



Report of the Head of Adult Services

Audit Committee – 9 April 2019

Social Care Contracts – Update at April 2019

Purpose: To update on Adult Services Social Care compliance with Corporate CPR's and Public Contracts Regulations 2015

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For Information

Background

Internal Audit on Social Care Contracts – Update at April 2019

1. Introduction

- 1.1 As a result of an internal audit on social care contracts carried out in December 2017 an assurance level of moderate was given.
- 1.2 An action plan was developed to address individual contracts identified as non-compliant with corporate CPRs and Public Contract Regulations 2015.
- 1.3 This action plan identified the following actions:
 - Review and update the contracts register to identify the 94 contracts stated as non-compliant;
 - Further develop the People Directorate Work Plan to build on the contracts register and forward plan for the procurement processes to prioritise compliance based on risk;
 - Prioritise re-tendering of contracts with large areas of spend;

- Report quarterly to the People Commissioning Group to enable progress to be monitored.

2. Progress at May 2018

- 2.1 An update report was provided to Audit Scrutiny Committee in May 2018 which confirmed the following:
- 2.2 Of the 94 non-compliant contracts 16 have ended and a programme of work identified to address all areas of non-compliance. The contracts register had been updated to reflect this and monitoring arrangements established via the People Commissioning Group. All actions had been completed.

3. Progress at December 2018

Residential Care Contracts identified as non-compliant

- 3.1 All residential care contracts are now compliant. - This has further reduced the number of non-compliant contracts by 22. An exemption from corporate CPRs has been drafted to reflect legislation that enables service users to choose their own care provider. This will enable direct award of contracts to care homes at the discretion of Director where:
 - i. the decision to award a social care Contract has been made on the Council's behalf (e.g. a court directed order);
 - ii. the award of an emergency social care Contract and/or individual placement if it is considered to be in the interest of the Council or necessary to meet its obligations under relevant legislation and demonstrates Value for Money.
 - iii. residential and nursing care contracts which the Council has a duty to provide if it is considered to be in the interest of the Council or necessary to meet its obligations under relevant legislation and demonstrates Value for Money.

Domiciliary Care Contracts identified as non-compliant

- 3.2 The original December 2017 report highlighted 32 non-compliant contracts. The current register records 12 non-compliant contracts. A further reduction of 20.
- 3.3 Re-procurement of domiciliary care contracts is expected to commence in December this year. This will lead to transfer of business to new providers via legally compliant contracts during Spring 2019.

Supported Living Contracts identified as non-compliant

- 3.4 4 supported living contracts were identified as non-compliant. These areas remain non-compliant but a legally compliant procurement framework has now been created and a re-procurement

programme established. This has been a complex exercise that has involved dividing Swansea into 16 zones for purchasing services in lots of 4, in 4 tranches over a 15 month period. This is scheduled to commence in Jan 2019 and will lead to legally compliant contracts, a more even distribution of spend amongst contracted providers and a more resilient market place.

4. Third Sector and other non-compliant contracts

- 4.1 In December '17 they were 9 contracts reported as non-compliant with third sector organisations and 1 non-compliant internal SLA. Progress in this areas has been slow. Partly due to changes in personnel, staff absences and competing priorities given the relatively low spend on these services. Contract reviews have commenced however and re-procurements strategies are being considered. Timescales for achieving compliant contracts are to be confirmed.

5. **Number of Non-Compliant Social Care Contracts at December '18**

- 5.1 The number of contracts reported as non-compliant reduced from 94 to 30. Every contract currently non-compliant with CPRs or Public Contract Regulations has been reported via a contract waiver to ensure justifications are defensible, risks are manageable and re-procurements arrangements are in place. These arrangements will continue to be monitored by the People Commissioning Group.

6. **Progress at April 2019**

Residential Care Contracts Identified as non-compliant

- 6.1 All residential Care Contracts are compliant (exemption now operates to exclude care homes from contract procedure rules on basis that competitive tendering is not required).

Domiciliary Care Contracts identified as non-compliant

- 6.2 The original December 2017 report highlighted 32 non-compliant contracts. In December 18 the update report highlighted 12 non-contracts. At April 19 there are 14 non-compliant contracts)2 have been contracted via direct award to help meet demand for services pending completion of re-procurement process.
- 6.3 Re-procurement of domiciliary care contracts has commenced as expected. Tender requirements have been advertised. Compliant contracts will be awarded in October '19.

Supported Living Contracts identified as non-compliant

- 6.4 4 supported living contracts were identified as non-compliant. 2 contracts remains non-complaint. A legally complaint procurement framework has now been created and a re-procurement

programme established. Re-procurement via the framework has commenced in January 19. Re-procurement will occur in 4 tranches. Contract awards will occur in May 2019 for tranche 1, September '19 for tranche 2, December '19 for tranche 3 and March 20 for tranche 4.

7. Third Sector and other non-compliant contracts

7.1 In December '17 there were 9 contracts reported as non-compliant with third sector organisations and 1 non-compliant internal SLA. Progress in this area has been slow. Partly due to changes in personnel, staff absences and competing priorities given the relatively low spend on these services. Contract reviews have stalled because of resource and personnel problems. Contract waivers have been submitted for some of these services and the number of non-compliant contracts featuring on the register is 5. Timescales for achieving compliant contracts are to be confirmed.

8. Equality and Engagement Implications

8.1 The Council is subject to the Public Sector Equality Duty (Wales) and must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not

8.2 Our Equality Impact Assessment process ensures that we have paid due regard to the above.

8.3 An EIA screening (Appendix 1) has been undertaken which shows that there are no equality and engagement implications in relation to this report.

9. Legal Implications

9.1 Approximately 21 contracts are non-compliant with corporate CPRs and Public Contract Regulations 2015. Where required, contracts which are non-compliant with CPRs or Public Contract Regulations have or are in the process of being reported via a contract waiver to ensure justifications are defensible, risks are manageable and re-procurement arrangements are in place. Where contracts are granted waivers this has the effect of removing non-compliant status on the contracts register.

10. Financial Implications

- 10.1 Re-commissioning of services to ensure legally compliant procurement processes is likely to have above inflation implications for the unit costs of services concerned (increases forecast to be in the region of £1.6m for 19/20). Strategies are in situ for managing rising costs. If these are not successful additional savings in other areas of Adult Services will need to be identified to comply with the requirements of the Medium Term Financial Plan.

Background papers: None.

Appendices: Appendix 1 – EIA Screening Form