

CABINET MEETING: 19 NOVEMBER 2020

RECOMMISSIONING OF DOMICILIARY CARE AND SESSIONAL SUPPORT SERVICES – AN UPDATE

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

AGENDA ITEM: 10

Reasons for this Report

1. The report seeks to update Cabinet on progress in relation to the recommissioning of Domiciliary Care and the impact that COVID-19 has had on the timeline for implementation that was previously agreed by Cabinet in January 2020.
2. In light of delays incurred as a result of the pandemic, Cabinet is therefore asked to agree :
 - To extend the procurement timeline approved by Cabinet in January 2020 until at the latest November 2021 to enable colleagues within our Commissioning and Procurement teams to re-engage with the sector as part of the previously planned consultation and *test and learn* sessions, and to complete of the Cost of Care exercise which is integral to the recommissioning exercise
 - To approve the extension of the current commissioning arrangements for Domiciliary Care, which uses a dynamic purchasing system entitled 'Accredited Provider List for Domiciliary Care Services in Cardiff ('APL'), for a period of up to 10 months to provide sufficient time for the new commissioning arrangements to be implemented to support the introduction of the new outcome – focused, locality –based domiciliary care model. Subject to the agreement of the individual Providers concerned, the overarching agreements concluded between the Council and those providers appointed to the current APL will be extended to November 2021 at the very latest.
 - Request that authority is delegated to the Director of Social Services, in consultation with the Cabinet Member for Social Care, Health & Well-being, Cabinet Member of Children and Families, the

Section 151 Officer and the Director of Governance and Legal Services for all future procurement decisions relating to the new arrangements, including the outcome of the Cost of Care exercise and the related Fee Setting Strategy, and all associated matters.

Background and Strategic Intention

3. Local Authority Social Services are required to help people with care and support needs to live independently, supporting them with reasonable adaptations to their homes and providing services in a way that meets their needs and outcomes. Domiciliary Care and sessional support services support people to live at home with care and support.
4. Social Services proposed a new model of delivery for domiciliary care and sessional which was agreed by Cabinet in January 2020. This included a locality approach to delivery, complemented by strength based social work practice that moves away from 'time and task' and towards more flexible, outcome-focused care, promoting long term stability of the care sector and putting the needs and wishes of local residents in the centre of delivery.
5. The model contributes to the delivery of the Council's **Capital Ambition** commitments to support individuals to live fulfilled, independent lives within their communities. It takes its direction from the Welsh Government's **A Healthier Wales: our Plan for Health and Social Care** published in July 2018. This is the first national plan for health and social care in Wales. It sets out an ambition for seamless well-being, health and social care services that are designed and delivered around the needs and preferences of individuals. The plan describes a holistic approach to keeping people as independent as possible in their own homes and communities, with providers working together to enable people to achieve their wellbeing outcomes and preventing escalation of needs. Locality approaches, which bring together primary and community well-being, social care and health services in clusters provide the foundation for seamless services. Domiciliary care is a fundamental component of care and support for people at risk of losing their independence. To enable the 'Healthier Wales' policy to be achieved in Cardiff it is important that domiciliary care commissioning reflects the holistic, locality approaches set out in the national plan.

Related Decisions

6. A report was put before Cabinet in September 2018 setting out the work that needed to be undertaken for Social Services to achieve domiciliary care provision across the city that
 - provides a more flexible approach to support the achievement of a range of person-centred outcomes for individuals;
 - is based on meaningful relationships that enables services to be developed that reflect what matters to individuals with care and support needs and their carers;
 - supports personal outcomes identified through strength-based social work practice that is being rolled out across Social Services through

Collaborative Conversations training in Adult Services and the Signs of Safety model in Children's Services;

- promotes individual's resilience and the strengths they already have within their own family, or wider networks in their communities.
7. At that time, Cabinet decided that:
- Authority was to be delegated to the Director of Social Services, in consultation with the Cabinet Member for Social Care, Health and Well-being, the Section 151 Officer and the Director of Law and Governance, to deal with the interim arrangements for the commissioning of domiciliary care for adults to deal with the interim arrangements for the commissioning of domiciliary care for adults **until November 2020** and all associated matters (...)
 - A further report must submitted to Cabinet seeking approval for the proposed model for domiciliary care commissioning that is proposed to come into effect from November 2020.
8. The aforementioned additional report was also presented to Cabinet in January 2020, which set out a clear vision for the future delivery of care at home for children, young people, adults and families. The model outlines the plan for a locality approach to delivery, complemented by strength based social work practice that moves away from 'time and task' and towards more flexible, outcome-focused care, promoting long term stability of the care sector and putting the needs and wishes of local residents in the core of the model.
9. At that time, Cabinet agreed:
- The vision for the provision of domiciliary care as outlined above, with a proposed 2 year implementation plan to be agreed
 - Authority was delegated to the Director of Social Services, in consultation with the Cabinet Member for Social Care, Health and Well-being and the Cabinet Member of Children and Families, the Section 151 Officer and the Council's Monitoring Officer, to determine all aspects of the procurement process or the recommissioning of domiciliary care services (including decision – making around the Cost of Care Exercise, approving the evaluation criteria to be used, and authorising the award of the contracts) and all ancillary matters pertaining to the procurement and proposals above.

Progress Made and Impact of Covid 19

10. Following Cabinet Approval in January 2020, the Commissioning Project Team proceeded with a number of *Test and Learn* Sessions with the market, testing and consulting on the proposed model with the provider market and other stakeholders, a proposed Outcomes Framework was created and a number of providers volunteered to take part in a regional Cost of Care exercise, facilitated by the Regional Partnership Board (RPB). Finally, there was continued progress with the *adam HTT* system that will offer an end to end commissioning IT platform for domiciliary care for the new model.

11. Unfortunately however, the previous procurement timetable to complete this significant recommissioning exercise has been significantly affected by the COVID 19 pandemic. The Social Care sector has and continues to be considerably impacted by the pandemic and was considered one of the more high risk environments (e.g. care homes and domiciliary care agencies), alongside hospitals during the peak.
12. As a response to the pandemic, Council Officers were refocused from planned work to crisis management which significantly changed officer's roles and responsibilities on a day to day basis. In addition, Providers were required and supported to change their standard operating models to respond to the changes needed in service delivery (such as infection control and social distancing requirements) and managing significant staffing challenges that arose from a reduction in care that was required throughout the peak of the crisis. This impacted both Officers and Providers ability to continue to engage with the planned developments set out in the January 2020 Cabinet Report.
13. The impact of COVID 19 and the immediate response and refocus that was required by Council officers and providers paused the progress with the recommissioning exercise of domiciliary care. Cabinet and scrutiny members were verbally updated to this effect by the Director of Social Services at the time, however it is acknowledged that a formal request to extend the procurement timeline beyond the agreed date (4 November 2020) had not been presented and therefore requires approval at this time.
14. Recognising the impact of COVID 19 on the procurement timetable for this recommissioning exercise, an Officer Decision Report was agreed by the Corporate Director of People and Communities in October 2020. This report agreed the extension of the current commissioning arrangements via the current APL by a period of two months (4th November 2020 –11 January 2021). As responsible for the Director of Social Services statutory roles, the Corporate Director was able to extend this arrangement for 2 months under delegated authority. However, the Corporate Director was unable to extend beyond this time due to the related costs of future packages of care that would require cabinet oversight and decision.

Outstanding Key Deliverables for the Recommissioning Exercise

15. There are a number of key deliverables as part of the recommissioning exercise for Domiciliary Care that remain outstanding, impacted by the pandemic response as outlined in paragraphs 11-14, and must be resolved prior to the new delivery model going live. This will assure there will be minimal disruption in service delivery for our local people and continuity of care can be assured.
16. The key deliverables are as follows:
 - **A cost of care exercise.** This exercise is required to set a standard cost that the Council will pay for Domiciliary Care going forward. This exercise not only ensures the Council has a better

understanding of the true cost of delivery for care at home, as directed by the Welsh Government's statutory guidance "*Fulfilled Lives Supportive Communities Commissioning Framework and Guidance*" (2010; in particular standard 10), but it will also add assurance the Council is getting as much value for money as possible. The exercise will inform a fee setting strategy for Domiciliary Care in future years, which will be agreed at Cabinet level. It has been proposed throughout the length of this recommissioning exercise that cost will not be the determining factor in the awarding of future packages of care. As such, this exercise is integral to the new Approved Provider List (APL) going live. The methodology to be used has been tried and tested with the local Care Home sector and includes significant oversight and scrutiny by a project group, including finance and audit colleagues. The current timeline for this exercise requires a minimum of three months to complete.

- **Development of the Accreditation and Enrolment Criteria.** This is the criteria that allows providers to apply to be on the future APL for the new delivery. As part of this process, providers will be expected to evidence core standards for the delivery of domiciliary care, as well as any specialist knowledge for any sub-categories of care such as for children sessional support or for adults with learning disabilities.
- **Finalise the Technical and Service Specification** – A draft specification has been completed, however this requires finalising in consultation with the market
- **Development of the 100% Quality Award Criteria** – As mentioned above, the cost of care exercise will set a standard price for the delivery of domiciliary care in the new system. As such, the Project Group need to explore and propose how packages of care will be awarded to potential providers on the APL based on quality only.
- **Development of Performance Monitoring** – To explore and understand how domiciliary care providers will be monitored and quality assured within the new system, with a focus on person-centred outcomes. This will be supported by expanding the Adam IT system that will support Council officers to better quality assure and monitor the performance and outcomes of individual providers efficiently.
- **Children's domiciliary care and sessional support** – The new APL will include sub-categories for the delivery of domiciliary care and sessional support to children and families. However, the following details have yet to be finalised:
 - i. Service specification adaptations required for children and family support, considering differences of need for children and young people with disabilities, and children/ families at the edge of care
 - ii. Explore if the cost of care exercise outlined above can be used for the service delivery for children in addition to adults. The outcome of this work is required to inform how packages of care will be awarded for this cohort going forward.

- **Alignment with the Development of the Adult Services Strategy** which will be the key strategic driver for the delivery of internal services and the external market. The locality model of this proposed commissioning exercise will be driven by the development of this Strategy, rebalancing the role of Council run services and therefore the demand on the external market. The vision for adult services, which will be outlined in this Strategy, will link internal and externally commissioned services to link in with community based services, friends and family, and health based services in partnership, which will be aligned to support the launch of the new domiciliary care APL.
17. The Project Group leading on this recommissioning exercise have agreed a timeline that aims to achieve the above in line with a proposed delayed 'go live' date of 1 April 2021. However, it must be acknowledged that this is a very tight timeframe, taking into consideration the work outline in points 15 a-f, the decision making processes in the Council (e.g. the fee setting strategy) and ensuring the market has sufficient notice and time to apply to be on the new system and adapt their delivery to the new model.
 18. In addition, it is now becoming apparent that the COVID 19 pandemic is not going to be short term and will be something we will need to learn to adapt to at least for the near future. The impact of the second 'wave' or 'spike' of COVID 19 currently being evidenced throughout September and October with an increase of local infections and local and national lockdown initiatives, which may require the Social Services directorate to respond in a focussed and supportive way once again to the social care market. This will undoubtedly impact progress on the key dependencies outlined above and the timeline for the continual and increasing impact of COVID 19 is so far unknown.
 19. In addition, a National cost of care exercise directed by the Welsh Government has recently been announced. The initial findings and recommendations from this exercise are likely to be published in March 2021. It would be good practice if Cardiff Council completed our own exercise as described in section 17, but also considered the findings and recommendations of the national exercise. This would not be possible with the current timeline to have the new APL in place by April 2021.
 20. As a result of this, in addition to any other unforeseen circumstances, the Directorate is recommending flexibility within the proposed timeline by requesting an extension of the go live date for the new APL and the related extension of the current commissioning arrangements until November 2021 at the very latest.
 21. The Project team will be updating the proposed timeline for this recommissioning exercise over November and December, allowing for a clearer view on the timeline for the national cost of care exercise and the ongoing impact of the more recent increase of COVID 19 infections and the 'fire break' and local lockdowns on the social care market and Council officer time.

Ongoing Consultation

22. A detailed communication plan will be put in place to ensure that all partners are informed of decisions and progress. The communication plan will seek to manage potential concerns raised by citizens, their families and stakeholders throughout this procurement process.
23. Any providers on the current APL will be updated as soon as possible if an extension is agreed by Cabinet.
24. Ongoing *test and learn* sessions have been arranged to assure ongoing co-production with the market regarding the new, proposed model of delivery.
25. The Domiciliary Care Association for Cardiff were updated on the proposal to extend the current commissioning arrangements and service agreements beyond the 1 April 2021 on 16th October 2020. The feedback received was as follows:
 - The market will be led by the Council, however it is important that any changes are communicated clearly and effectively with the market in a timely manner
 - There is a potential that providers will feel frustrated by an additional delay to the new commissioning arrangements as the Council and the market have been working on this proposal in collaboration for almost 2 years. It was acknowledged that if there was an extension, there are elements of the current system that will need to be addressed in the interim, such as the re-introduction of the quality score for awarding packages of care (which was removed in the peak of the COVID 19 pandemic to support Council officers who were repurposed to crisis management and allow providers to focus on service delivery in a significantly challenging time). The re-introduction of the quality score will prevent packages being awarded on price alone which is driving the current cost of delivery to, what providers fear are, unsustainable levels. This piece of work is being completed by the Contracts Team via an Officer Decision Report and the Quality Score will be re-introduced as soon as possible.

Reason for Recommendations

26. The reason for the recommended decisions are
 - To allow sufficient time to finalise a number of key deliverables that are required for the recommissioning exercise, including the cost of care exercise and the inclusion of children sessional support
 - To ensure continuity of care for services users, without disruption

- To allow some flexibility to the procurement timeline in case there are any additional unforeseen delays to the exercise, linked with the ongoing pandemic response for COVID 19
- To ensure the Council does not take any action that might destabilise an already fragile market at a time when the extent of the impact of COVID 19 on provider future sustainability is not yet fully known.

Financial Implications

27. The Report proposes to extend to November 2021 at the latest, the procurement timeline for the recommissioning of Domiciliary Care and Sessional Support that was previously approved by Cabinet in January 2020. The extension is in recognition that previous timescales have been affected by the Coronavirus pandemic. As the proposed extension would be a continuation of the arrangements already in place, it should have no financial impact compared with the current position. However, the recommissioning and proposed new model raise a number of financial considerations.
28. With net annual domiciliary care expenditure of approximately £22 million, changes to commissioning arrangements in this area will have a significant financial impact for the Council. As such, separate financial and procurement advice will be required in relation to all aspects of the commissioning process.
29. One of the stated key deliverables of the recommissioning is to undertake a cost of care exercise to determine a standard rate that the Council will pay for Domiciliary Care in future. Whilst the outcome of such an exercise cannot be prejudged, it could have significant financial implications for the Council. It is intended that the transition to a standard cost of care will be effected via a fee-setting strategy. Given the extremely challenging budgetary outlook, it is important that the strategy, the time-period over which it is implemented and associated annual inflationary uplifts, be informed by affordability in the context of the Council's Medium Term Financial Plan
30. Under existing arrangements (setting aside exceptional circumstances during the pandemic), packages are awarded based on evaluation criteria that takes into account both quality and price. A move to a system based on a standard cost of care will over time, remove price as one of the determining factors of award. In such circumstances, the quality specifications required to achieve accreditation, together with ongoing performance management, will be key to assuring value for money.
31. The January 2020 Cabinet Report on the recommissioning of Domiciliary Care (referred to as a background paper) raised a number of issues that warrant note from a financial perspective. Firstly, the Report indicated that existing packages would remain with current providers post commissioning, with an incremental approach to implementing the new model. It should be noted that any change in this approach would affect the immediacy of financial impact and the ability of a fee setting strategy

to manage affordability. Secondly, the Report referred to the potential to allow providers discretion to vary the number of care hours delivered. Under current arrangements, payments to providers are based on delivered hours, rather than on the number of hours contained in the care plan, which are typically higher. A proposed change in approach to allow more flexible use of a bundle of hours could result in significant additional cost.

32. Any costs associated with undertaking the recommissioning exercise will need to be met from existing resources.

Legal Implications

Procurement and contract law

33. The Council's current commissioning arrangements for Domiciliary Care, in effect, uses a dynamic purchasing system ('DPS') entitled 'Accredited Provider List for Domiciliary Care Services in Cardiff ('APL'). A DPS is similar to an electronic framework agreement but where new suppliers can apply to join at any time. The DPS is a two-stage process. In the initial establishment stage, all suppliers (in the Cardiff case referred to as Accredited Providers) who meet the selection criteria and are not excluded must be admitted to the DPS. Under the APL all Providers admitted are required to conclude an overarching supplier agreement, which sets out, *inter alia*, the terms and conditions that will attach to individual contracts (orders) placed. Individual contracts are awarded during the second stage, in which all suppliers on the DPS are invited to bid for the specific individual contract.

In this case it is proposed to extend the duration of the DPS (referred to in the Public Contracts Regulations 2015 {'PCR'} as 'the period of validity'). Under the PCR it is possible to change the period of validity of a DPS. The Crown Commercial Service guidance on Dynamic Purchasing Systems states that... *'The ability to change the period of validity of the DPS provides flexibility if the authority's circumstances change, or developments in technology and markets mean that the DPS, as originally set-up, outlives its usefulness. There is no specific maximum duration of a DPS although any changes to the period of validity of a DPS must comply with relevant TFEU principles. The authority must make its own decision regarding the duration of a DPS, based on its needs and understanding of the market. Early market engagement should help provide insights. A longer-running DPS will reduce the need to re-compete, but if it is too long the DPS may become obsolete if the authority's circumstances or markets change'*.

34. As stated above, under the APL all Providers admitted are required to conclude an overarching supplier agreement. The recommendations propose that such agreements are extended. It should be noted that any such extension will require the Agreement of the individual Providers. There is a potential risk, namely whenever a party seeks to amend an existing agreement, the other party may use the opportunity to raise issues

of their own. By way of example only, the fee payable. The body of the report addresses the issue of fee and proposed work in this area.

35. Whilst the detail of the recommissioning proposals are not a specific recommendation of this report,(other than decisions on such matters be delegated) the report references a number of the intended key deliverables. It is worth noting that the same raise potential legal implications. Detailed legal advice should be sought on the procurement, the cost of care exercise and any proposed consultation process. The decision-making process for the Cost of Care Exercise must take into account and detail all relevant considerations. Relevant considerations would include taking into account strategic documentation, statutory guidance, demand, resources, market stability, the actual cost of care / provider costs and provider feedback. Where consultation is embarked upon it must be carried out properly and conform to the established law on consultation. These are areas that can attract scrutiny and potential challenge

Social Services and Well Being (Wales) Act 2014

36. In considering this matter the Council must comply with its duties under the Social Services and Well-being (Wales) Act 2014 (the “Act”) and have regard to the relevant codes of practice and statutory guidance issued under the Act. In brief the Act provides the legal framework for improving the well-being of people who need care and support and carers who need support, and for transforming social services in Wales.

General Legal Advice

37. In considering this matter the decision maker should have regard to the Council’s duties under the following legislation:-
38. **The Well-Being of Future Generations (Wales) Act 2015 (‘the Act’), which** places a ‘well-being duty’ on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
39. In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff’s Corporate Plan 2020 -23. When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
40. The well-being duty also requires the Council to act in accordance with a ‘sustainable development principle’. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take

account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

41. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible on line at the following link.

Equalities Act 2010

42. The Council has to satisfy its public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties) – the Public Sector Equality Duties (PSED). These duties require the Council to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of ‘protected characteristics’. The ‘Protected characteristics’ are: • Age • Gender reassignment • Sex • Race – including ethnic or national origin, colour or nationality • Disability • Pregnancy and maternity • Marriage and civil partnership • Sexual orientation • Religion or belief – including lack of belief.
43. The decision maker should also have regard, when making its decision, to the Council’s wider obligations under the **Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.**

Equality and other public duties

44. Please see Appendix A for an Equality Impact Assessment

HR Implications

45. There are no HR implications relating to this report

Property Implications

46. There are no property implications relating to this report

RECOMMENDATIONS

The Cabinet is recommended to:

1. revise the procurement timeline approved by Cabinet in January 2020 that set out a November 2020 implementation date for new contracts and agree to extend this for a period till November 2021 at the latest to enable

colleagues from the Commissioning and Procurement teams to re-engage with the sector as part of the previously planned consultation and *test and learn* sessions, and to complete of the Cost of Care exercise which is integral to the recommissioning exercise

2. approve the extension of the current commissioning arrangements for Domiciliary Care, which uses a dynamic purchasing system entitled 'Accredited Provider List for Domiciliary Care Services in Cardiff ('APL'), for a period of up to November 2021 to provide sufficient time for the new commissioning arrangements to be implemented to support the introduction of the new outcome –focused, locality –based domiciliary care model. Subject to the agreement of the individual Providers concerned, the overarching agreements concluded between the Council and those providers appointed to the current APL will be extended to November 2021 at the very latest.

3. delegate authority to the Corporate Director of People and Communities, in consultation with the Cabinet Member for Social Care, Health & Well-being, Cabinet Member of Children and Families, the Section 151 Officer and the Director of Governance and Legal Services for all future procurement decisions relating to the new arrangements, including the outcome of the Cost of Care exercise and the related Fee Setting Strategy, award of contracts and all associated matters.

SENIOR RESPONSIBLE OFFICER	SARAH MCGILL Corporate Director People & Communities
	13 November 2020

The following appendices are attached:

Appendix A – Equality Impact Assessment

The following background papers have been taken into account

1. [Commissioning of Domiciliary Care and Procuring Care Home Services, Cabinet Thursday 20th September, 2018](#)
2. [Recommissioning of Domiciliary Care and Sessional Support Services, Cabinet Thursday 23rd January, 2020](#)
3. Officer Decision Report – Domiciliary Care Approved Provider List Service Agreements and commissioning arrangements – Request to Extend. Signed by Sarah McGill on 14 October 2020, embedded below: