



Havering
LONDON BOROUGH

17/21
DECISION
TO BE
MADE

Notice of Key Executive Decision

Subject Heading:	Approval for contract modification to provide care at Dreywood Court extra care scheme
Cabinet Member:	Councillor Wendy Brice-Thompson, Cabinet member for Adult Services and Health
CMT Lead:	Barbara Nicholls, Director of Adult Social Care
Report Author and contact details:	Daren Mulley, Commissioning Manager T: 01708 433982 E: daren.mulley@havering.gov.uk
Policy context:	<p>Havering Extra Care Housing Strategy (2011-21) It is one of the Council's core priorities to improve quality of life for residents aged 65 and over, and enable as many older people as possible to live independently in their own home, for as long as possible.</p> <p>Havering Health & Wellbeing Strategy - Early help for vulnerable people to live independently for longer</p>
Financial summary:	This is an existing commitment for which budget already exists. The contract modification would mean incorporating £653,723.00 to Care Support's existing three year contract at Paines Brook Court which is £1,312,734.00. The contract value for one year would therefore be £1,091,301.

Non-key Executive Decision

Relevant OSC:	Individuals
Is this decision exempt from being called-in?	No

The subject matter of this report deals with the following Council Objectives

Havering will be clean and its environment will be cared for	<input type="checkbox"/>
People will be safe, in their homes and in the community	<input checked="" type="checkbox"/>
Residents will be proud to live in Havering	<input type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

Sanctuary Care has served notice on its intention to terminate the contract to provide the extra care service at Dreywood Court. This decision paper requests approval for the modification of the contract with Care Support for care at Paines Brook Court extra care scheme dated 15th September 2014, to allow for an increase in the current service provision over and above the original agreed terms and conditions, as allowed by clause 8 (Modifications) under the terms and conditions of the current contract, to provide care at Dreywood Court extra care housing scheme.

AUTHORITY UNDER WHICH DECISION IS MADE

Constitution Part 3 Responsibility of Functions Section 3.3 Powers of Members of the Corporate Management Team to award all contracts with a total contract value of between £156,000 and £5,000,000.

STATEMENT OF THE REASONS FOR THE DECISION

The Council currently holds the following contracts for care in extra care housing:

- Contracts with Care Support to provide care in St Ethelburga Court and Paines Brook Court
- A contract with Sanctuary homecare to provide care in Dreywood Court.

The Council entered the contract with Sanctuary homecare on 1st July 2013 which was scheduled to run until 30th June 2018; however, Sanctuary homecare served notice on 6th December 2016 of its intention to terminate the contract as allowed under clause 29.1 (Termination) of the contract (i.e '...by giving the other party 6 months written notice).

There is currently a contract in place with Care Support to provide care at Paines Brook Court, which the Council can amend up to 50 % of its original contract value under the terms and conditions agreed between the parties.

The Council has a duty under the Care Act to ensure 'suitability of accommodation' in meeting the at home care and support needs of older and vulnerable people. Extra care is one form of supported accommodation which can help meet this need.

As a result of Sanctuary Home Care serving notice to the Council, modification to an existing contract is considered to be the preferred option. This option enables continuity of service provision based on current pricing and contract terms and

conditions. It also gives the Council sufficient time this year to plan and prepare the re-commissioning of the three extra care housing scheme services, which would prevent the need for the Council to go out to tender, award and mobilise a contract within just six months. The plan was to recommission all three schemes jointly ensuring an improved offer across the three and to have new contracts in place by April 2018.

To inform this decision, the Council has therefore sought advice from its Legal and Procurement offices. Legal have reported that there is some risk that the modification does not meet all the requirements of Regulation 72 of the Public Contract Regulations (2015) for modifying contracts. The modification satisfies the requirements of the regulation, in particular; (a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents.

With regards to the existing contract, Clause 8 of the terms and conditions allow for modifications provided that such additional services shall be similar to the service. In this modification, the contract is being modified with a similar service to Care Support's existing contract.

(b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor—

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or

(ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract;

With regards to (b), the total contract value for care with Care Support at Paines Brook Court is £1,312,734 and to modify and include care at Dreywood Court for 1 year would cost £653,723. Therefore, the modification will not exceed 50% of Care Support's original contract.

However, Legal has advised that this modification may not meet all the conditions stipulated in Regulation 72, in particular section c (i) that states exemption if, 'the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen'. According to Legal advice, this is not unforeseen because there is provision in the terms and conditions of the contract for each party to terminate the contract which means that both parties could have foreseen the termination of the contract. However, though there is a termination clause in the contract for each party to enact, the timing of the termination has reduced the viable options available to the Council and it is therefore in the best interests of the Council to modify Care Support's existing contract whilst it prepares to go out for tender for all three contracts later this year.

This will require the Council to publish a contract notice as required by the Public Contract Regulations 2015.

The Council therefore proposes modifying Care Support's existing extra care contract that it currently holds for the provision of care at Paines Brook Court. Informally, Care

Non-key Executive Decision

Support has responded positively to this proposal and has expressed an interest in accepting the contract modification. Our preferred option is therefore to formally approach Care Support and agree to modify its contract once this decision has been approved.

OTHER OPTIONS CONSIDERED AND REJECTED

1. **Do nothing and let the contract expire:** If the contract is not modified, the Council runs the risk of having no service when the notice period ends in May 2017. This option is not practical as the local authority has a statutory duty to provide support and services to the residents of the scheme. In addition, this could lead to reputational risk for the Council, the under supply of care and support at the Dreywood Court housing scheme which could lead to safeguarding issues for adults with care and support needs. Furthermore, care workers could leave or possibly be laid off due to uncertainty over their future work that will affect delivery of care in the service.
2. **Tender for a new contract:** Whilst it would be technically possible to undertake an accelerated tender exercise, it would not allow sufficient time to review the current service and identify improvements for going out to the market. If the contract was for a period of 9-12 months it would be of low interest to the market due to the resources required to implement a short term contract. If the contract was longer term it would mean the service at the Dreywood Court extra care scheme would be on a different timescale to the other two contracts at the extra care schemes at Paines Brook and at St Ethelburga. In addition, it would not fit with the Council's strategic approach to go out to tender for all three extra care housing schemes together with contracts commencing April 2018.

PRE-DECISION CONSULTATION

Stakeholders in the Council and current care providers through meetings, project groups and one to one discussions.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: John Green

Designation: Head of Joint Commissioning

Signature:



Date: 06/03/2017

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. The report proposes necessary modifications of the current Paines Brook Court contract to provide additional services under the terms and conditions of the existing contract. The reasons for the additional service provision is set out within the body of the report and shall not be repeated here. This is to ensure that there is no break in the service provision to individuals who benefit from these services and to whom the Council is exercising a duty or power towards.
2. The Care Act 2014 ("the **2014 Act**") has been in effect since April 2015 and places a number of general duties on the Council when it is exercising functions under the 2014 Act. They include:
 - i. To promote an individual's well-being. Well-being is defined in the 2014 Act and includes control by the individual over day-to-day life. In exercising this general duty the Council must have regard to the importance of preventing or delaying the development of needs for care and support as well as and the importance of the individual participating as fully as possible.
 - ii. To promote integration of care and support. The statutory guidance supporting the Act includes guidance for Council departments working more closely together and in a joined up manner.
 - iii. To establish and maintain a service for providing people in its area with information and advice relating to care and support. This service should include information about the choices and types of care and support available, choices of providers available and how to access the care and support.
 - iv. To promote diversity and quality in the provision of services within the locality.

Under this section the Council must ensure that commissioning and procurement practices deliver the services that meet the requirements of the Act.

3. The 2014 Act replaces the notion of FACS (Fair Access to Care Services) eligibility and replaces this with a national eligibility threshold. That threshold is set out in the Care and Support (Eligibility Criteria) Regulations 2014, which came into effect at the same time as the 2014 Act. This threshold will need to be taken into account through the proposed procurement exercises to ensure that services are available which assist in meeting the legal duty of the Council under the 2014 Act.
4. Section 5 of the 2014 Act places a general duty on the Council to promote the efficient and effective operation of a market in services for meeting care and support needs in its area. This is commonly known as 'market shaping' and 'commissioning'. The Council must facilitate a local market that offers a diverse range of high quality and appropriate services. The proposals in this report align with the Council's general duty.

5. The Council has a duty to continue to meet the needs of an adult and support for any carers in the event of provider failure in accordance with section 48 of the 2014 Act and the Care and Support (Business Failure) Regulations 2015 (SI-2015/301). The proposals in this paper shall assist in avoiding any temporary duty arising upon the Council.
6. Health, social and other related services fall within the Light Touch Regime (LTR) under Chapter 3, Section 7 of the Public Contracts Regulations 2015 ("**Regulations 2015**"), as set out in Schedule 3 for contracts relating to health, social and other related services. Services subject to the LTR, with a contract value that exceeds the current threshold of £589,148 is subject to the full requirements of Regulations 2015. The light touch regime provides an open and transparent process for procuring health, social and other related services but allows significant flexibility in the way that process is designed and implemented. The contracting authority can use its own processes and award criteria in a way that best suits the particular purpose and specific outcomes sought. The proposed contract modification for the services set out within the body of this report fall within the LTR.
7. There is a risk of legal challenge to the proposed modification of the current as set out in the Statement of the Reasons for the Decision section of the report. The risk is a finding by a court that the modification does not meet all of the regulation 72 requirements, and is therefore in breach of Regulation 2015. The weakest link is the regulation 72(c)(i) which deals with foreseeability of the event that led to the modification. The risk is low as the Council has, arguably, a pragmatic reason for requiring this short term contract and has some basis, by reason of the preparatory steps taken, that it is not the Council's long term intention to avoid competition. Regulation 72(3) requires the publication of the modified contract in accordance with regulation 51 (Form and manner of sending notices for publication at EU level).
8. The Council should note that it is required by the Public Services (Social Value) Act 2012 to consider how its procurement activities might secure the improvement of the economic, social and environmental well-being of the London Borough of Havering. The Council should be satisfied that due regard will be given to these duties for the intended modification of the Paines Brook Court contract.
9. Any change in provision or services should be considered in accordance with the public sector equalities duty under the Equalities Act 2010, which requires the Council when exercising its functions to have 'due regard' to the need to eliminate discrimination (both direct and indirect discrimination), harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. The Council should perform a proportionate equality analysis before determining its preferred procurement option and prior to any changes being made. It is likely that consultation with service users, service users' families and other stakeholders will need to take place in order to understand

potential impacts.

Any consultation carried out for the purposes of assessing the impact of service changes should comply with the following criteria: (1) it should be at a time when proposals are still at a formative stage; (2) the Council must give sufficient reasons for any proposal to permit intelligent consideration and response; (3) adequate time must be given for consideration and response; and (4) the product of consultation must be conscientiously taken into account. The duty to act fairly applies and this may require a greater deal of specificity when consulting people who are economically disadvantaged. It may require inviting and considering views about possible alternatives.

Derron Jarell | Senior Procurement Solicitor | Legal Services

FINANCIAL IMPLICATIONS AND RISKS

The contract modification will be funded through the Adult Social Care budget within Adult Community Commissioning (A34060). This is an existing commitment of £653,723.00 for one year, for which budget already exists.

Falil Onikoyi | Interim Strategic Finance Business Partner

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

There are no HR implications or risks directly affecting the Council or its workforce that can be identified in relation to this decision

Cheryl Graham | Strategic HR Business Partner

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The modification of this contract will enable the Council to continue to achieve positive outcomes in the service provision for older people living in wards in the borough with levels of social isolation, low income deprivation and poorer health outcomes.

Diane Egan | Community Safety and Development Manager

BACKGROUND PAPERS

Sanctuary Care Termination Letter



Sanctuary letter 6
Dec 2016 notice.pdf

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Details of decision maker

Signed

Name:

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Andrew Beesley, Committee Administration & Interim Member Support Manager in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____