

RIDGEND COUNTY BOROUGH COUNCIL

REPORT TO CABINET

6 SEPTEMBER 2016

REPORT OF THE CORPORATE DIRECTOR – SOCIAL SERVICES & WELLBEING

RESIDENTIAL AND NURSING CARE CONTRACTS

1.0 Purpose of Report

The purpose of this report is to:

- 1.1 Authorise a waiver under CPR 3.2.3, from the requirement to tender the provision of residential care home services.
- 1.2 On the basis that the waiver under CPR 3.2.3 is approved, delegate authority to the Corporate Director – Social Services and Wellbeing to enter into contracts with the current and any future residential and nursing care providers on terms to be approved by the Corporate Director – Social Services and Wellbeing in consultation with the Corporate Director - Operations and Partnerships and the s151 Officer. Such contracts to take effect for the terms set out in Section 8 (Recommendation) of this report.

2.0 Connection to Corporate Plan

- 2.1 This report links to the following improvement priorities in the Corporate Plan 2016-20:
 - Helping people to be more self-reliant;
 - Smarter use of our resources.

3.0 Background

- 3.1 In February 2014, Cabinet approved a waiver under Contract Procedure Rule 3.2.3, from the requirement to competitively tender the provision of residential and nursing care home services. The waiver was approved on the basis that, at that time, the contracted providers were the only tenderers who could technically provide such a service, due to statutory restrictions in respect of the Council's obligation to set appropriate fees.
- 3.2 Cabinet was advised that this statutory restriction dates from the implementation of the National Health Service and Community Care Act 1990, when the funding of residential care homes passed from the Department of Social Services in central government to local authorities and that the subsequent National Assistance Act (Choice of Accommodation)(Wales) Directions 1993, imposed on local authorities the duty of determining the amount that they would expect to pay for assessed needs. Furthermore, that

the discretion to set such fees was tempered by the provisions of Section 7 of the Local Authority Social Services Act 1970, which states that local authorities, in performing their functions, must 'act under' the guidance of the Welsh Ministers and that the most recent guidance was the 'Fulfilled Lives, Supportive Communities: Commissioning Framework Guidance and Good Practice' (August 2010). For these reasons, Cabinet was asked to authorise a waiver from the requirements to competitively tender the Residential Care Home fees under CPR 3.2.3 as there was technically no competitive market available.

- 3.3 Cabinet is asked to note that these statutory restrictions remain in force with the result that there is no competitive market place available for these services and for these reasons, the situation remains that the current contracted providers are the only tenderers who could technically provide such a service.
- 3.4 The Social Services and Wellbeing Directorate operates a quality assurance system for older person's residential and nursing care. Contracting arrangements in place with residential and nursing care home providers are in the form of:
 - Pre-placement agreement – the overarching contract in place with the home, which sets out the Council's required quality standards, health and safety standards, the monitoring arrangements and financial payment terms.
 - Individual service agreements (ISA's) – which are the individual spot-purchasing contracts entered into when specific placements are made at a home, these will include the personal details of individual including the cost of the placement and how their care needs are to be met.
- 3.5 Spot-purchasing is a process which allows the Local Authority to place an individual based on their level of need as and when required, rather than committing to block purchasing arrangements, which can tie the Local Authority to a certain number of placements at a fixed cost.
- 3.6 This practice is in keeping with a number of other Local Authority's social care arrangements, and has enabled the directorate to provide timely and flexible responses to a range of needs, as and when they are required.
- 3.7 In addition to the contractual arrangements outlined in paragraph 3.2 above, there are monitoring and safeguarding procedures in place to ensure the services that are commissioned meet the Local Authority's requirements, in terms of the provision of good quality care.
- 3.8 One of the key mechanisms in place is the Regional Quality Framework (RQF), whose aim is to provide a clear vision for quality for individuals living within care home settings, in order to improve the lives of people and promote positive outcomes. Co-produced in partnership with local care home providers, a Quality Standards assessment tool has also been developed, which sits beneath the RQF. This allows the Council to assess and monitor a

home's performance against the RQF and contract, with the aim of driving quality up still further, whilst also ensuring value-for-money for the Council.

- 3.9 The contracts that are in place with residential and nursing providers are BCBC contracts. However the Council contracts on behalf of Abertawe Bro Morgannwg University Health Board (ABMU) for the Nursing Care element only. This is in keeping with the close partnership working relationship that the Council has with health.

4.0 Current Situation

- 4.1 The Social Services and Wellbeing Directorate currently has commissioning arrangements with 20 older people's residential and nursing care providers in the borough, and on average there are approximately 280 weekly funded placements across the residential and nursing care home sector.
- 4.2 In February 2014, Cabinet approved for the contracting arrangements in place with these providers to be extended by a period of 24 months, which expired on 31st March 2016. This was due to a number of factors including the implications of the new Social Services and Wellbeing Act 2014 and clarification from Welsh Government on the changes.
- 4.3 Since early 2016, Local Authority officers across Wales have been in dialogue with the Welsh Government to discuss and assess the impact of the Social Services and Well-being (Wales) Act. Officers have also been working closely with colleagues in health (ABMU), who have advised of changes needed to the contract and service specification in relation to the nursing elements of the contract.
- 4.4 Discussions with Welsh Government and ABMU concluded in June 2016, following which officers finalised a model for residential and nursing care, which takes account of implications of the Act. The model has also been updated to reflect more recent, wider changes in residential and nursing care, such as the implications for the model in relation to the Regional Quality Framework, developed as part of the Western Bay Programme, which was approved by Cabinet in June 2015.
- 4.5 To ensure existing providers also had an opportunity to contribute towards the development of the new model, officers presented an early draft of the model/contract at the Residential and Nursing Care Forum in March 2016, highlighting the main differences between the revised model, and the current model in place. The main differences were that, for the first time, the right for self-funding placements is to come under the Local Authority's contractual arrangements. In addition, the new arrangement has also included an update of the Care Fees Quality Payment Scheme where the standards are aligned to the Regional Quality Framework (RQF) as agreed through the Western Bay collaborative, and for the first time aligned to key aspects of the contract itself. This initial engagement was followed up with a final draft being circulated in July 2016, offering providers a further opportunity to provide comment and

feedback. On both occasions, the response was generally positive from providers, with very little negative feedback.

- 4.6 In light of the above, officers wish to seek approval to enter into new contracts for the 20 existing providers, as whilst the market cannot be competitively tendered, there would be considerable risks to both the Council and the residents if the Council does not enter into new contracts with the current care home providers. Therefore, it is imperative that the Council has a contract in place with each provider, to enable the authority to continue to place residents in these homes.
- 4.7 For the model and contract to be responsive to future legislative changes, as well as any new strategic drivers from both a Local Authority and ABMU perspective, it is felt that a relatively shorter-term contract would be more appropriate. Given this, it is proposed that an initial contract period of two years (with an option to extend by up to 24 months) would be appropriate, as it would mean that timely changes could be made, if required.
- 4.8 It is recognised that the needs of individuals are continually changing, and it is also recognised that the shape of the care home market can change at very short-notice. Even though officers feel there is already a robust and responsive market in place across the county borough, officers also wish to seek approval to enter into new contracts with any new residential and nursing care providers that may be required during this (up to) four year period, to be able to continue to have a robust market that meets need and demand.
- 4.9 There is a requirement under Regulation 19 (1) (a) of The Partnership Arrangements (Wales) Regulations 2015 that by April 2018 there will be a pooled fund across ABMU for Care Home placements. At this stage the implications are being considered by finance and legal officers before a new pooled fund agreement can be drafted and implemented.

5.0 Effect upon Policy Framework and Procedure Rules

- 5.1 In February 2014, Cabinet approved a waiver under the Council's Contract Procedure Rules (CPRs), from the requirement to competitively tender for the provision of future residential care homes contracts on the basis that under CPR 3.2.3, the current providers are the only tenderers who can technically provide such a service due to statutory restrictions in respect of the Council's obligation to set appropriate fees, which means that there is no competitive market place available for these services.

6.0 Equality Impact Assessment

- 6.1 There are no equalities implications arising from this report, therefore an Equalities Impact Assessment is not required.

7.0 Financial Implications

- 7.1 During the 2015/16 financial year, the Local Authority commissioned 20 in-county providers and spent approximately £8.5 million on the delivery of older person's residential and nursing care in the borough.
- 7.2 There are no additional financial implications to the proposal of entering into the new contracts, as the costs are already committed.

8.0 Recommendation

It is recommended that Cabinet:

- 8.1 Authorise a waiver under CPR 3.2.3, from the requirement to tender the provision of residential care home services on the basis that the Council has a statutory obligation to set the fees, which means that there is technically no competitive market available for these services.
- 8.2 On the basis that the waiver under CPR 3.2.3 is approved, delegate authority to the Corporate Director – Social Services and Wellbeing to enter into contracts with the current residential and nursing care providers on terms to be approved by the Corporate Director – Social Services and Wellbeing in consultation with the Corporate Director - Operations and Partnerships and the s151 Officer. On the basis that (if approved) the reasons for a waiver under CPR 3.2.3 would have applied on any earlier date that the statutory restrictions as set out in this report were in force, Cabinet is asked to authorise such contracts on a retrospective basis, from the 1st April 2016. The contracts are to be in place for an initial period of two years, with an option to extend for further periods of up to two years.
- 8.3 On the basis that the waiver under CPR 3.2.3 is approved, delegate authority to the Corporate Director – Social Services and Wellbeing to enter into contracts with any new residential and nursing care providers on terms to be approved by the Corporate Director – Social Services and Wellbeing in consultation with the Corporate Director - Operations and Partnerships and the s151 Officer, provided that such new contracts shall be co-terminus with the contracts referred to in 8.2 above

Susan Cooper

Corporate Director – Social Services and Wellbeing
August 2016

9.0 Contact Officer

Pete Tyson – Commissioning, Social Services and Wellbeing
01656 642667
Peter.tyson@bridgend.gov.uk

10.0 Background documents

Cabinet Report of the 4th February 2014 – Commissioning and Award of Contracts in Respect of Adult Social Care