

CABINET MEETING: 17 MAY 2018

**EXTENSION OF CONTRACTS IN RELATION TO THE
SUPPORTED LIVING SERVICE FOR ADULTS WITH A
LEARNING DISABILITY**

**SOCIAL CARE, HEALTH & WELL-BEING
(COUNCILLOR SUSAN ELSMORE)**

AGENDA ITEM: 7

***Appendix 2 is exempt from publication pursuant to Paragraph 16 of Part 4
of Schedule 12A to the Local Government Act 1972***

Reason for this Report

1. To ensure that formal and appropriate contract arrangements for the provision of Supported Living Services for Adults with a Learning Disability are in place by implementing the current contract clause that allows for the extension of contract arrangements.
2. To approve the extension of the Personal Domiciliary Care and the Housing Related Support contractual arrangements for the provision of Supported Living Services for Adults with a Learning Disability as set out in the proposed recommendation.

Background

3. The Social Service Directorate reported on this matter to Cabinet on 9 October 2014. Cabinet approved the revised model for the provision of Supported Living for citizens with a learning disability; the proposed procurement process; the overarching evaluation criteria to be used to award the contracts; and delegated authority to the Director Health & Social Care in consultation with the Cabinet Member (Health & Social Care), the Council's Section 151 Officer, the County Solicitor and the Council's Monitoring Officer, to deal with all ancillary matters pertaining to the procurement including the award of the contracts.
4. In respect of the Personal Domiciliary Care element, tenderers were required to clearly set out the annual price for the provision of the service over each of the five years of the contract. To ensure tenderers were able to submit an informed price, the tender documentation provided details about the level of personal domiciliary care support required for all the service users living in each locality at the time.

5. In respect of the Housing Related Support element, the pricing schedule indicated the level of Supporting People Programme Grant funding for the tenderers to deliver housing related support. It was explained that the price for housing related support was set for the first year, but with a caveat that it may reduce over the period of the contract, dependent on the future level of the Council's Supporting People Programme Grant allocations. Tenderers were required to confirm that they accepted these costs for the Housing Related Support Services
6. On 2 April 2015 Cabinet authorised the award of the Personal Domiciliary Care Supported Living Services contracts and the Housing Related Support Supported Living Services contracts to the successful tenderers with contracts to commence on 1 August 2015.
7. The contracts were awarded for a fixed term of three years with the option to extend for a further period or periods equating to no more than two years provided that the contracts did not extend beyond 31 July 2020.
8. The Directorate has procured a sustainable supported living service model where the providers deliver services which meet the outcomes of individuals as set out in their support plans, offering individuals more choice, control and independence in their lives.
9. There has been full review of the service delivery and service user consultation and engagement to ensure they are satisfied with how their care and support needs are being met and a high quality provision is being delivered. The Supported living model of support is tailored to the needs, wishes and interests of service users and in line with the requirements of the Social Services and Well Being (Wales) Act 2014.
10. The Contract has delivered a high quality service and meets the care and support needs of the service users. The proposed extension of the contract represents best value for the Council. During the contract, the Directorate has awarded price increases to respond to the NLW. It is anticipated that a re-tendering process to secure the services post extension will result in higher prices as the market place is aware of pension and NLW increases.

Issues

11. In July 2015, the Chancellor of the Exchequer announced that from 1 April 2016, the UK Government would introduce a requirement for all employers to pay a mandatory NLW for workers aged 25 and above. The initial hourly rate was set at £7.20; this being a rise of 50p on the National Minimum Wage (NMW) rate of £6.70, which was implemented in October 2015. In April 2017, the NLW rose to £7.50.
12. In order to mitigate this issue, in 2017 the Council had an additional allocation of £2.1million from Welsh Government to ensure that providers (across the care sector) use the funds to secure high quality services, which included:

- ❖ Delivering their legal obligations to their staff for care time
- ❖ Improve terms and conditions of its workforce e.g. ensuring that a variety of contracts are available to staff, as opposed to zero hour contracts
- ❖ Other aspects that impacts upon the payment of the NLW.

In relation to learning disability supported living services, the Directorate has approved a fee uplift in relation to the NLW to the three organisations delivering the Personal Domiciliary Care element of the Supported Living Service for adults with a learning disability. Over two years these uplifts equated to c£770,000. No uplift was due in respect of the Housing Related Support element. The contracts will remain within the affordable cost envelope.

13. There has also been a number of employment tribunal cases relating to sleep-in arrangements. Legal judgements confirmed that where a carer's presence at a premises is part of his/her work, the hours spent at the premises are classed as working time for the purposes of the NMW legislation, irrespective of the level of activity.
14. The traditional practice for a sleep-in was to pay a flat sum plus an hourly rate if the care worker was disturbed and delivered support through the sleep in period. In 2016, official guidance to HMRC required that the NLW hourly rate was to cover care workers whether they are awake or asleep.
15. Following two employment tribunal cases the government issued new guidance saying that time spent asleep did in fact qualify for the NLW payments. This was followed by HMRC enforcement action demanding that care workers be paid six years back pay where payment had not reflected this. At the time of the original procurement of these contracts the tender documentation did highlight to bidders the recent sleep-in judgments and for bidders to take account of the same when considering their bids. Therefore no subsequent adjustment to contract prices was required.
16. As indicated in paragraph 4, in respect of the Personal Domiciliary Care element, tenderers were required to clearly set out the annual price for the provision of the service over each of the potential five years of the contract. The overall contract sums initially submitted for the extension period, years 4 and 5, show increases equivalent to 1.6% and 0.18% respectively, over the previous year. At current contract values, this implies cost increases of £261,000 in year 4 and £31,000 in year 5. If a contract extension is approved, these costs would however be largely offset in 2018/19 and 2019/20 by identified savings generated from a rationalisation of schemes in 2017/18, arising from an ongoing review of care provision within the contract.

17. The contracts for supported living services for adults with a learning disability represent a significant proportion of Social Services expenditure. The current annual cost of this service is £15.977m for Personal Domiciliary Care and £1.874m for Housing Related Support.
18. The estimated value of a contract extension for 15 months would be £20,899,000, for the domiciliary element, taking account of the original contract prices submitted, subsequent uplifts and anticipated increases in 2018/19 and 2019/20. The value of the SP contract for 15 months would be £2.34m.
19. On 18 January 2018 Cabinet approved the Supporting People Local Delivery and Spend Plan 2018/19, which took account of the funding required for the Housing Related Support element of the Supported Living Services for adults with a Learning Disability.
20. The contracts for supported living services for adults with a learning disability have an expiry date of 31 July 2018, although they do contain an option to extend as mentioned earlier in this report.
21. The matter has been presented to Community & Adult Services Scrutiny Committee on 18 April 2018 and 16 May 2018.
22. The proposed extension of the contracts will allow the Directorate time to carry out a new tender in time for new contracts to commence November 2019.

Consultation

23. Delivery against the communication plan will ensure that all partners are informed of decisions and progress to manage anxiety and distress for people, their families and stakeholders.

Reason for Recommendations

24. To ensure that formal and appropriate contract arrangements for the provision of the Supported Living Service are in place for August 2018 to October 2019 by implementing the current contract clause that allows for the extension of contract arrangements.

Financial Implications

25. The report seeks approval for the 15-month extension of the Personal Domiciliary Care and the Housing Related Support contractual arrangements for the provision of Supported Living Services for Adults with a Learning Disability.
26. The contract value for the domiciliary care element of the contract currently amounts to £15.977m per annum. Annual costs relating to the Housing Related Support element of the contract amount to £1.874m.

27. Since the original tenders were submitted, contract prices have been uplifted to reflect pressures such as the NLW, with use made of additional WG grant funding awarded for this purpose.
28. As indicated in the report, tenderers were required to provide a separate annual price for each of the potential five years of the contract. For the domiciliary care contract, the overall contract sums initially submitted for the period of the proposed extension, (year 4 and part year 5), showed increases equivalent to 1.6% and 0.18% respectively. At current contract values, this implies cost increases of £261,000 in year 4 and £8000 in year 5 (three months), and these would be additional commitments under an extended contract. These costs would, however, largely be offset by savings resulting from a rationalisation of schemes in 2017/18 and could, therefore, be contained within the budget for the service. Any further fee uplifts considered for 2018/19 and 2019/20 would have to be contained within the sums allocated to Social Services for fee increases as part of the 2018/19 and 2019/20 (if applicable) budgets.
29. Taking account of the original contract prices submitted, subsequent uplifts and anticipated increases in 2018/19 and 2019/20, the estimated value of a contract extension for 15 months would be £20,899,000 for the domiciliary care element of the contract, and £2.34m for the supporting people element. These costs could be contained within existing budgets (subject to any fee uplift in 2019/20 being contained within the budgeted allocation).
30. The housing related support element of the contract is 100% funded via supporting people grant. The level of grant funding has been confirmed at the same level for 2018/19. The contract permits the Council to review its position in relation to housing related support, should the level of grant funding reduce or cease. The position should, therefore, be reviewed when funding levels for 2019/20 are known.
31. The report indicates that the proposed extension of the contract represents best value for the Council, given that it is anticipated that a re-tendering process would potentially result in higher costs, as bidders reflect recent pressures in their prices. If the extension is approved, existing provision should continue to be reviewed, with any further efficiencies identified reflected in the level of service commissioned when the contract is re-tendered

Legal Implications

32. The legal implications to this report are exempt from publication pursuant to Paragraph 16 of Part 4 of Schedule 12A to the Local Government Act 1972 and can be found in confidential appendix 2

HR Implications

33. There are no HR implications relating to this report.

RECOMMENDATIONS

Cabinet is recommended to approve the variation of the existing contracts for the provision of Supported Living Services for adults with a learning disability by way of (i) a definitive extension of the contract by 8 months from 1 August 2018 and (ii) subject to confirmation of funding, a conditional extension of a further 7 months to 31 October 2019.

SENIOR RESPONSIBLE OFFICER	Sarah McGill Corporate Director People & Communities
	11 May 2018

The following appendices are attached:

Appendix 1 – Equality Impact Assessment

Appendix 2 –Legal Implications (exempt from publication)