impairment with packages commissioned at varying hourly rates over and above the current set domiciliary care framework rate. It is proposed going forward that there will be one set hourly rate for all types of provision.

4.19 The proposed model will consist of a tiered system, consisting initially of Tier 1 and 2 providers. It is proposed there will be twelve primary providers in Tier 1, with the remaining providers falling into a second Tier. Having 12 primary providers should mitigate the risks faced in the current framework agreement where there are insufficient providers to go to source packages. Over the past three years, the service has been detrimentally affected as a result of the Council's contract monitoring arrangements identifying the need to suspend three providers from taking new packages due to quality issues and a further provider handed back the whole contract, placing additional burden on the remaining providers.



- 4.20 The procurement subject to this Cabinet paper will initially be completed for non - specialist domiciliary care providers to join the proposed new list, with other more specialist provision to be included in the tender as additional lots for the market to respond to at a later date.
- 4.21 The current domiciliary care framework agreement is split into twin- town provision where providers have allocated areas. Under the new agreement, it is proposed that all providers will provide services across the whole borough.
- 4.22 The Service Requirements will be advertised via the Council's electronic procurement in-tend and on Find a Tender (the UK's new eProcurement Platform that has replaced OJEU) and on Contracts Finder.
- 4.23 Once advertised, providers will apply to join the new list to be considered for the provision of domiciliary care as a Tier 2 provider. All providers regardless of Tier will need to satisfy checks on company standing, CQQ registration etc. There will also be quality questions that are scored in this stage and a number of the highest scoring who want to be considered for Tier 1 status will be invited to tender and asked to complete a further application form. If providers are successful in the application process, an interview will be completed as the second part of the Tier 2 status evaluation process before the definitive list of twelve Tier 1 providers being identified.
- 4.24 Once applications have been received to join the new proposed list, the list will be closed. Thereafter, the list will be reopened for Tier 2 status every year, or pre-defined term, and all providers meeting the pass criteria will be added to the list; existing providers do not need to reapply. The ability for providers to apply for Tier 1 status will be identified in the process at the outset and will be potentially every 3 – 5 years depending on the sole discretion of the Council.



- 4.25 Referrals will be managed in a fair and equitable manner. Initially referrals for new packages of care will go to Tier 1 providers and they will be given an agreed timescale to respond within, for example 1 hour, and where more than 1 provider is able to deliver the package, a mechanism to fairly distribute work will be devised that is transparent and communicated to providers. Where Tier 1 providers cannot deliver a package, Tier 2 providers will be approached based on a fair and equitable transparent process.
- 4.26 Consultation will continue with internal colleagues from Social Workers, Brokerage, the Contracts Team and Sandwell's in-house frontline service (STAR). Market Consultation is included above.
- 4.27 A Brokerage Portal or other mechanism to support the management of referrals and commissioning of packages will be pursued to enable an effective roll out of the new approach.

5 Alternative Options

- 5.1 Re-procure like for like, but as mentioned already, a short-term agreement results in instability and service user distress when having to change care and support providers. The new proposal seeks to establish a new process for greater stability.
- 5.2 Do not re-procure – this is not an option as the existing framework contract will end on 28 February 2022 and the Approved List is not a viable alternative.
- 5.3 Do not re-procure and allow the existing framework contract to end and compel all Service Users to commission their own care packages via a direct payment. This is not without significant risk and can be detrimental to people who do not want the complexities of managing their own care and support even though for some people, it increases their choice and control. In addition, a market that the Council is not overseeing is a safeguarding risk as there will be no direct contractual relationship between the Council and the care provider, resulting in service users potentially being exposed to harm that is harder to detect.



6.0 Implications

Resources:

The funding for this service would be from the Adult Social Care and Health budget.

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.

There is a payment mechanism within the framework Community Care contract for calculation of the hourly rate in future years, (as per Appendix 1) which is paid from 1st April each year, and that takes into account cost of living increases, including increases to the National Minimum Wage. The proposed contracts will reference adherence to this payment mechanism but will have the ability to review its use thereafter.

The uplift in domiciliary care rate will cost approximately £318,000 in 2021/22 based upon the 2020/21 actual spend on home care.

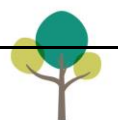
Prior to the application of client charges, the following table identifies the expenditure for the existing framework and non-framework provision;

	Non-Framework	Framework	Total
2020/21	5,740,646	6,283,150	12,023,796
2019/20	6,522,470	7,376,229	13,898,699
2018/19	5,563,752	6,559,845	12,123,597
	£17,826,868	£20,219,224	£38,046,092

The aggregate value over the lifetime of the proposed Framework Agreement is not able to be calculated because the annual uplift for each year is unknown, however the payment mechanism in Appendix 1 will be used to calculate any uplift.



	<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>
<p>Legal and Governance</p>	<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 service proposed to be contracted falls under the Light Touch Regime of the Public Contracts Regulations (PCR) 2015 which allows for greater flexibility for how a procurement is run. However, while there is greater flexibility, the aggregate value of the Contracts will exceed the PCR15 Light Touch Threshold. A fully compliant tender process will be undertaken in accordance with both the Council's Procurement and Contract Procedure Rules and the Public Contracts Regulations 2015.</p> <p>The Council's Procurement and Contract Procedure Rules require Cabinet to approve award of contracts for the estimated value of the service and this paper seeks such authority.</p> <p>Legal advice has been sought on the proposed new model and the term of the Agreements and the procurement documentation will be agreed with legal representatives before the opportunity is put out to market.</p>
<p>Risk:</p>	<p>The risks identified in the separately completed Risk Assessment include;</p> <ul style="list-style-type: none"> - Approval not achieved - Lack of interest from the market - Provider recruitment of staff and retention - Performance and service delivery - Funding not secured - Lack of Performance Monitoring resources - Provider sustainability



	<p>These risks have been evaluated and sufficient actions have been identified in the risk assessment, to ensure the risks are mitigated. It is considered that sufficient mitigation is in place so that the proposed contracts deliver against the specification. There are no red risks that require reporting.</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>
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 so support local communities.</p> <p>Social value has a fixed minimum % amount in the tender scoring process to allow the impact to be crucial to the outcomes.</p>



7. Appendices

Appendix 1 – Fee Rate Calculator

Appendix 2 - Analysis of Provider Responses to Survey

