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**PROCUREMENT OF DOMICILIARY CARE – PRE-DECISION SCRUTINY**

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**Purpose of Report**

1. This report provides the Committee with background information to enable Members to carry out pre-decision scrutiny of the draft cabinet report “Procurement of Domiciliary Care” prior to its consideration by the Cabinet at its meeting on the 18<sup>th</sup> January 2018. A copy of the draft Cabinet Report is attached at **Appendix 1**.

**Scope of Scrutiny**

2. The scope of this scrutiny is based on the report attached at **Appendix 1** and covers:
  - a. The proposed new model of commissioning domiciliary care services
  - b. The proposed recommendations.
3. The proposed new model of commissioning domiciliary care services covers all categories of service user groups in Cardiff, and therefore so does this scrutiny.
4. Members will have an opportunity to send comments, observations and recommendations to Cabinet in time for their consideration of this item.

**Background to Domiciliary Care in Cardiff**

5. ‘Domiciliary care’ is a generic term to cover the provision of care services in the home. It is used in Cardiff to describe services that are provided by the independent sector; the term ‘home care’ is used to describe domiciliary care that

is provided by the Council's in-house service. Domiciliary care contributes to enabling individuals to continue to live independent lives at home within their communities, which is a key aim of this Council and the Welsh Government.

6. The overall cost of domiciliary care is currently approximately £23.5 million per annum, with between 30,000- 35,000 hours of care commissioned per week for approximately 2,200 people.
7. In Cardiff, domiciliary care is currently commissioned and provided via a Dynamic Approved Provider List (DAPL), supported by an IT system (called Adam) that underpins the processes of procuring and managing domiciliary care packages. Each care package goes through a 'mini-tender' process where interested approved providers submit a bid containing their price and detailing how they will meet the client's outcomes. Mini-tenders are evaluated on price and quality, which are weighted 50/50, the quality element of which includes an evaluation of how the provider states that they will meet the client's outcomes.
8. Cardiff has a diverse domiciliary care provider sector. The report to Cabinet states that there are currently 70 domiciliary care providers registered on Cardiff's DAPL; this compares to 38 providers who were on the list when it first became active in November 2014. The report to Cabinet highlights, at points 15 -18, that there has been a decrease in the hourly rate, due to increased competition and capacity within the marketplace.
9. The following key issues have appeared in the national press as causing anxiety for domiciliary care providers: introduction of the National Living Wage for over 25s; minimum wage for under 25s; payment for all work related time, including the requirement to pay staff for travelling time; and auto-enrolment in pension schemes. In recognition of these financial pressures, the Council awarded a 2% increase on hourly rates for domiciliary care contracts in place on *adam* on or before 8 July 2015 and a price uplift of 3% to all of the contracts which were previously let under the Framework Agreement; these uplifts applied from 4 April 2016.

## Issues

10. The contracts for the DAPL and Adam IT system are due to expire on 3 November 2018. The report to Cabinet, attached at **Appendix 1**, states, at point 4, that *'The Council intends to enter into a new arrangement with providers for commissioning domiciliary care to become effective no later than 4<sup>th</sup> November 2018.'*
11. As part of the process of considering the new arrangements, the Council has consulted with providers to establish their views. Providers have reported that the current commissioning arrangements are *'proportionate, efficient and effective'* (point 20, Appendix 1) and that *'significant change to the current commissioning arrangements is neither needed or appropriate'* (point 27, Appendix 1). The report to Cabinet states that *'whilst the recommendation is to continue with the current overarching approach, the Council does expect to make some changes to the detail of how these arrangements operate'* (Point 27, Appendix 1). Points 32 and 37, Appendix 1, outline that these changes could be in relation to: mitigating the risks re future rates, capacity and market sustainability; and to creating flexibility to support different commissioning and delivery models, such as lots<sup>1</sup> or locality based provision.
12. The report to Cabinet highlights a number of risks associated with the end of the existing contracts and the mitigating actions that will be taken to manage these risks. These include: providers choosing not to join a new arrangement; and providers seeking to use a new arrangement to achieve higher rates of pay. The report states that the Council will ensure that *'where a change in provider is needed, the current provider and new provider work together to ensure the transition process is done in a safe way with the minimum of disruption to the service user'* (point 30, Appendix 1). The Legal Advice highlights that *'Consideration will need to be given to whether there are any TUPE implications, in particular if an existing provider chooses not to apply to join the new DAPL'* (point 52, Appendix 1).

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<sup>1</sup> Lots is the term used for a number of care packages, bundled together, normally because of specific, specialist needs e.g. specialist dementia care

13. The Cabinet Report attached at **Appendix 1** contains the following recommendations:

- a. *Authorise the proposed overarching approach to secure a new Dynamic Approved Provider List for domiciliary care services as further detailed in the body of the report; and*
- b. *Delegate authority to the Director of Social Services in consultation with the Cabinet Member for Social Care, Health and Wellbeing, the Section 151 Officer and the Director of Governance and Legal Services:*
  - 1) *To carry out all aspects of the procurement, without limitation to include*
    - I. *approving the establishment of a new Dynamic Accredited Provider List*
    - II. *approve the tender evaluation criteria to establish the dynamic accredited provider list*
    - III. *appointing new providers to the dynamic accredited provider list subsequent to them meeting the selection criteria as stated by the Council*
    - IV. *further delegate authority to award contracts that are required during the life of the dynamic accredited provider list, such further delegations to be in accordance with the Council's Scheme of Delegations*
    - V. *to deal with all associated matters*
  - 2) *To authorise any required procurement process to obtain the supporting technology required to support the dynamic accredited provider list, up to and including the award of contract.*

### **Previous Scrutiny**

14. In previous years, this Committee has undertaken several scrutinies relating to the commissioning of domiciliary care in Cardiff, including scrutiny of the Social Care Task Force proposals, the Expert Group report, and pre-decision scrutiny in March 2014 and May 2014 on the way forward with commissioning.

15. At their meeting on 7<sup>th</sup> May 2014, scrutinising the proposed Approved Provider List approach, Members made the following points:

- a. Members were pleased to hear that the aim of the proposed model was to drive up quality and not to drive down cost.
- b. Members were interested to understand the rationale behind the stated aim that the new system would be cost-neutral, particularly given the demand trends and the need to improve quality. We note the response that this hypothesis is based on providers becoming more efficient and on the new model covering more groups of service users.

16. In November 2016, Members carried out an in-depth scrutiny looking at market capacity and sustainability, contingency planning, ensuring quality provision and cost control. To inform this scrutiny, Members received evidence from the CSSIW and Older People's Commissioner for Wales and reviewed comparator information from across Wales. The letter resulting from this scrutiny is attached at **Appendix 2**.

## **Way Forward**

17. At this meeting, the following witnesses will be in attendance:

- a. Councillor Susan Elsmore (Cabinet Member for Social Care, Health and Well-being)
- b. Tony Young (Director of Social Services)
- c. Amanda Phillips (Assistant Director, Adult Social Services)
- d. Leon Goddard (Project Officer, Social Services).

18. Pre-decision scrutiny aims to inform the Cabinet's decisions by making evidence based recommendations. Scrutiny Members are advised to:

- i) look at the information provided in the report to Cabinet to see if this is sufficient to enable the Cabinet to make an informed decision;
- ii) check the financial implications section of the Cabinet report to be aware of the advice given;
- iii) check the legal implications section of the Cabinet report to be aware of the advice given;
- iv) check the recommendations to Cabinet to see if these are appropriate.

19. The Improvement and Development Agency (IDeA) have published a Members Guide to Procurement that contains the following relevant checklist questions for Members:<sup>2</sup>

### **Projects checklist**

- How will we know if users are satisfied?
- What service standards are we setting?
- What wider benefits will there be for the community?
- How are we addressing equalities?
- How is health and safety built in?
- Will we meet our sustainability objectives?
- Have staff been consulted?
- How will we control risk?
- Does this project affect anything else we are doing?
- What will happen if things change during the contract?
- What incentive is there to perform well?
  - How will we keep the service going if the contract fails?
- How are we going to monitor it?
- How will poor performance be tackled?
- Can we ensure that we learn lessons for next time?

### **Legal Implications**

20. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural

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<sup>2</sup> Members Guide to Procurement – IDeA – downloaded from their website week commencing 18<sup>th</sup> October 2010

requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

## **Financial Implications**

21. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

## **RECOMMENDATIONS**

It is recommended that the Committee:

- i. Consider the proposed draft report attached and whether it wishes to relay any comments or observations for inclusion in the consultation, for consideration by the Cabinet at its meeting on the 18 January 2018; and
- ii. Decide the way forward with regard to any further scrutiny of this issue.

**DAVINA FIORE**

**Director of Governance and Legal Services**

**11 JANUARY 2018**