

# North Tyneside Council

## Report to Cabinet

### Date: 11 April 2016

#### ITEM 7(d)

Title: Residential and  
Nursing Care Homes  
Contract

Portfolio(s): **Adult Social Care**

Cabinet Member(s): **Councillor Alison  
Waggott-Fairley**

#### Report from Service

Area: **Health, Education, Care and Safeguarding**

Responsible Officer: **Jacqui Old** (Tel: (0191) 643  
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Wards affected: **All Wards**

### PART 1

#### 1.1 Executive Summary:

The purpose of the report is to seek Cabinet approval to undertake a procurement exercise to set up a new Dynamic Purchasing System for the provision of residential and nursing care provided in a care home setting. A Dynamic Purchasing System is similar to a Framework Agreement but will enable new providers who meet the minimum requirements to be added at any point during its lifetime. The Dynamic Purchasing System will enable the Authority to contract with any care home provider in the borough that accepts the fee structure proposed by the Council and who meets the standards set out in the contract and the specification.

The new Dynamic Purchasing System will replace the current contractual arrangements in place with residential and nursing care homes in the Borough, which expire in August 2016. The current contracts cover all existing placements that have been made to enable the Authority to meet its statutory duty in respect of individuals who have been assessed as requiring residential or nursing care following a Community Care Assessment.

This procurement will be a joint exercise with the NHS, North Tyneside Clinical Commissioning Group (CCG) and the contract will also cover the provision of Funded Nursing Care and NHS Continuing Health Care.

Approval to proceed with a procurement exercise is required, in accordance with the Authority's Contract Standing Orders, as the estimated total cost of the services to be procured will exceed £500,000 over the life-time of the contract.

## **1.2 Recommendation(s):**

It is recommended that Cabinet authorise the Head of Health, Education, Care and Safeguarding, in consultation with the Head of Law and Governance and the Head of Finance to:

- (1) Undertake a Public Contract Regulations 2015 compliant procurement exercise to establish a new Dynamic Purchasing System for residential and nursing care home providers, as outlined in section 1.5.3 of this report.

## **1.3 Forward Plan:**

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 7<sup>th</sup> March 2016.

## **1.4 Council Plan and Policy Framework**

1.4.1 This report relates to the following priorities contained within the 2014 - 18, Our North Tyneside Plan:

- (a) Our People will be listened to by services that respond better and faster to their needs
- (b) Our People will be supported to achieve their full potential
- (c) Our People will be supported to live healthier and longer lives
- (d) Our People will be cared for and kept safe if they become vulnerable.

1.4.2 The services contribute to the achievement of the Creating a Brighter Future Programme priorities of:

- (a) Cared for, safeguarded and healthy.

1.4.3 In addition, the services will specifically contribute positively towards the outcome of:

- (a) Better managing demand for services so people access the right services at the right time.

## **1.5 Information:**

### **1.5.1 Background**

There are currently 30 care homes in the Borough registered with the Care Quality Commission (CQC) to provide residential and nursing home care to older people. The total number of registered beds is 1,431 and occupancy levels vary between 80 – 85%. This means that on average there are around 1,200 people living in care homes in North Tyneside at any one time. Of those 1,200 placements, the Authority is responsible for funding 607 placements, with the remainder being a mixture of:

- individuals who are funded by North Tyneside Clinical Commissioning Group and who are eligible for NHS Continuing Health Care funding;
- individuals who fund their own care home placements (Self-funders); and
- individuals who are funded by other local authorities.

Section 30 of the Care Act 2014 (and the Care and Support and After-care (Choice of Accommodation) Regulations 2014) implements the important principle (enshrined in the National Assistance Act 1948 (Choice of Accommodation) Directions 1992), of the right

of an individual, subject to certain conditions, to be provided with their preferred residential accommodation, i.e. to live in the residential and nursing home of their choice.

Whilst Adult Social Care must seek to ensure Best Value in terms of the procurement of residential and nursing care, a Dynamic Purchasing System will provide some structure to the existing market, with the Authority setting a pre-determined price for care home placements and the right of the individual in terms of choice of placement.

The Choice of Accommodation Direction, facilitating individual choice of placement, means that it is not possible to procure this service based on price alone, nor to restrict the number of care homes with whom the Authority contracts, subject to them meeting minimum requirements in terms of health and safety, standards, registration etc.

It is therefore preferable for the Authority to have in place a contractual arrangement or mechanism to contract with all care homes in the Borough, who are suitably registered with the CQC to provide this service.

### 1.5.2 Existing contractual arrangements

The Authority currently contracts with all residential and nursing care home providers in the Borough, who are suitably registered with the CQC for the provision of personal care and accommodation.

This includes: permanent placements; short term placements; emergency placements; and respite provision.

North Tyneside CCG currently contracts with all nursing care home providers in the Borough, who are suitably registered with the CQC for the provision of:

- NHS Continuing Health Care; and
- Funded Nursing Care.

Contracting arrangements with all in-borough providers of residential and nursing home care, who are registered with CQC to provide regulated activities, is through a pre-purchase agreement between the Authority and Providers. Under this pre-purchase agreement there is no guarantee of the quantity of placements (if any) that will be made by the Authority and the Authority pays a pre-agreed rate per placement made, dependent upon placement type.

The duration of placements is unpredictable and varies between a short period of time or a number of years. Overall expenditure on residential and nursing placements for the period of the proposed Dynamic Purchasing System (August 2016 – August 2019) is forecast to be approximately £54m for Adult Social Care placements, i.e. £18m per annum and £10.5m for NHS Continuing Health Care placements, i.e. £3.5m.

NHS Continuing Health Care placements are currently subject to contract with, and funded by, the North Tyneside Clinical Commissioning Group.

### Quality Monitoring

Current contracts are monitored via a Quality Payment Scheme that links the level of fee paid to the quality of service provided, and which is determined by an annual quality assessment. This is a joint arrangement with the CCG, with the CCG taking a lead in terms of monitoring the quality of clinical provision including NHS Continuing Health Care

placements and the Authority leading with the quality assurance in respect of the residential elements of both residential and nursing home care.

This arrangement will continue under the proposed new contractual arrangements, which will align contractual and joint monitoring arrangements under one contract.

### 1.5.3 Proposed contractual arrangements

The Authority proposes to undertake a procurement exercise to set up a new Dynamic Purchasing System for the provision residential and nursing care provided in a care home setting. The Dynamic Purchasing System will be a joint contract between the Authority and the CCG and providers. The Dynamic Purchasing System will cover the provision of personal care, Funded Nursing Care and NHS Continuing Health Care.

NHS Continuing Health Care placements will continue to be funded by the North Tyneside Clinical Commissioning Group.

To ensure consistency and transparency in terms of contracting and value for money it is proposed that the Dynamic Purchasing System be put in place to comply with the Public Contracts Regulations 2015. A Dynamic Purchasing System will enable the Authority to contract with any care home provider in the borough that accepts the fee structure proposed by the Council and who meets the standards set out in the contract and the specification for:

- Personal care
- Funded Nursing Care
- NHS Continuing Health Care.

It is proposed that a Dynamic Purchasing System (DPS) is used rather than a Framework Agreement, as this will enable new providers who meet the minimum requirements to be added to the DPS during its lifetime.

### 1.5.4 Social Value

The Public Services (Social Value) Act 2012 requires public bodies to consider how the services they commission and procure might improve the economic, social and environmental well-being of the area. Providers will be asked to work with the Authority around Social Value as part of the tender evaluation process.

The relevant social benefit priorities to this procurement exercise are:

- Improved social inclusion for residents;
- Improved local training or employment opportunities;
- Supporting our local population to keep well;
- Improved healthy life expectancy;

### 1.5.5 Indicative Timeline

Subject to Cabinet approval, the new Dynamic Purchasing System will be in place to commence on the 1<sup>st</sup> of August 2016. The contract duration will be for 36 months with an option for the Authority to extend for a further 24 months.

## **1.6 Decision options:**

### Option 1

Agree the recommendation set out at section 1.2.

### Option 2

Not agree the recommendation set out at section 1.2.

Option 1 is the recommended option.

## **1.7 Reasons for recommended option:**

Option 1 is recommended for the following reasons:

- (a) Current contracts expire in August 2016 and in order to comply with procurement regulations, the Authority must undertake a procurement exercise and put new contracts in place.
- (b) The Dynamic Purchasing System will replace an outdated and inappropriate contractual process.
- (c) The Dynamic Purchasing System will enable the Authority and the Clinical Commissioning Group to jointly commission residential and nursing care home placements.

## **1.8 Appendices:**

None.

## **1.9 Contact officers:**

Sheila Watson, Strategic Commissioning Manager, People Based Commissioning,  
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## **1.10 Background information:**

None

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

Any procurement exercise will need to take account of the Authority's responsibilities for Market Shaping, Market Management and Market Sustainability as set out within the Care Act 2014. This includes ensuring that it does not take any actions which may threaten the sustainability of the market as a whole for example by setting fee levels below an amount which is sustainable

for a provider in the longer-term. This requirement includes the need to take into account the impact of the introduction of the National Living wage from 1 April 2016.

Budget proposals agreed by Council for 2016/17 include some contingency for the pressures that the National Living Wage will bring.

The budget for these costs is a significant one which includes savings targets agreed as a part of the 2016-17 Budget agreed by Council on 18 February 2016. Spend in these services is driven by demand and the services must be delivered where there is a qualifying assessment of need. As such this budget is subject to a significant level of unpredictability and is therefore kept under close scrutiny. Any indication of pressure or potential pressure will be reported to Cabinet and Council routinely as part of the budget monitoring process.

## **2.2 Legal**

As stated in section 1.5.1 of this report, when the Authority, in accordance with its social services responsibilities under s18 – 20 Care Act 2014, make placements in care homes or care homes providing nursing care, subject to specified conditions, any preference expressed by the individual for a particular type of accommodation should be met (s30 Care Act 2014)

Further to that the Care and Support and After-care (Choice of Accommodation) Regulations 2014, confirm that within reason, individuals should be able to exercise genuine choice over where they live.

By setting up a Dynamic Purchasing System the Authority would have a minimum standard for all providers to adhere to as well as a clear cost structure. Within the procurement process ultimate individual choice of provision will be confirmed.

The Authority will comply with the provisions of the Public Contracts Regulations 2015 and the Authority's Contract Standing Orders when procuring the service.

## **2.3 Consultation/community engagement**

### **2.3.1 Internal Consultation**

The process of updating the service specification is being done in close conjunction with key colleagues within: Adult Social Care and the Clinical Commissioning Group.

### **2.3.2 External Consultation/Engagement**

As there is no change to existing service provision and the exercise is to renew contractual arrangements which are due to expire, no extensive consultation has taken place. Consultation will be undertaken with Providers at a Provider Forum in March.

## **2.4 Human rights**

The proposals contained in this report relate to the following human rights:

- Right to liberty and security
- Right to respect for private and family life
- Freedom of thought, belief and religion
- Freedom of expression
- Protection from discrimination

## 2.5 Equalities and diversity

The proposed Dynamic Purchasing System will stipulates that the Provider will ensure compliance with the Equality Act 2010 and the Public Sector Equality Duty and therefore will not unlawfully discriminate against employees or service users with protected characteristics. The Dynamic Purchasing System will also stipulate that the Provider must ensure that its workforce receives appropriate training in order to understand their roles and responsibilities under the Equality Act e.g. implementing Equal Opportunity requirements, and to promote equality and prevent discrimination.

An Equality Impact Assessment was carried out on 08 March 2016 and is available [here](#). The procurement process and on-going performance monitoring against the requirements set out in the service specification, will require providers to provide demographic data, including relevant protected characteristics will be used to assess and monitor the values and practices of providers in relation to equal opportunities.

## 2.6 Risk management

Risks have been considered and evaluated. Financial risks associated with market management have been indentified and will be managed through the existing risk register. Actions that could be taken to mitigate identified risks have been identified. During the process of contracting, risks will be discussed, evaluated and actioned as appropriate.

Any risks associated with the process of putting new contracts in place have been mitigated through the employment of the NEPO portal as the mechanism to ensure that an open and transparent procurement process is in place.

## 2.7 Crime and disorder

There are no crime and disorder implications arising from this report.

## 2.8 Environment and sustainability

There are no environment and sustainability implications arising from this report.

## PART 3 - SIGN OFF

- Deputy Chief Executive
- Head(s) of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy