

9 March 2023		ITEM: 9
Health and Wellbeing Overview and Scrutiny Committee		
Renewing Contracts with Care Home and Supported Accommodation Providers		
Wards and communities affected: All	Key Decision: Key	
Report of: Councillor Deborah Arnold, Portfolio Holder for Children’s and Adult Social Care		
Accountable Assistant Director: Ceri Armstrong, Interim Assistant Director Adult Social Care		
Accountable Director: Les Billingham, Interim Director Adult Social Care and Community Development		
This report is Public		

Executive Summary

The Care and Support Statutory Guidance issued under the Care Act 2014 stipulates that:

- Where the care planning process has determined that a person’s needs are best met in a care home, the local authority must provide for the person’s preferred choice of accommodation, subject to certain conditions.
- Where a local authority is meeting needs by arranging a care home, it is responsible for contracting with the provider.
- When commissioning services, local authorities should assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care.

In Thurrock we contract with every care provider located within the Borough and have Local authority funded placements in each home. Despite our not having

conducted a competitive tender for this our rates remain extremely competitive. These rates are benchmarked annually against regional colleagues to check that our contractual approach continues to obtain value for money for the local authority.

Despite our fees being lower than average, our quality ratings are above average, with over 90% of our care homes being rated as good or excellent following a Local Authority Contract Compliance Visit.

We place approximately 60% of people within the Borough with the remaining 40% being placed outside of Thurrock, this could be for a variety of reasons, such as family choice, or lack of a suitable vacancy within the Borough. When placing outside of the Borough for older adults' residential homes we honour the rates the host authority pays these providers. For adults of a working age and supported accommodation providers these rates are individually negotiated. These are however regularly benchmarked against rates paid by regional and national colleagues to ensure we are obtaining value for money.

For these reasons, in common with many other local authorities with social services responsibilities, it has been the practice of Thurrock Council not to tender for residential care home services, and this report seeks a waiver from the Constitutional requirement to tender, and approval to follow a single sourcing arrangement for awarding contracts for care home services for both older people and working age adults.

This is consistent with the decision of Cabinet on the 5th April 2017.

Government Intervention & Section 114

In July 2022, the Council was made aware of concerns around the valuation of specific investments. A review process commenced, and the initial findings highlighted significant concern with three investments and the position was shared informally with the Department of Levelling Up, Housing and Communities (DLUHC). On the 2 September 2022 DLUHC announced directions to implement an intervention package at the Council.

The Secretary of State exercised his powers under section 15(11) of the Local Government Act 1999 to give a Direction without complying with the requirement at section 15(9) to give Thurrock an opportunity to make representations about the Directions, as he considered the failures of the Council's compliance with its Best Value duty in respect of the functions specified in the Directions sufficiently urgent. This was because of the following:

- the scale of the financial and commercial risks potentially facing the Authority, which were compounded by the Authority's approach to financial management

- and the seriousness of the allegations that were made by third parties about the processes applied to the operation of the Authority's commercial strategy, and;
- the failure of the Authority to provide assurance to Ministers and the Department on the adequacy of the actions that they were taking to address the issues, taking account of the scale and pace of the response required.

The Secretary of State nominated Essex County Council to the role of Commissioner

On 19 December 2022, the Council's Acting Director of Finance & Section 151 Officer issued a report under Section 114 of the Local Government Finance Act 1988. This advises Councillors that the Council faces 'a financial situation of an extremely serious nature'.

Since that period the Council has continued to operate under the s114 Notice and is working alongside Commissioners to tighten its financial management procedures

1. Recommendations

- 1.1 That HOSC endorse a waiver from the constitutional requirement for competitive tendering for the provision of care home services for older people, working age adults, and supported accommodation, and approve a single sourcing arrangement for new contracts for care home and supported accommodation placements commissioned by the Council.**
- 1.2 That HOSC endorse the delegation to the S151 officer and Commissioners, in consultation with the Portfolio Holder, the authority to award contracts for care home and supported accommodation services to meet the assessed needs and preferences of older people and working age adults.**
- 1.3 That HOSC endorse the changes to and agreement of fees (e.g. annual uplift) being agreed in consultation with the S151 officer.**

2. Introduction and Background

- 2.1 Care and Support Statutory Guidance issued under the Care Act 2014 stipulates that where the care planning process has determined that a person's needs are best met in a care home, or a supported accommodation provision that the local authority must provide for the person's preferred choice of accommodation, subject to certain conditions.
- 2.2 Service users (often assisted in their decision making by relatives and friends) commonly express a preference for a care home when assessed as requiring residential care. However, the choice is often also determined by the availability

of care homes to meet quite specific assessed needs, including sensory impairments, dementia care, physical disability, mental health needs, substance misuse and autism.

- 2.3 Where a local authority is responsible for meeting a person's care and support needs and their needs have been assessed as requiring a particular type of accommodation in order to ensure that they are met, the person must have the right to choose between different providers of that type of accommodation provided that:
- the accommodation is suitable in relation to the person's assessed needs
 - to do so would not cost the local authority more than the amount specified in the adult's personal budget for accommodation of that type
 - the accommodation is available
 - the provider of the accommodation is willing to enter into a contract with the local authority to provide the care at the rate identified in the person's personal budget on the local authority's terms and conditions
- 2.4 The choice of the service user, or the availability of provision to meet their assessed needs, are the main factors which determine which provider is contracted to provide care. This is in keeping with the Care Act 2014. In consequence of this, Thurrock in common with most other councils in the region has tended to follow a single sourcing arrangement in contracting with care home and supported accommodation providers.
- 2.5 Thurrock has a small amount of providers and has few voids. All providers within the Borough are used with insufficient competition justifying selection based on price. The agreed price with Thurrock providers is low compared to benchmarked comparators and 90% of homes are rated as 'good' or above by a Local Authority Quality Compliance Visit which is above regional and national averages and demonstrating that Thurrock has good value for money through its approach.
- 2.6 For this reason Cabinet will be asked to agree a waiver from the requirement in Thurrock's Constitution for competitive tendering for contracts for care homes over £75,000 per annum. HOSC are asked to endorse this recommendation.
- 2.7 This report has been drafted in light of the current financial situation the Council faces. The challenges facing the Council during 2022 are well publicised and this report should be read in that context. Future service activity will need to reflect the intervention the Council finds itself in. Particularly difficult decisions will need to be made on levels of service and methods of service delivery during 2023 and beyond

3. Issues, Options and Analysis of Options

3.1 In order to be able to set a personal budget for a person who requires residential care or supported accommodation a local authority needs to have regard to the cost of care for the provision. For placements outside Thurrock the Council should have regard to the cost of care in that area when setting a person's personal budget. This arrangement mainly applies to meeting the needs of people aged 65 years and over who's sensory, mobility and cognitive functions may be impaired as a result of the ageing process.

3.2 The local authority rates paid for care home places in Thurrock for people aged 65 and over from 1st April 2022 (per week) are as follows.

- Standard residential care £572.23 (shared room £543.60)
- High Dependency residential care £609.91 (shared room £579.43)
- Dementia care £617.24 (shared room £586.30)
- High needs dementia care £646.63 (shared room £614.22)
- Nursing care £633.73 (shared room £602.24)

3.3 The Council funds placements in 12 care homes for older people in the local area, owned and managed by 6 providers. The Council also funds placements in Essex and Southend, and to a lesser extent elsewhere, and in these cases the Council pays the rate established by those local authorities.

Personalisation

3.4 In addition to service users having the choice of care home (subject to the conditions in the Guidance and set out above), the service specification, developed in conjunction with other councils with social services responsibilities in the East of England, sets out how the service will address the requirements of the personalisation agenda.

3.5 In the context of commissioning for outcomes, the specific outcomes to be achieved for each service user are agreed between the care manager, the care home provider and the service user, and recorded in the care and support plan. The actual tasks related to the delivery of personal care in the care home will then be agreed between the service user and the care and support provider and recorded in the service user's individual service contract. The care manager must determine that the times and tasks appear appropriate to the delivery of the agreed outcomes.

Quality And Safety

- 3.6 The Council works closely with the Regional Association of Directors of Social Services Group to address quality and safety in Care Homes. The Group has developed a market management system (PAMMS - Provider Assessment and Market Management System) which incorporates risk rating, monitoring assessment tools, action planning functions, demographic reporting, fee levels and benchmarking data.
- 3.7 The Council's Contract Compliance Team conduct Quality Monitoring Inspections to develop and maintain quality standards in line with the Regional Group guidelines and contractual standards for Residential Care Services. During inspections the online assessment tools are completed which will determine a rating and an action plan for providers. The rating will establish the level of support and monitoring required to ensure quality standards are improved and maintained, which will include regular provider checks and visits.

Current Contracts For Care Homes

- 3.8 In order to renew the current contracting arrangements for care homes, the Council must address the requirement in the Council's Constitution, which would ordinarily require contracts of this value to be competitively tendered
- 3.9 The current contract for care homes was introduced in September 2017. In order to renew the contract, and for the reasons set out in paragraph 2.4 above, Cabinet are asked to agree a waiver from the Constitutional requirement for competitive tendering and to approve a single sourcing arrangement for contracting with care home providers.
- 3.10 The updated Regional Standard Contract for care homes which Thurrock developed in conjunction with the other councils in the East of England will be offered to providers. This will ensure that the terms and conditions of contract and the specification are up to date in relation to relevant legislative requirements, reflect good practice, and are consistent with the terms and conditions used by neighbouring councils.

4. Reasons for Recommendation

- 4.1 The Council's Constitution requires competitive tendering for contracts valued at over £75,000. This report requests a waiver of that requirement in respect of care home (residential care) and supported accommodation services. It also seeks approval of the arrangements for the award of these contracts. HOSC are asked to endorse these recommendations prior to Cabinet of 12th March 2023.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 Following approval, a letter will be sent to providers inviting them to enter into a contract with the Council for the provision of care home places for an initial period of 5 years which may, by mutual agreement, be extended for a further 24-month period, up to a maximum of 7 years. (Please note there will be a 6 months' notice period to exit this contract, if this contractual approach no longer offers value for money for the local authority the contract can be terminated and reprocedured in a different way).
- 5.2 HOSC is asked to consider this report and endorse its recommendations prior to Cabinet being asked for approval at its meeting of 12th March 2023.

6. Impact on corporate policies, priorities, performance and community impact

- 6.1 The Community Strategy, the Corporate Plan and the Medium Term Financial Strategy (MTFS) require the Council to commission services at the highest possible standard whilst delivering value for money for the Council.

Implications

7.1 Financial

Implications verified by: **Mike Jones**

Strategic Lead - Corporate Finance

The budget allocation for the services covered within the report are detailed in the following table:

Service Type	Client Group	2022/23 Revised Budget £000's	2023/24 Base Budget £000's
Residential Care	Older People	9,431	10,763
	Learning Disabilities	8,355	8,014
	Mental Health	1,559	1,111
	Physical Disabilities	1,216	1,516
Total		20,561	21,405
Nursing Homes	Older People	1,126	1,401
	Learning Disabilities	78	41
	Physical Disabilities	191	59
Total		1,395	1,501
Supported Living	Older People	571	684
	Learning Disabilities	4,394	4,468
	Mental Health	3,072	2,966
	Physical Disabilities	622	1,072
Total		8,659	9,191

Grand Total	30,615	32,097
--------------------	---------------	---------------

The 2023/24 draft budget has been formulated to take into consideration that full year effect of the residents receiving a service within the relevant care provisions. This is included within the Draft 2023/24 Budget report to Cabinet on 22 February 2022.

The increase in the funding requirement identified for 2023/24 is as a result of additional demand for residential care services. Funding has been allocated in the Councils medium term financial strategy and is detailed in the aforementioned Draft Budget 2023/24 report.

Within the 2023/24 draft budget, the Council has identified £1.878m growth for price inflation, and £4.520m for demographic and other pressures, to be applied across the Adult Social Care external placement budget.

Furthermore, an additional £1.090m of specific grant fund has been awarded in the local government finance settlement through the ASC market sustainability and improvement fund. In line with the guidance, this funding will be used to fund additional financial support to the external care market in 2023/24.

At this stage, the budget detailed in the above table does not include any inflationary price uplifts for 2023/24. This is currently under discussion as part of the consultation with external care providers, which will take into consideration national living wage, general inflation as well as recruitment and retention pressures within the care sector. Funding has been identified in the 2023/24 draft budget and will be allocated upon conclusion of the consultation. This consultation forms part of the annual budget setting process each year, and is subject to the economic considerations, which will vary over the life of the contracts, and form part of the Councils MTFS.

The recommendation to following a single sourcing arrangement in contracting with care home and supported accommodation providers has been deemed as the most cost-effective approach to procurement of the services. The 2022/23 and 2023/24 base budgets have been set in accordance with this approach, and outside of the application of inflationary price uplifts, the approval of the recommendation will not have an adverse financial impact on the proposed budget, and conversely, provides certainty over the charges which the Council will pay for the current residents

7.2 Legal

Implications verified by: **Kevin Molloy**

Principal Solicitor - Legal

- 7.2.1 The Council's Constitution requires a competitive tender to be completed for all contracts over £75,000. However, this requirement may be waived provided the Council complies with its duty to obtain Best Value pursuant to the Local Government Act 1999. The Council is unable to conduct the normal competitive procurement procedure for residential care and supported accommodation providers because of the particular nature of the service provision and the service user choice. However, the Council is required to act transparently, fairly, proportionately and in a non-discriminatory manner when dealing with service providers.
- 7.2.2 By entering into legally binding contracts with care homes in the borough, the Council will be able to manage the relationship with the accommodation providers, including being able to monitor the standard of care being provided to the service users therefore ensuring the Council's safeguarding function is carried out.
- 7.2.3 The Council needs to ensure that a robust procedure is established for determining the local authority rate. It is essential that the procedure includes an evaluation of all relevant circumstances relating to the provision of the service and not just the Council's financial circumstances (although this is also a relevant factor).
- 7.2.4 Legal Services and Procurement Services will provide ongoing advice and assistance to the client in relation to the procurement process and the legal issues regarding setting the local authority rate.

7.3 Diversity and Equality

Implications verified by: **Rebecca Lee**

Community Development & Equalities

- 7.3.1 The arrangements for contracting with care home providers for older people, and for working age adults, will be undertaken with due regard to equality and diversity considerations. This will include adherence to the relevant 'Equality' Codes of Practice on Procurement. These require consideration of the equality arrangements of all such providers; that they have relevant policies on equal opportunities and are able to demonstrate a commitment to equality and diversity. These arrangements will also be subject to a full review as part of the contract management of the services to be provided using the PAMMS Monitoring System.

7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None.

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

Care and support statutory guidance Updated 9 December 2016

<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

9. **Appendices to the report**

Appendix 1 – Regional Fee Comparison

Report Author:

Louise Brosnan

Service Manager – Contracts & Brokerage

Adults, Housing and Health