

# CHESHIRE EAST COUNCIL

## Cabinet

---

<b>Date of Meeting:</b>	15 <sup>th</sup> October 2013
<b>Report of:</b>	Brenda Smith, Director of Adult Social Care and Independent Living
<b>Subject/Title:</b>	Domiciliary Care Framework (Forward Plan Ref: 13/14-19)
<b>Portfolio Holder:</b>	Cllr. Janet Clowes - Health and Adult Care

---

### 1.0 Report Summary

- 1.1 Cheshire East Council is committed to helping people to live and die within their own home and will support them to remain active and independent for as long as possible. Domiciliary Care is the range of care and support services provided in peoples own home to enable them to remain independent. These services can range from a short call to assist with medication up to 24 hour live-in care.
- 1.2 In 2011/12 995,000 hours of domiciliary care were delivered to 764 service users at a cost of £16.5 million. 97% of these hours were provided by the independent sector. In response to customer preference and demand the Council are committed to developing this type of care provision as an alternative to residential based care services.
- 1.3 Residents of Cheshire East are given the opportunity to have a direct payment to enable them to buy their own care or employ a personal assistant. If they do not wish to exercise this right, however, Cheshire East Council procures the assessed services on their behalf. These services are currently procured by the Council via Personal Support Contracts (PSC) but could be procured more effectively using a framework agreement.
- 1.4 The 2006 EU 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”.

### 2.0 Recommendations

- 2.1 It is recommended that Cabinet approve the establishment of a framework agreement through which it will purchase future domiciliary care services.

- 2.2 It is recommended that Cabinet approve the transfer of all current Personal Support Contracts to the new framework agreement.
- 2.3 It is recommended that Cabinet delegate authority to Director of Adult Social Care and Independent Living (Brenda Smith) to approve the providers admitted to the framework agreement following a legally compliant procurement exercise and to subsequently enter into agreements with providers.

### **3.0 Reasons for Recommendations**

- 3.1 A framework agreement will remove the need to undertake a wide competitive process in relation to each individual. A fast and efficient response can be provided as services can be called off a framework almost immediately.
- 3.2 The establishment of a framework agreement will further extend customer choice in relation to domiciliary care providers with increased capacity enabling Adult Social Care to better meet increasing demand for this type of care provision.
- 3.3 The framework agreement will support the Council to maintain the quality of care provision through a sustainable care market. All providers will be signed up to the terms and conditions of the framework agreement and any provider who does not meet the required standards will be removed from the framework agreement.
- 3.4 The establishment of the framework agreement will ensure that the Council complies with the Public Contracts Regulations 2006 and the Council's Finance and Contract Procedure Rules.
- 3.5 The framework agreement will ensure a more effective use of assessment and care management resources as they will be able to make any required changes to the commissioned care package without the need to set up a new individual agreement and thereby freeing up much needed resources for face to face contact with service users and carers

### **4.0 Wards Affected**

- 4.1 All wards.

### **5.0 Local Ward Members**

- 5.1 All ward members.

### **6.0 Policy Implications**

- 6.1 The recommendations within this report support the delivery of outcomes three and five of the Cheshire East Council Three Year Plan.

Outcome 3 – People have the life skills and education they need to thrive - everyone is equipped to live independent, self-sufficient lives, and to realise their particular talents and abilities;

Outcome 5 – People live well and for longer - care services focus on prevention, early intervention and physical and mental wellbeing.

## **7.0 Legal Implications**

- 7.1 The aggregate value of the requirement for specialist care placements is such that these services must be procured in accordance with EU legislation and the Council's Finance and Contract Procedure Rules.
- 7.2 A framework agreement enables the Council to meet its need for a service for a set period of time in order to obviate the need to undertake a wide competitive process in relation to each individual procurement. It complies with EU requirements and the Council's rules.
- 7.3 The Public Contracts Regulations 2006 allow 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. The Council can choose to appoint a supplier 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.
- 7.4 The Public Services Social Value Act 2012 applies to framework agreements. It requires the Council to:
  - consider how what is proposed to be procured might improve the social economic and environmental well-being of the relevant area
  - how in conducting a procurement process it may act with a view to securing that improvement whether to undertake a consultation on this matters.
- 7.5 In order to evidence value for money the service should engage with the legal section to ensure that call-off contracts contain provisions which enable continuing value for money to be tested and to contain provisions such that the contract can be terminated in the event that the service cannot be provided on terms which remain acceptable to the Council.
- 7.6 The proposals include transferring all current Personal Support Contracts on to the new framework agreement. The Legal Section has advised the Service that in view of the impact that the changes

may have on current service users it is likely that the duty to consult arises. Officers have expressed concern as to how meaningful consultation will be given that this is a high level decision about the mechanisms by which the service will be provided and that the end result may not be all that noticeable to service users. However, recent in case law (R (On the Application of Nash) v Barnett LBC) 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.

7.7 The Legal Section's advice is that the proposal to transfer services onto new contracts under the framework agreement is a high level decision and if 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

7.8 The Council must have due regard to the Public Sector Equality Duty as set out at S149 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...

and consideration needs to be given to carrying out an Equality Impact Assessment in respect of the proposal to transfer current contracts in order to assist the Council in meeting its Public Sector Equality Duty.

7.9 If the transfer of contracts 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.

## **8.0 Finance**

8.1 The framework will be used to procure services for people identified as having a need which is eligible under the Cheshire East Council's Fair Access to Care Services (FACS) criteria. No additional budget will be required for the transfer of services to a framework agreement.

8.2 There is no obligation for the Authority to purchase services through the framework agreement.

## **9.0 Risk Management**

- 9.1 The services provided enable the Council to fulfil its statutory duty under the Health & Social Care Act.
- 9.2 There is no obligation for the Authority to purchase packages via the framework agreement.
- 9.3 Initially there will be a need for increased administrative support to assess the providers that wish to be part of the framework agreement.
- 9.4 The framework agreement will increase capacity and will enable Adult Social Care to better meet increased demand for domiciliary care provision.
- 9.5 As providers are signed up to the framework agreement as a whole it will be easier for the Authority to monitor service quality and address poor performance than is currently the case using the Personal Support Contract arrangement.

## **10.0 Access to Information**

The background papers relating to this report can be inspected by contacting the Officer named below:

**Name:** Lynn Glendenning  
**Designation:** Commissioning Manager  
**Tel No:** 01625 383749  
**Email:** [lynn.glendenning@cheshirecheshireeast.gov.uk](mailto:lynn.glendenning@cheshirecheshireeast.gov.uk)