

TELFORD & WREKIN COUNCIL

CABINET – 26 JUNE 2014

DOMICILIARY CARE PREFERRED PROVIDER FRAMEWORKS

**REPORT OF ASSISTANT DIRECTOR FAMILY, COHESION &
COMMISSIONING**

LEAD CABINET MEMBER – CLLR ARNOLD ENGLAND

PART A) – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSALS

- 1.1 To seek Cabinet approval to award qualifying providers entry to the Preferred Provider Framework for domiciliary care.

2. RECOMMENDATIONS

It is recommended that Cabinet approve the following:

- 2.1 The Director: Care, Health and Well-being is granted delegated authority, following consultation with the Cabinet Member for Adult Social Care to award qualifying providers entry to the Preferred Provider Framework for a period of one year with the option of extending the Framework annually for a further 3 years.**
- 2.2 To delegate the authority to the Assistant Director: Law, Democracy and People Services to execute all documentation required to give effect to the agreements reached in relation to 2.1 above.**

3. SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Co-Operative Council priority objective(s)?	
	Yes	<ul style="list-style-type: none"> Protect and support our vulnerable Children and Adults <p>Improve the health and wellbeing of our communities and address health inequalities</p>
	Will the proposals impact on specific groups of people?	
	Yes	<p>Domiciliary care is put in place to support:</p> <ul style="list-style-type: none"> Older and vulnerable people, with Community Care needs to live independently in their own homes. Children and Young people with disabilities to enable and support them to live ordinary lives, to access a range of specialist activities including short break services <p>The needs of these vulnerable groups were considered in relation to the Equality Duty 2010 when developing the Framework and its adoption will deliver an improvement to care standards, health and equality of opportunity.</p>
TARGET COMPLETION/DELIVERY DATE	The aim is to put the new Preferred Provider Framework in place by September 2014.	
FINANCIAL/VALUE FOR MONEY IMPACT	Yes	Domiciliary Care is currently provided for all client groups in Adult Social care. The care is purchased in the main from external providers. The cost of externally purchased homecare in 2013/14 including block contracts was £12m of which spot purchased care was around £10.3 m

	<p>and block purchased care a £1.7m .</p> <p>Adult Social Services has a savings target of £10.5m over the period of years 2014/16. These are contained in the current budget strategy and the adopted financial recovery plan. Over £3m of this is proposed to be met from Homecare and almost all from Homecare spot purchasing – required reduction of around 30%. The proposals to deliver this saving include proposals to reduce rates and to deliver demand management for example through the use of Assistive Technology etc.</p> <p>Recent updated work on spot purchased Homecare suggests there has been a small reduction in the average rate at which the Council purchases homecare the spot average rate in 2013/14 was around £15 per hour. The savings proposals included in the above totals and expected to be made from reducing Homecare rates is £650k. In order to achieve this the current average spot rate would need to reduce by up to 10% and based on best information held the rate would need to reduce to between £13.50 and £14.00 per hour.</p> <p>Through the tender process the Framework will accredit service providers and ask for costs that are below £14.00 per hour for general domiciliary care and a cost for specialist support. In order to deliver the saving proposed of £650k the call off contract “mini bids” would have to deliver a reduction to an average rate of between £13.50 and £14 per hour (being the maximum level in the proposed banding).</p> <p>TS/RP/28/05/14</p>
--	--

LEGAL ISSUES	Yes	The aggregate value of the various Individual Placement Agreements (" Call-Off contracts ") that will be procured under the proposed Preferred Provider Framework Agreement (" the Framework ") requires these services to be procured in accordance with EU legislation, the Public Contracts Regulations 2006 (as amended) (" the Regulations ") and the Council's Finance Regulations and Contract Procedure Rules.
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	The Care & Support Act places a duty on the Council to ensure a diverse market of care providers. This in turn, supports the personalisation agenda in ensuring provider choice. Adopting a Preferred Provider Framework will retain a diverse provider market, whilst offering the Council the opportunity to secure best value from the market.
IMPACT ON SPECIFIC WARDS	Yes	Borough wide impact: Domiciliary care purchasing takes place across all wards of the Council.

PART B) – ADDITIONAL INFORMATION

4. INFORMATION

Tender

The tender for the Preferred Provider Framework was opened on 2 May 2014. The response to date has been positive with over 50 domicilliary care providers showing interest in the tender. The closing date for the tender was 9 June 2014, 37 providers formally submitted a response, and evaluation of the tenders is underway..

Contracting Arrangements

The current spot contracting arrangements for domiciliary care under which Adult Social Care services are currently being purchased are not in line with

good practice; use out of date Terms & Conditions; have no service specification and prices have not been competitively set through a contracting process.

Although children's contracting arrangements for domiciliary care and support are in place we are taking the opportunity to include these services into this tender and rationalise our contracting arrangements. This supports the move to a single commissioning/contracts team: The restructure is almost complete and will be implemented from 1 July 2014.

The Framework will use the Council's new contract Terms & Conditions, and incorporate an outcome based specification. These will provide a more robust basis for monitoring the performance of care providers, and supporting safeguarding obligations. The Framework will also improve market management in terms of supply and transparency of pricing.

Through the tender process the Framework will accredit service providers and ask for costs that are below £14.00 per hour for general domiciliary care. For specialist care, consideration may be given to costs that are above £14.00, but below £16.00 per hour.

Adult Social Care

Adult Social Care has arranged domiciliary care for over 1800 older and vulnerable people within Telford & Wrekin.

Domiciliary care focuses on allowing people to stay in their own home. Domiciliary care aims to keep people healthy, well and active; able to take part in, and contribute to, their local community. Good domiciliary care, linked to other community based services, delays the need for moving to a care home. For most people, care in their own home is a preferred and more cost effective alternative to residential or nursing care.

The majority of this care is delivered by independent as well as not for profit care providers, under spot purchasing arrangements linked to individual care plans.

To achieve savings on purchasing domiciliary care Adult Social Care need to reduce both the demand for care and associated hours of provision and the cost of care. The Financial Recovery Plan sets out a series of initiatives that seek to address each of these priorities. The tendering of a Preferred Provider Framework seeks to reduce the cost of care. Under the new Framework bids will be invited for packages of domiciliary care for individuals. Bids will only be considered if they fall within the price band set out within the Framework. This approach will ensure the Council can maximise the opportunity associated with a competitive process, whilst creating control around the highest and lowest prices. A brokerage process has been operating during 2012/13, testing this approach, and there is evidence that it is reducing the average price that Adult Social Care is paying for domiciliary care.

Children and Young People with a Disability

It is estimated that there are between 1,132 and 2,037 children and young people experiencing some form of disability living within Telford & Wrekin.

Approximately 160 children and young people require some support and about a third of these currently choose an agency to supply the support. This equates to 88 support sessions per week and nearly 1000 hours per year.

Families with an assessed need will have access to provision that will enable them to be cared for in their own home or given opportunities to access activities and places, and to become involved and included, in the wider community. The children of these families may use the services procured via this Framework contract if appropriate.

5. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

Community Impact

The setting up of Preferred Provider Frameworks, with potential exclusion of some lower quality providers from the Framework, should ensure that the Council focuses its purchasing on care providers delivering safe care. This arrangement lessens the risks associated with safeguarding issues that could arise from buying low cost care. Safeguarding issues signal poor care practices with the potential of harm and distress to vulnerable people in the borough. Additionally any major safeguarding issue carries reputational risks for the Council.

Financial Impact

The proposal is intended to deliver care in the Community at a lower unit cost than is currently the case. .

The Preferred Provider Frameworks will also support the **Abacus Project and Agresso system**: It will bring in requirements around raising service orders and contracts that will be compliment the work to ensure these processes operate efficiently.

Long term sustainable savings from domiciliary care purchasing will result from the combination of use of the Preferred Provider Frameworks and activities to transform the way care is delivered i.e. by using Assistive Technology, etc.

Market Impact

At present the Council is the major purchaser of domiciliary care locally. The expectation is that, via the policy to promote personal budgets and direct payments Council purchasing will reduce, and purchasing will be led by individuals accessing Council funding where appropriate. This shift requires

that a wide range of providers of domiciliary care and low level care are available within the local market.

Rigid, formal framework contracts would adversely affect the provider market, potentially pushing the majority of providers out of business. The Preferred Provider Frameworks can include a wide range of care providers, and have greater development potential around a quality mark or ratings system to support purchasing decisions, by the Council or by individuals

Legal Impact

Frameworks

The Regulations define a framework agreement as ***“an agreement or other arrangement between one or more contracting authorities and one or more economic operators, which establishes the terms under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework applies”***. The Regulations permit local authorities to enter into framework agreements with a number of service providers, following a competitive tendering process, and to thereafter select from those service providers to provide particular services, as and when required for a maximum period of four years. This obviates the need to undertake a wide competitive process.

In general terms, in letting each Call-Off contract the Council can choose to appoint a service provider off the Framework, directly based on the pricing and/or other information established in the original tender process, or if the price cannot be directly determined or in order to ensure best value it can hold a mini-competition between the suppliers appointed to the Framework in or to make an award. It is the Council's intention to hold mini-competitions in relation to each Call-Off contract and to have a fixed pricing band in place (with pre-set maximum and minimum values) to ensure that competitive bidding does not come at the expense of service quality and integrity.

Social Value

The **Public Services (Social Value) Act 2012** (“the Act”) applies to Framework Agreements. Section 1 (3) requires an authority to:

- (a) *consider how what is proposed to be procured might improve the social economic and environmental well-being of the **relevant area** and*
- (b). *how, in conducting the process of procurement, it might act with a view to securing that improvement.*

(“the relevant area” means the area consisting of the area or areas of the one or more relevant authorities on whose behalf a public services contract is, or contracts based on a framework agreement are, intended to be made.)

Section 1 (7) requires that, *“The authority must consider whether to undertake any consultation as to the matters that fall to be considered under subsection*

(3).” The Act is silent on how, or with whom, consultation must be held but a presumption is that this could include the voluntary and community sector, along with other providers and interested groups.

The intention is that, as well as the larger Providers of these services, the procurement process will encourage small to medium local Providers to tender for a place on the Framework. Care however, will need to be taken to ensure that the possible introduction of current (or future) technology, such as the current electronic monitoring systems (that monitor care staff attendance time in the service user’s home) does not result in a disproportionate and adverse costs penalty (from the system licence fee and call-rate charges) on these small to medium local Providers as this may negate the intended local benefits under the Act.

Best Value

Section 3(1) of the Local Government Act 1999 imposes a general duty, “*to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness*”.

In addition to demonstrating value for money via continuing market testing and quality control, Call Off contracts will contain provisions which enable continuing value for money to be tested and provisions to allow termination in the event that the service cannot be provided on terms which remain acceptable to the Council.

Section 3(2) of the Local Government Act 1999 requires that an authority, when deciding how to fulfil its duty under S3 (1), must consult

- a) representatives of persons liable to pay any tax, precept or levy to or in respect of the authority,
- (b) representatives of persons liable to pay non-domestic rates in respect of any area within which the authority carries out functions,
- (c) representatives of persons who use or are likely to use services provided by the authority, and
- (d) representatives of persons appearing to the authority to have an interest in any area within which the authority carries out functions.

(3)For the purposes of subsection (2) “representatives” in relation to a group of persons means persons who appear to the authority to be representative of that group

Best Value and the Phased Transfer of Current IPA’s onto the Framework

Achieving value for money for the Council includes the phased transfer of all current Individual Placement Agreements on to the new Framework, however in view of the impact that the changes may have on current service users it is likely that the duty to consult under section 3(2) arises.

In R (On the Application of Nash) v Barnett LBC) [2013] EWHC (judicial review of outsourcing services) the Judge noted that Section 3 of the Local Government Act 1999 required the local authority to consult on the way in which it exercised its functions and that this included high-level choices about how an authority went about performing its functions. If such consultation does not take place there is a risk that service users and current/potential providers may be able to challenge the final decision, although that risk is likely to be low.

Public Sector Equality Duty.

The Council must have due regard to the Public Sector Equality Duty as imposed by s149 (1) of the Equality Act 2010, which states:

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it...

Consideration needs to be given to carrying out an Equality Impact Analysis in respect of the proposal to transfer current Individual Placement Agreements onto the new Framework in order to assist the Council in meeting its Public Sector Equality Duty.

TUPE 2013

If the transfer of current Individual Placement Agreements onto the Framework results in a change of service provider the consideration will need to be given as to whether any obligations under TUPE arise.

Equality analysis outcomes

Consultation with service users of adult Social Care has highlighted concerns regarding consistency and continuity of care, as well as good quality care and respect for privacy.

Whilst the overall objective of the Domiciliary Care Preferred Provider Frameworks is to deliver financial savings and a consistent market, it will, as a by-product ensure improvement in care and quality for an individual. It will do this by introducing a quality threshold for providers, a robust contract specification and a right for the Council to monitor provider performance. It is anticipated that it may also lead to a smaller number of providers, improving the capacity of the Council to monitor quality and contract delivery. Safety will be improved as the Framework will not include agencies that exhibit consistently poor practice. This will be assured through normal safeguarding and quality monitoring processes.

Concerns for the transition of individuals from one agency to another have been considered. Service users impacted by the Framework will be informed of changes in an appropriate manner to their needs and will effectively have three options:

- The transfer of individual placements from agencies who have not managed to integrate with the Framework to one within the Framework will be a managed process that will reflect the Service Users choice to receive care from a new agency.
- For individuals who choose not to transfer to a Framework agency, they will be invited to take up a personal budget and supported to appropriately direct their own support. It is unknown how many affected individuals would exercise this choice nor is it possible to identify until the Framework has been compiled.
- For individuals who do not wish to transfer to an agency on the Framework, and who do not wish to take a direct payment, the Council can consider continuing to secure their care package via their existing provider to facilitate service user choice.

The overall implementation of the Framework will be monitored through our normal contracting and commissioning process and individual outcomes will be monitored through the community care review process and statutory complaints system.

6. PREVIOUS MINUTES

Procurement Intentions report: Cabinet 20 Feb 2014. Minute 8

7. BACKGROUND PAPERS

**Report prepared by Fran Jones, Commissioning Specialist, Telephone:
01952 381215**