

Notice of NON KEY Executive Decision

Subject Heading:	Approval to waive one of the Council's Contract Procedure Rules for the tender of Homecare Services
Cabinet Member:	Councillor Jason Frost, Cabinet Member for Adult
SLT Lead:	Barbara Nicholls, Director for Adult Services
Report Author and contact details:	Sandy Foskett, Commissioner and Projects Manager, Sandy.foskett@haverling.gov.uk
Policy context:	At a local level, this contract supports the Council to meet its Communities Theme priorities in its Corporate Plan 2019/20. This plan sets out how the Council intends to invest and transform the borough with an emphasis on improving the lives of vulnerable children, adults and families. In summary, this service ensures the Council fulfils its aim of ensuring that the needs of the most vulnerable are met and that people are supported to be healthy and active.
Financial summary:	The estimated spend on home care during this contract will be at least £54m against which 5% efficiency savings would be required as part of contract review. The proposed approach will not identify these efficiencies as part of the contract review but will require arrangements

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	to be put in place to implement, manage and monitor savings as part of the annual hourly rate review process.
Relevant OSC:	Individuals
Is this decision exempt from being called-in?	No

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

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This decision paper seeks approval to waive rule 18.4 of the Contract Procedure Rules (CPR) requiring tenders to be evaluated against pre-determined of 70:30 best price-quality ratio weighting in order to allow the tender to be evaluated on 100% quality basis for the tender of Homecare Services. This does not mean there is no evaluation of price. This is done through a separate process of annual analysis of the market and its sustainability, providing more scrutiny of the rates than would be the case if it was only evaluated when contracts were renewed. It is therefore potentially misleading if, by seeing that this applies 100% quality, that we are not also looking at cost on a regular and rigorous basis.

AUTHORITY UNDER WHICH DECISION IS MADE

Waiver

CPR 14 (Waivers)

- 14.1 No exception to these Rules shall be permitted except upon approval by an individual Cabinet member using an Executive Decision or by some other provision in this Rule. The report shall set out the background, the rule being waived, the reasons the waiver is required, how value for money will be demonstrated, any legal or financial risks or implications and shall be approved by the Director of Legal and Governance and the Chief Executive.
- 14.2 Authority to waive any provision contained in CPR will only be permissible if it does not infringe EU or National legislation and is subject to the Council's Scheme of Delegation.

STATEMENT OF THE REASONS FOR THE DECISION

The Council is intending to commence a competitive tender process to recommission Homecare Services. The tender is due to be published at the end of January 2022 and contracts awarded in July 2022.

The contracts are commencing on 1 August 2022. The estimated cost of homecare over the next four years is £54m. Homecare agencies are paid on an annual rate that is reviewed every year and goes through a separate approval process. This has to take into account several factors including sustainability of the market and competition for carers within the market. Therefore financial aspects are considered through a separate process.

The Care Act places responsibilities on local authorities for preventing, reducing or delaying needs, through providing interventions such as the provision of formal care

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such as meeting a person's needs in their own home. The commissioning of homecare services is how the Council meets this responsibility.

On a daily basis vulnerable people are discharged from hospital who need packages of care to enable them to go home and live safely. The main benefit of homecare is that it means people can remain independent at home for longer. This means better outcomes for residents and delays the need for more costly residential care.

The Council needs to ensure the sustainability of the homecare market, due to the outcomes it delivers and the reduction/delay of more costly care packages, whilst balancing against limited resources.

The rates payable for homecare are set at a fixed price of £18.58 per hour at present. This is paid at a minimum of £9.29 for the first half hour and then at a minute-by-minute rate beyond half an hour. This has been determined through extensive stakeholder engagement and research into the price of homecare

Setting a rate which supports the market means providers will be able to deliver a better quality service for residents. The benefit here is better outcomes for residents, reductions in time and resource spent on resolving quality issues. Paying less can result in poor quality services. There are examples where this has been an issue in other Authorities where successful bidders with the lowest rate for homecare have not been able to sustain the service at that cost and have either left the market or requested significant increases. This causes significant impacts for the placing authority and those receiving care.

Homecare offers considerable employment opportunities in the borough, adding social value. Skills for care estimate there are 8100 social care jobs in Havering and the largest proportion of these will be people working in homecare.

If we try to reduce the payments we make to homecare providers it could reduce quality and capacity thereby increasing costs in other parts of the system. Having a stable, strong market is good for residents but also will provide benefits in preventing escalation into more costly forms of care, for example residential care.

Home care agencies are paid on an annual rate that is reviewed every year and goes through a separate approval process. This has to take into account several factors including value for money; sustainability of the market and competition for carers within the market. It also has to pay due regard to the councils budgetary position. 5% savings have been identified as a savings target for contract renewal but this would mean a much less robust review timescale than the annual review that will take place for homecare. The annual review will therefore recognise the 5% figure and look to see how that might be delivered. It is not easy to do however with a demand led service and there are conflicting pressures that need to be taken into account, but this will be considered as part of the 22/23 annual review in partnership between the commissioning, finance and ASC operational services before the delegated decision on rates is made. Spend reductions can be achieved by limiting rates paid or by managing demand or, indeed, through change to practice like Better Living. Competition for individual packages on price is not part of the current approach and the risk with doing so is, among other things, a 'race to the bottom' for providers and

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unsustainable rates which lead to risk in regard to long term provision of quality services to very vulnerable people. All of these things will have consequences, limitations and knock on effects that have to be considered and balanced out. The change of contractual position that this exercise is looking to implement does not impact on the council's ability to do the upcoming annual reviews.

The DPS that has been in place for home care has established, over a period of years, a high quality stable set of providers who will be evaluated on already set quality criteria and it is likely they will continue to provide home care on a daily basis to thousands of homes in the borough. It is therefore somewhat misleading if it is thought that the evaluation is based on 100% quality without considering financial aspects of the services which will be robustly considered in the aforementioned annual review process.

This report proposes that it is in the best interest of the Council to waive the Council's Contract Procedure rules and ensure the tender evaluation focuses on examining how bidders will deliver their proposed services by assigning a 100% Quality weighting with price evaluated through a separate annual process.

OTHER OPTIONS CONSIDERED AND REJECTED

Do nothing and evaluate providers when letting the contracts at 70% price 30% quality: This option was rejected because price is evaluated annually enabling more regular scrutiny of the rate we are paying. This annual review takes into account many factors such as the sustainability of providers, the need to operate within a competitive market and the pressure on local authority budgets.

PRE-DECISION CONSULTATION

The pre-decision consultation has involved engagement with key stakeholders including, Head of Joint Commissioning, Legal, Procurement and Finance business partners.

Gateway Review Group endorsed the recommendations in this report at the meeting of 15th December 2021.

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

Name: John Green

Designation: Head of Joint Commissioning Unit

Signature:

A handwritten signature in black ink, appearing to read 'J. Green', is written over a light blue horizontal line.

Date: 20.12.21

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

Section 1 of the Localism Act 2011 gives the Council a general power of competence to do anything that an individual can do subject to other statutory provisions limiting or restricting its use of such power. The recommendation in this report is compatible with this statutory power.

The Public Contract Regulations confirm that contracting authorities have flexibility of choice in selecting their price/quality evaluation model. Authorities must base the award on the Most Economically Advantageous Tender. This may be identified by fixing the cost so that operators compete on quality only. The 100% quality weighting must be advertised at the commencement of the procurement procedure.

Contract Procedure Rule 14.1 provides that a waiver of the Rules is permissible if approved by an individual Cabinet member using an Executive Decision, with a report setting out the background, the rule to be waived, the reasons why the waiver is required, how value for money will be demonstrated, any legal or financial risks or implications and with the approval of the Director of Law and Governance and the Chief Executive.

Furthermore, Officers have satisfied themselves that the waiver requirements have been met in this instance and that this decision will result in the best value for the Council overall.

FINANCIAL IMPLICATIONS AND RISKS

The estimated total spend on home care is currently £13.4m per year across all adult services and this is likely to increase over the next few years. Ongoing increases in the demand for services and limited financial resources mean the Council will need to meet care needs in the most cost effective way. High quality home care services allow care packages to be delivered far more cost effectively than residential care while also maintaining independence for the individual service user.

The draft 2022/23 budget includes a specific “Better Living” savings target of £1.5m and this is likely to see increased spend on home care and a reduction in more expensive residential care spend.

If current levels of spend continue the total value of this contract over a 4 year period will therefore be at least £54m against which a 5% efficiency saving would be approximately £2.7m.

The 100% quality approach provides a sustainable market in the short term, but does not immediately address value for money or affordability issues over the life of the contract as the initial contract rate per hour will be pre-determined at 2022/23 prices.

The proposed contract review process is on the basis that value for money savings will be identified and achieved on an annual basis, rather than through an upfront financial evaluation to identify efficiencies to be delivered over the lifetime of the contract. The annual savings will be achieved through the annual review of the contract rate which takes into account value for money alongside market sustainability and other pressures such as carer availability.

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The annual review process will therefore be key in reaching a balanced position where the market is sustained but required value for money savings are achieved.

In order to track progress against the required value for money saving, arrangements will need to be put in place to identify annual value for money savings achieved each year and cumulatively during the contract period. These arrangements will be managed and monitored by the Director of Adult Services under delegated powers and reported as part of contract management reporting arrangements as required.

The key risk is that on an annual basis it will not be possible to sustain the market and deliver required value for money savings, which would either create potential budget pressure or require the quality of service to be reduced to deliver value for money reductions.

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

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

BACKGROUND PAPERS

None

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

Delete as applicable

~~Proposal NOT agreed because~~

Details of decision maker



Signed

Name: **Councillor Jason Frost**

Cabinet Portfolio held: **Cabinet Member for Health and Adult Care Services**

CMT Member title:

Head of Service title

Other manager title:

Date: **20/01/2022**

In consultation with:

Signature:

Director of Legal and Governance

Signature:

Chief Executive

Lodging this notice

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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 _____