

## **Adults and Health Committee**

<b>Date of Meeting:</b>	21 <sup>st</sup> November 2022
<b>Report Title:</b>	Care at Home Recommissioning
<b>Report of:</b>	Helen Charlesworth-May, Executive Director Adults, Health and Integration
<b>Report Reference No:</b>	AH/41/2022-23
<b>Ward(s) Affected:</b>	All wards

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### **1. Purpose of Report**

**1.1.** The purpose of this report is to request a decision to extend the Framework Agreements for Care at Home services to 4<sup>th</sup> September 2024 due the growing uncertainty created by general economic and market conditions and the added uncertainty created by the Government-led changes to the social care system. This report seeks approval to realign Care at Home contracts by extending the current Framework arrangements.

**1.2** Adults and Health Committee in March 2022 resulted in the following decisions:

- (1) Approves Cheshire East undertaking the recommissioning of care at home services for adults which are potentially procured in partnership with Cheshire Clinical Commissioning Group (or its successor), with Cheshire East Council as the lead commissioner.
- (2) Approves a contract period of five years with a possible two-year extension.
- (3) Notes that commissioners intend to engage providers and stakeholders on the proposed new model and that independent consultants have been appointed to undertake a review of care fees

which will help to inform the new commission.

- (4) Delegates authority to the Executive Director of Adults, Health, and Integration to enter into a joint agreement with Cheshire Clinical Commissioning Group in consultation with the Chair of the Adults and Health Committee should a joint commission with the CCG\* be progressed, following a report to the committee.
- (5) Delegates authority to the Executive Director of Adults, Health, and Integration in consultation with the Director of Governance and Compliance and the Chair of the Adults and Health Committee to enter into contracts with the successful suppliers following the prescribed procurement process.

\*Note that since the publication of the recommendations the Cheshire CCG has been replaced by the Integrated Care Board.

The plan remains that these decisions will be implemented by Commissioners once the recommissioning process has taken place.

- 1.3. The recommission of the services will contribute to the following objectives in Cheshire East Council's Corporate Plan 2021-2025:
  - Vulnerable and older people live safely and maintain independence within community settings
  - To prioritise home first for patients discharged from hospital.

## **2. Executive Summary**

- 2.1 At its meeting of 28<sup>th</sup> March 2022, Adults and Health Committee (Report reference AH/42/21-22) considered a report on the recommissioning of the Care at Home contracts. It was resolved that Adults and Health Committee approved the recommissioning of Care at Home services, potentially in partnership with Cheshire Clinical Commissioning Group, with a contract period of an initial five years with a possible two-year extension.
- 2.2 The report also set out the timetable for the recommissioning of the services which proposed going to tender in January 2023, awarding contracts in April 2023 and commencing new contracts on 31<sup>st</sup> August 2023.
- 2.3 It has since become apparent that current conditions in the care market and the fragility of the UK economy generally are not conducive to successfully undertaking a large-scale procurement of these statutory services and to proceed as planned would create a risk that the provision of care at home services within the Borough would be further destabilised.
- 2.5 The adult social care sector is undergoing a period of significant reform in respect of care charging, which is applicable to Care at Home services, the implications of which, on the timetable set in March 2022, will not be realised

until after the service was due to go out to tender. This uncertainty may impact on the willingness of providers to bid for the services and impact on the success of the overall procurement process. Revising the timetable will provide time for these economic and policy issues to settle and their long-term impact assessed.

- 2.6 Commissioners are requesting authority to extend existing Framework contracts and the commissioning timescale for a 12 month period to allow time for the market and the economy to settle and for charging reforms to be introduced and embedded.
- 2.7 The extension periods within the framework have been exhausted, and so the extension would need to be actioned by way of a Voluntary Ex-Ante Transparency Notice (VEAT), a notice to the market of the intention to award contracts without going through a competitive process. The risk of challenge from other providers is considered to be low as the Framework will be opened so that all providers will have an opportunity to join these contracts.
- 2.8 The Prime provider contracts will expire at the contract end date in September 2023, and it is proposed that existing packages of care currently delivered under Prime Provider contracts will be transferred to the same care providers' Framework contracts. This will mitigate the risk of challenge, simplify contractual arrangements with providers and provide continuity of care delivery to service users.
- 2.9 Commissioners will continue to work with colleagues in the Integrated Commissioning Board (ICB) to explore a joint commission covering care at home and continuing healthcare (CHC). This would represent a further step towards health and social care integration (the Council's Care Brokerage Team already source continuing healthcare on behalf of the NHS), and potentially offer greater choice and value for local residents through harmonisation of contract terms.
- 2.10 The proposed timetable for the revised recommission is as follows:

Market and public engagement	April 2023 – August 2023
Procurement and contract documents finalised	December 2023
Contract notice issued on the Chest	January 2024
Closing date for tenders	February 2023
Evaluation of tenders	March 2024
Award sign off and intention to award letters issued	April 2024
Mobilisation	May – August 2024
Contract start date	September 2024

- 2.11 Commissioners will use the extended period to continue to support social care providers through challenging times and to explore with providers and stakeholders the optimal model for service delivery in such a challenging market.
- 2.12 The Council's response to the pressures on the Care at Home market are as follows:

Short term response – Take a risk-based approach to managing market challenges through a clear understanding of providers' pressures and working with the market and internal stakeholders to address issues as they arise.

Medium term – Align services such as General Nursing Assistants, Reablement and the voluntary sector to support timely hospital discharge, maximise independence and reduce the need for more traditional forms of homecare intervention.

Long term – Develop with stakeholders and care providers alternative care models which takes an holistic, asset-based approach to care and support at a local level. This will involve a partnership approach that has the potential to improve outcomes for residents by ensuring they remain well for as long as possible and thereby reducing the need for personal care.

### **3. Recommendations**

That the Adults and Health Committee:

- 3.1. Agree to extend the Framework agreement for Care at Home services to 4<sup>th</sup> September 2024.
- 3.2 Note that in order to comply with Procurement Regulations a VEAT will be published.
- 3.3 Note that the Prime Provider contracts will expire in September 2023 and existing packages of care will be moved onto the Framework contract.
- 3.4 Note that the Commissioners will continue to explore and, where appropriate, pilot alternative models for care delivery particularly in rural and hard to serve areas; and continue to engage providers and stakeholders on the proposed new model to help to inform the new commission.

#### **4. Reasons for Recommendations**

- 4.1. Care at home is one of the largest contracted services that the council commissions in the external care market with approximately 1,200 adults in Cheshire East supported to live at home at any one time. The council spends approximately £17 million on care at home services for adults per annum. The current pressures on the market, the introduction of charging reforms and the impact of inflation on costs and prices have led to the conclusion that launching a procurement process at this time is likely to destabilise the provision of care in the Borough as economic uncertainty and changes to Government policy may make it difficult for providers to plan, resulting in fewer bidders than would normally be expected.
- 4.2 The health and social care sector is facing one of its biggest challenges ever in terms of recruitment and retention of care staff and financial sustainability. Care providers have struggled to recruit and retain suitable care staff since the relaxation of Covid restrictions. This is due to a number of factors including competition from other sectors, which are able to pay more, a poor image of care delivery as an occupation, and post Covid burn out. This situation has been exacerbated due to the current cost of living crisis and in particular the rise in petrol costs, as most care staff are reliant on their own transport to travel between care calls.
- 4.3 In addition, providers have experienced increased costs for National Minimum Wage, pension contributions, energy costs (which have increased by over 400% for some providers), CQC registration fees and insurance premiums, which for some providers have doubled since the start of the pandemic. Over the past two years the Council has been able to provide financial support to the market through passporting Government grants, but these are no longer available.
- 4.4 The Council has managed these conditions by spot purchasing care when Framework providers cannot deliver, which may be at a higher rate, whilst a small number of commissioned providers have exited the market completely, putting additional pressure on those that remain and, in some cases, further reducing capacity for hospital discharge and people who need support in the community.
- 4.5 The report presented to Committee in March proposed a future model similar Prime Provider and Framework provider model delivered currently with the Framework contracts being commissioned via a Flexible Purchasing System. However, it has become evident this financial year that this model is not able to meet the current demands of the care sector and that a different approach to securing the right care at the right price will be necessary. In addition, in engagement with care providers, during soft market testing, they have expressed a preference for a different approach based on a single category of provider, rather than a two-tier system. Commissioners will need to spend time modelling how this will work.

- 4.6 The proportion of care hours delivered by Prime Providers has reduced since the pandemic and only one Prime Provider is currently delivering to the Guaranteed Minimum Hours set out in the contract. In view of this, it is proposed that, during the period of the extension, the Prime contracts are allowed to expire in September 2023 and that Prime providers deliver their current packages of care under their Framework contracts. This would place all commissioned providers on the same footing.
- 4.7 There is no additional cost implication to this as each Prime Provider is paid the same hourly rate for care delivered under their Framework contracts. The only difference is that Prime providers would no longer have the first opportunity to pick up new packages of care, but this would make little difference due to the lack of capacity in the care market. It would create efficiencies in the Brokerage process as all providers would be approached to deliver care simultaneously.
- 4.8 Cheshire East Rural Action Plan 2022-2026 highlights some of the challenges of delivering care to rural populations; 2/5ths of the Cheshire East population lives in rural areas. The contract extension will enable commissioners to consider and explore alternative neighbourhood based delivery models that could be piloted during the extension to support this challenge. It is envisaged that an alternative, neighbourhood based model will provide a more holistic, assets-based approach to care provision which maximises the input of health professionals and voluntary organisations and reduces reliance on more traditional domiciliary care.

## 5. Other Options Considered

- 5.1. The council could proceed with the current contracting arrangements and allow all contracts to expire in September 2023 without recommissioning, moving to a spot purchase arrangement. This option is not sustainable financially and could potentially further de-stabilise the care at home market.
- 5.3 The Council could opt to take services back in-house. However, the costs and practicality of such an approach is not feasible in the time available.

Option	Impact	Risk
Not commission and 'spot purchase' services	Loss of financial control for the council	Budget overspends No assurance over value for money

Bring Care at Home services in house	Greater control over service delivery for Council	Timeframe not practical Council unable to recruit sufficient posts to meet unmet need
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## 6. Background

6.1 The council has a duty under the Care Act 2014 to meet the eligible care and support needs of people who are ordinarily resident in the local authority area and to ensure the effective and efficient operation of the care market in the local area.

6.2 Care at home services (also known as domiciliary care) provide vital care and support for people with eligible needs within their own home. The service seeks to promote independence and reduce reliance, where possible, via commissioned services. The services are key to achieving a home first approach to hospital discharge and help service users to maintain their independence for as long as possible without the need for more intensive and costly interventions.

6.3 In extending the recommissioning of the care at home service, commissioners are seeking to:

- Ensure compliance with the Council’s Contract Procedure Rules and Public Contract Regulations
- Support Care at Home providers through the most challenging and fragile period that the health and social care sector has experienced
- Build upon the successes and lessons learned from the current commissioning model
- Adopt a more person-centred outcome-focused approach to service delivery and contract management with a move away from traditional ‘time and task’ models of commissioning
- Provide best value through maximising opportunities afforded by assistive technology, voluntary sector provision and local assets
- Develop the skillset of the local care workforce so that the service benefits the wider health and care system and prevents hospital admissions.

## 7. Consultation and Engagement

7.1 Engagement with local care providers, service users and other stakeholders will continue to form a key element of the recommission.

- 7.2 The process will continue to be overseen by the Care at Home Recommission Steering Group which comprises representatives from Cheshire East Council Procurement, Legal, Finance, Adult Social Care Operations and Communications teams as well as Cheshire ICB.
- 7.3 The steering group is supported by various task and finish groups focusing on different elements of the recommission including IT systems, Adult Social Care Operations, Communications and Legal, Financial and Procurement.
- 7.4 Market engagement and soft market testing commenced in April 2022 using a variety of methods including surveys, focus groups and meetings. These will continue and stakeholders will be consulted on alternative models of care.
- 7.5 Service users will be informed of the recommissioning process at an appropriate stage to support their input and invited to give their views via surveys and a telephone 'hotline'. The recommission will inevitably cause some anxiety for service users and it will be important to provide reassurance that any handover process to new providers will involve the minimum of disruption to normal services.
- 7.6 Ward members will be kept informed of changes to service delivery resulting from the recommission and provided with copies of letters to service users for information.
- 7.7 Since the recommission does not involve changes to terms and conditions for Cheshire East Council employees, there is no need to consult staff or Trade Unions.

## **8 Implications**

### **8.1 Legal**

- 8.1.1 The Care Act 2014 contains a number of statutory duties pertinent to the provision of care at home services and the care provider market. These are outlined below.
- 8.1.2 Section 5(1) Care Act 2014 places a duty upon the council to promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that there is a variety of providers and high quality services to choose from.
- 8.1.3 Local authorities are under a general duty to implement preventative services that reduce the need in adults for care and support and the need for support of carers (Section 2 Care Act 2014). Whilst there is no statutory duty within the Care Act 'supporting people to live as independently as possible for as long as possible is a guiding principle of the Care Act' (paragraph 1.19, Revised Care and Support Statutory Guidance).

- 8.1.4 Statutory guidance accompanying the Care Act 2014 is clear that the way services are commissioned has a direct impact upon ‘shaping the market’ (Paragraph 4.4) and requires that local authorities must ‘consider how to ensure that there is still a reasonable choice for people who need care and support’ (Paragraph 4.39) and to ensure that their fee levels do not compromise the service providers’ ability to employ people on at least minimum wage and provide effective training and development of staff (Paragraph 4.31).
- 8.1.5 Section 8 of the Care Act 2014 mostly focusses on the ways in which services can be delivered for eligible adults and confirms that these services may be delivered by itself, delegated, or by making direct payments.
- 8.1.6 Section 79 of the Care Act 2014 enables local authorities to delegate all of their functions under the Act with some exceptions notably charging and safeguarding. It is important to note however that the local authority retains ultimate responsibility for the acts or omissions of delegated bodies.
- 8.1.7 There will be a need for ongoing legal advice during this process and the above summary alone will not provide the necessary level of detail. There will be a need for ongoing legal and procurement advice during the recommissioning process, and the Adults, Health and Integration directorate will engage with the council’s legal and procurement teams accordingly.
- 8.1.8 This recommission is due to go ‘live’ at a time where Cheshire East Council will be the lead integrated partner for services for older people. Any additional legal implications on this process due to this will need to be considered.
- 8.1.9 As noted above; it is proposed to publish a Voluntary Ex-Ante Transparency Notice (VEAT), which will inform the market that the Council proposes to continue to operate the framework on an adjusted basis (i.e. in line with the recommendations at para 3.1 and 3.2). If the VEAT process is undertaken; and no objection from the market is forthcoming; the Council can proceed without the risk of market challenge. The VEAT must set out a justification of the decision to extend and adjust the framework; which will most likely be the fact that the current state of the market makes recommissioning at this juncture a non-starter; together with full and transparent details of the adjustments to be made to the framework. Engaging with the VEAT process demonstrates transparency; but it is not without risk (publicising the proposed extension of the framework could be challenged); however as noted above the proposed opening up of the framework means that providers are not being denied opportunity; which may reduce the risk of there being any disaffected parties.

## **8.2 Finance**

- 8.2.1 The current spend for care at home services is around £17 million. Fees for Care at Home providers were uplifted by 14% in 2022/23, in recognition of the challenges facing domiciliary care providers. 6% of the uplift was funded from the Council's 2022/23 allocation from the Government's new Market Sustainability Fund with 8% funded from headroom in the Better Care Fund.
- 8.2.2 It is anticipated that 2023/24 the 14% uplift will be funded from future allocations of Market Sustainability Funding. However, the levels of funding for 2023/24 are, as yet, unknown. If the pace of change in moving towards the Fair Cost of Care doesn't align with the receipt of Market Sustainability grant funding, it will be necessary for any funding gap to be filled through the Council's Medium Term Financial Strategy (MTFS) process in order to ensure this statutory service continues to be fully funded.

## **8.3 Policy**

- 8.3.1 The recommendation to recommission the service ensures that the care at home service continues to fulfil the council's commitment to providing choice in service provision while also ensuring best value for service delivery.
- 8.3.2 The ethos of the planned recommission is aligned to that of the council's Corporate Plan 2021-2025 which seeks to empower and care for the residents of Cheshire East. In particular the care at home service meets the council's objectives to ensure vulnerable and older people live safely and maintain independence within community settings and to prioritise home first for patients discharged from hospital.

## **8.4 Equality**

- 8.4.1 An Equality Impact Assessment has been completed and is appended to this report. The EIA will be reviewed and updated throughout the commissioning process.

## **8.5 Human Resources**

- 8.5.1 There are no direct human resource implications for the council. However, it is possible that TUPE will apply for existing care providers.

## **8.6 Risk Management**

- 8.6.1 In extending the current contracts for the maximum period possible, commissioners are seeking to mitigate the risk of the procurement being impacted by lack of market engagement as a result of the current pressures providers are experiencing. Legal risks are outlined above.
- 8.6.2 A risk register has been developed for the recommission and will be reviewed and updated throughout the commissioning process. The major identified risks are low interest in the tender opportunity due to a lack of

capacity throughout the social care sector. Additionally, social care providers face significant cost of living pressures.

## **8.7 Rural Communities**

- 8.7.1 People living in rural communities are at an increased risk of social isolation. The commissioning of any care at home service will seek to ensure that in the first instance that the residents of Cheshire East are not disadvantaged in accessing this service due to their postcode. A model that is more focused on maximising the use of neighbourhood assets will help to ensure that people living in rural communities receive the help and support they need.
- 8.7.2 In determining the pricing model for the service, commissioners will consider whether an enhanced ceiling price is required for delivery in rural areas of the borough using evidence from the cost of care exercise. This will support the additional challenges of recruiting staff in rural and more affluent areas of the borough.

## **8.8 Children and Young People/Cared for Children**

- 8.8.1 Although there is to be a separate recommission for children's care at home services, the adults service will be designed to facilitate a seamless pathway for young people transitioning into Adult Services.

## **8.9 Public Health**

- 8.9.1 The World Health Organisation defines Public Health as 'the art and science of preventing disease, prolonging life and promoting health through the organised efforts of society'. The care at home service would meet the 'prolonging life' element of this definition. Living within one's own home for as long as possible has been proven to be more beneficial than living within a residential care setting. Therefore, in providing a service that promotes independence and a re-abling approach to care will allow residents to live within their own homes for longer. This recommission will also seek to ensure that providers adopt an approach that includes awareness of the resources within the community that those who they support could access.

## **8.10 Climate Change**

- 8.10.1 The main challenge that presents itself in this domain is that care at home delivery often requires the use of carbon fuelled transport. Providers do seek to offset this by developing 'walking' rounds where all calls are within relative proximity to one and other. However, the use of cars, scooters and motorcycles is often the most time efficient way to ensure that all those who require support receive it within a timely fashion.
- 8.10.2 Some providers are trialling the use of electrified transport namely bicycles with their staff teams. A potential green energy bonus or support to purchase

more carbon efficient transport may have a slight positive impact. However, current public transport infrastructure and the cost of purchasing electric vehicles present as barriers to becoming viable alternatives in situations where car travel is essential.

<b>Access to Information</b>	
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Appendices:	Appendix – Equality Impact Assessment
Background Papers:	<a href="#">Care Act 2014</a> <a href="#">Market Sustainability and Fair Cost of Care Fund: purpose and conditions 2022 to 2023 policy paper</a>