

Novation of a personal care and support Framework Agreement
Councillor Wayne Fitzgerald, Deputy Leader of the Council and Cabinet Member for Integrated Adult Social Care and Health
October 2017
Deadline date: N/A

Cabinet portfolio holder: Responsible Director:	Councillor Wayne Fitzgerald, Deputy Leader of the Council and Cabinet Member for Integrated Adult Social Care and Health Wendi Ogle-Welbourn, Corporate Director, People and Communities
Is this a Key Decision?	YES If yes has it been included on the Forward Plan: YES Unique Key decision Reference from Forward Plan: KEY/16OCT17/02
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO
Is this a project and if so has it been registered on Verto?	NO

R E C O M M E N D A T I O N S

The Cabinet Member is recommended to:

1. Authorise entering into a Deed of novation to novate the Council's personal care and support Framework Agreement and all existing call off contracts with Housing and Care 21 to Carewatch Care Services Limited.

1. SUMMARY OF MAIN ISSUES

- 1.1 This report seeks the Cabinet Member's approval of the recommendations to ensure that the necessary documentation is entered into to novate the Council's personal care and support Framework Agreement and all existing call off contracts from Housing and Care 21 to Carewatch Care Services Limited from.

2. PURPOSE OF THIS REPORT

- 2.1 This report is for the Cabinet Member for Integrated Adult Social Care and Health to consider exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (b).

3. **TIMESCALE**

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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4. **DETAILS OF DECISION REQUIRED**

- 4.1 The decision maker is asked to authorise entering into a Deed of novation to novate the Council's personal care and support Framework Agreement and all existing call off contracts with Housing and Care 21 to Carewatch Care Services Limited.

5. **CONSULTATION**

- 5.1 Service users who were supported by Housing and Care 21 were informed of the change in care provider in advance. People may request to receive support from another provider on the framework and direct payments remain an option for anyone wishing to receive their support from an alternative provider who is not on the Framework.

6. **ANTICIPATED OUTCOMES**

- 6.1 The anticipated outcome is that Housing and Care 21's personal care and support Framework Agreement with the Council, and all existing call off contracts under that Framework Agreement, will be formally novated to Carewatch Care Services Limited. The rights and obligations of Housing and Care 21 under the Framework Agreement and existing call off contracts, from the effective date of the deed of novation, will be transferred to Carewatch Care Services Limited. The approval of the recommendation will mean that Carewatch Care Services Limited will be a provider on the Framework.
- 6.2 Members of Housing and Care 21's staff transferred to Carewatch Care Services Limited under the Transfer of Undertakings (Protection of Employment) Regulations 2006, providing continuity and consistency within a much needed service for the residents of Peterborough.

7. **REASONS FOR RECOMMENDATIONS & ANY RELEVANT BACKGROUND INFORMATION**

- 7.1 The Council has Framework Agreements with a number of providers for the provision of personal care and support (homecare) services. There are no fixed contracted hours with the providers on the Framework Agreements, and instead the Council calls off from the Framework in relation to specific packages for service users as and when required, and then pays the providers in accordance with the contracted hourly rate.
- 7.2 The Framework Agreements have an initial term of 20 January 2014 to 19 January 2016 and provide the option to extend by a further period of 2 years (by two 12 month periods). CMDN JAN14/CMDN/01 provided authority for the Council to enter into the Framework Agreements and also authorises the option to extend the contracts for two further 12 month periods (up to 19 January 2018). The expenditure for the extension periods were approved by CMDN JAN16/CMDN/07.
- 7.3 Housing and Care 21 have been a provider on the personal care and support Framework Agreement since January 2014. and support 55 people to remain in their own home, at an approximate annual cost of £400,000.
- 7.4 Housing and Care 21 informed the Council that they intend to concentrate investment in their homecare business in four key hub areas nationally. Peterborough does not fall within these identified hub areas.

- 7.5 Housing and Care 21 sold part of their business and transferred the operation of contracts which fall outside of their four key hub areas, to Carewatch Care Services Limited some time ago and wish to enter into Deed of novation to novate the personal care and support Framework Agreement and all existing call off contracts, for this purpose to formalise the transfer with the Council.
- 7.6 Entering into the Deed of novation will result in a change of provider which is a modification of the Framework Agreement and the call off contracts. Regulation 72 of the Public Contracts Regulations 2015 confirms that a framework agreement may be modified without a new procurement procedure where a new provider replaces the one who had initially been awarded the framework agreement, as a consequence of universal or partial succession into the position of the initial provider, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the framework agreement and is not aimed at circumventing the application of the Regulations.
- 7.7 Evidence has been provided demonstrating that there was a genuine corporate restructuring and that Carewatch Care Service Limited fulfil the criteria for qualitative selection initially established (when the Framework Agreements were originally procured). The novation will not entail any other modifications to the Framework Agreement.
- 7.8 Members of Housing and Care 21's staff transferred to Carewatch Care Services Limited under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), ensuring consistency for service users currently being supported by this service. Direct payments remain an option for anyone wishing to receive their support from an alternative provider.
- 7.9 Transferring all care packages (call off contracts) provided by Housing and Care 21 to one provider enables consistency for service users, to increase the likelihood that they will be able to continue to receive care and support from their previous carers, due to the carers transferring under TUPE to the same provider. If Housing and Care 21's existing care packages were to be distributed to various providers on the Framework, then there would be a risk that service users may not continue to receive care from their existing carers.
- 7.10 It is vital to ensure the care and support needs of vulnerable adults continue to be met and novating the Framework Agreement and call off contracts to one provider avoids the risks associated with requesting several existing providers on the Framework to commence the care packages, as freeing up capacity in the current market to meet the required demand may be problematic.
- 7.11 Entering into the Deed of novation will allow Carewatch Care Services Limited to provide the required services in respect of Housing and Care 21's existing packages of care (call off contracts), and also allow the Council to call off from the Framework Agreement in relation to specific packages for service users as and when required from Carewatch Care Services Limited in the future, providing additional capacity in the current market.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The other option that was considered is to terminate all existing packages of care and re-let them with another provider(s) under the framework agreement. Housing and Care 21 indicated that they would cease their operations in Peterborough, and therefore them continuing with the existing packages of care was not an option. This would mean that alternative care providers would need to be sourced by the Council for care packages exceeding 550 care hours per week. Capacity has been an issue in recent months with alternative providers on the personal care and support (homecare) Framework and it may be difficult to identify providers who can meet demand within the required timeframe.

- 8.2 Do nothing: It is understood that Housing and Care 21 sold part of their business to Carewatch Care Services Limited some time ago, and that their staff and operations have already transferred. If the deed of novation is not put in place to formalise and document the novation of the Framework Agreement and call off contracts, and nothing is done, this means the documentation will not represent what is occurring in reality and could represent a risk to the Council of not having any formalised written contractual documentation in place with Carewatch Care Services Limited.

9. IMPLICATIONS

9.1 Financial Implications

The Framework Agreement does not impose a fixed volume of service and there are no fixed contracted hours with providers. Instead services for specific packages of care are called off from the Framework Agreement, as required. There is therefore no fixed financial commitment from the Council to a certain volume of work or fixed annual contract values. Estimated maximum expenditure under this particular Framework Agreement is £430,000 per annum. This will be funded from adult social care budgets. The approval of the recommendations will not have any impact on the estimated maximum expenditure detailed within JAN16/CMDN/07 of £11,000,000 across all of the Council's personal care and support Framework Agreements, which remains accurate.

9.2 Legal and Procurement Implications

9.2.1 The approval of the recommendations to novate the Framework Agreement and existing call off contracts from Housing and Care 21 to Carewatch Care Services Limited supports the Council in complying with its statutory duties under the Care Act 2014.

9.2.2 Entering into the Deed of novation will allow the Council and Carewatch Care Services Limited to enforce the terms of the Framework Agreement against each other directly and transfers the rights and obligations of Housing and Care 21 from the effective date of the deed of novation to Carewatch Care Services Limited.

9.2.3 As Housing and Care 21's Framework Agreement was awarded under the Public Contracts Regulations 2006, following an OJEU procurement process, the proposed modification to be made by entering into the Deed of novation is subject to Regulation 72 of the Public Contracts Regulations 2015, which sets out the circumstances when modifications to a Framework Agreement (which include replacing the provider) can be made without a new procurement procedure being required.

9.2.4 Advice from Legal Services has been obtained in relation to the proposed modification, in respect of Regulation 72 of the Public Contracts Regulations 2015, and a credit check on Carewatch Care Services Limited has been carried out by Financial Services, in accordance with the Council's Contract Rules.

10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

10.1 None

11. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

11.1 CMDN JAN14/CMDN/01
CMDN JAN16/CMDN/07