

Meeting:	CMT (Commercial Management Team) and Executive
Meeting date:	13/02/2024
Report of:	Michael Melvin - Corporate Director of Adult Services and Integration (DASS)
Portfolio of:	Councillor Jo Coles - Member for Health, Wellbeing and Adult Social Care

Decision Report: Update For The Commissioning Of The Reablement Service In York And The Incorporation Of The Rapid Response Service

Subject of Report

1. The Council of the City of York (“**CYC**”) has a contract with Human Support Group Ltd. (“**HSG**”) until 31st March 2024 for the provision of Reablement Services. This service is funded by the Better Care Fund (“**BCF**”) and includes an element of Rapid Response.

CYC, also, has a separate agreement with Springfield Healthcare (“**SFH**”) until 31st March 2024 to provide a Rapid Response Service. This service is jointly funded with our North Humber and Yorkshire Integrated Care Board (“**ICB**”) and CYC.

2. Adult Social Care Commissioners were given approval by the Executive on 12th October 2023 to proceed with a competitive tendering process resulting in a new Reablement Service being implemented from 1st April 2024. A copy of the previous report submitted to the Executive in October 2023 is attached to this report as **Appendix D**. The approvals sanctioned are detailed as **Appendix E**.

3. The purpose of this report is to provide the Executive with an update with regards the recommission of the Reablement Services, and to submit to the Executive for approval a new procurement timetable for the recommission of the Reablement Service. The rationale for this is outlined in this report.
4. In addition, this report also seeks approval from the Executive for a 6-month extension to the current Reablement Service contract with HSG up to and including 30th September 2024 to allow Adult Social Care Commissioners time to recommission the Reablement Service in compliance with the proposed timetable, the Council's Contract Procedure Rules (the "**CYC CPRs**") and the Light Touch Regime under Regulations 74 to 76 and Schedule 3 (the "**Light Touch Regime**") of the Public Contract Regulations 2015 (the "**Procurement Regs**"). The rationale for this is outlined in this report.
5. Finally, this report also seeks Executive approval for a proposal to incorporate the Rapid Response Service, currently delivered by SFH, into the Reablement Service and tender both services as one opportunity to the open market. The rationale for this is outlined in this report.
6. The Reablement and Rapid Response services play a crucial role in terms of delivering and enabling CYC to meet its duties under the Care Act 2014, in terms of preventing, reducing, or delaying needs for care and support for all adults including carers; this means to prevent deterioration and reduce dependency on support from others.
7. Subject to the approval of the new procurement timetable and the proposed extension to the HSG Reablement contract, it is anticipated that the new combined Reablement and Rapid Response Service contract would commence on 1st October 2024, and then continue for an initial term of 2-years expiring on 30th September 2026, with an option for CYC to extend the term by a further 12-months expiring on 30th September 2027, and thereafter an option to extend for a final 12-months expiring on 30th September 2028.
8. The specification for the new Reablement Service and Rapid Response services is finalised with all partners contributions incorporated. Other documents to support the procurement process are being developed to enable a tender to be issued on the 27th February 2024 once approvals have been sought and received.

Benefits and Challenges

9. The Benefits and Challenges of re-commissioning the Reablement Service are set out in paragraph 4 and Table 1 of the previous Executive Report attached to this report as **Appendix D**.
10. These continue to apply to the recommissioning of the Reablement Service under the proposed revised timetable in **Appendix A** of this report, including the proposed 6-month extension to the current Reablement Service contract with HSG, and will ensure that CYC will be able to properly engage with the market on the new combined service, allow CYC to dedicate available time and resources over the next 6-months to ensure that a robust, fair, open and transparent tender process is carried out in accordance with the CYC CPRs and the Procurement Regs, to ensure better value for money for local residents, as well as allow sufficient time to transition from the current 2-separate Reablement and Rapid Response Services to the new combined service (including, but not limited to, sufficient time to allow for any necessary transfer of staff).
11. There are several advantages and disadvantages for the incorporation of the Rapid Response Service into the current Reablement Service. Tendering these services together as one opportunity to the market, whilst extending the original timetable by 6-months, provides an important opportunity to test the market, gain better value for money and will address the performance issues within the current services.
12. The advantages and disadvantages are outlined in **Table 1** below with key risks highlighted.

Table 1 – Pros and Cons detail
Advantages (Pros)
<ul style="list-style-type: none"> • The Rapid Response Service is provided by the prime provider from our Homecare contract and this service has been extended year on year with the same provider since 2019, without formally testing the market. • Approaching the market through a tendering process for both the Reablement and Rapid Response services together will enable a fair, open, and transparent process and will establish if CYC is receiving value for money. • The market is in a better position in terms of the current available capacity for similar services, with providers actively looking for new business and/or additional packages of care. • Combining both services offers an important opportunity to shape the Reablement Service and the Rapid Response Service with a re-developed specification outlining clear expectations of service delivery, better outcomes for our customers and removes duplication within the 2-services.

- This approach will provide the opportunity to simplify 2-complex pathways into one that removes duplication and will improve the flow of care within the Immediate Care pathway.
- CYC will be fully compliant with CYC's CPRs and the Procurement Regs by tendering the Reablement Service and Rapid Response Service on our tender tool YORtender.
- Providers will progress through a neutral selection process with clear set obligations and the selection will be made based on a rigorous evaluation of what CYC requires.
- The new Contract for both services will have an initial term of 2-years, with an option to extend for up to a further 2-years (1-year, plus 1-year). Combining both services will ensure we have one set of robust terms and conditions within the newly developed contract. The term of the new contract will enable flexible options going forward addressing under performance issues.
- Both services have provided care and support for over 900 people preventing them from going into Residential care, so they can remain in their own homes, fully supporting the Home First Approach.
- Tendering the combined services may result in a single or joint bid from the market bringing in additional expertise and experience to deliver the services.
- Extending the current procurement timetable by 6-months will provide the time and the opportunity to incorporate the Rapid Response Service, as well as provide sufficient time to tender, award the contract and mobilise with the new combined service starting on 30th September 2024.
- The six-month extension will be focused on the tendering, award process and mobilisation. Further engagement with our partners has already taken place resulting in a finalised specification.

Disadvantages (Cons)

- If the incumbent Provider is not successful it will take time to establish a new Provider within the Intermediate Care Pathway and familiarise themselves with teams, they will work with. This will be managed through a detailed tendering process asking for evidence and reassurance of any areas of concern including a detailed implementation and mobilisation plan for the four-month period assigned for this activity.
- CYC has a wide range of Homecare providers, but there is no guarantee of providers bidding for the Reablement and Rapid Response Service. However, CYC currently has 24 providers delivering similar services and more going through our due diligence processes that may submit bids.
- To complete the tendering exercise and the transition from the current two separate services to the new combined service can be time consuming and will require commitment of staff resources from various departments over the extended 6-month period. The open procedure will be used that will combine

stages of the process and is the fastest procedure to progress. Work has already commenced to develop the tender pack of documents.

Key Risks

- Combing both services results in a large contract to deliver and this may reduce the number of providers that may bid. The visibility of this tender opportunity will be supported through various activities to encourage interest from the market. There will be a bidders meeting with the market to clarify the ask from the market in terms of service delivery, outcomes and contractual commitment. The tender will be put on our YORtender system that advertises on the open market.
- Tendering the Reablement Service does not mean that there is a guarantee of providers bidding for the Reablement Service, and this would lead to CYC not providing statutory services in line with the Care Act 2014. The event mentioned above together with advertising the service on CYC's online procurement portal, YORtender, means that the open market and all providers registered would see the opportunity and this would reduce this risk.
- Delays to the amended timescales proposed to the Executive, as outlined in **Appendix A – New Procurement Timetable**, would result in services not being available when current contracts expire. There are no more extensions available and the new timetable at Appendix A has been realigned to manage this risk.
- **The Pension Scheme:** As this is a second-generation transfer, CYC has an ongoing pension obligation to protect the pension rights of those named individuals that transferred originally from CYC to HSG where they are still in employment with HSG at the time at which the service is transferred to a new provider. This means that the new provider will need to provide a pension scheme for those named individuals that is broadly comparable to the and they ordinarily will do so by applying for admitted body status in the North Yorkshire Pension Fund. TUPE information has already been sourced and forwarded to CYC Officers who manage this process.

Policy Basis for Decision

13. The combination of the Reablement and Rapid Response Services enables CYC to meet several policies and priorities such as the Council Plan, which stipulates an important outcome for our population of good health and wellbeing and supports the delivery of key principles for the York Health & Wellbeing Board. See the updated **Equality Impact Assessment** at **Appendix B** for further supporting detail.

14. Section 5 of the Care Act 2014 places duties on local authorities to promote the efficient and effective operation of the market for meeting care and support needs. The due diligence process is part of activities that helps local authorities facilitate market shaping duties by onboarding new providers through a robust vetting process to minimise operational risks and provide good quality services that serve and safeguard our residents.
15. The **Commissioning Strategy, Market Sustainability Plan** and the **10-Year Vision 'People at the Heart of Care Adult Social Care Reform Paper'** clearly outlines that CYC will work with existing and new providers within the market to provide sustainable, quality and value for money services.
16. NICE guidance (NG74) is a quality standard for Intermediate Care including reablement service delivery. This guideline covers referral and assessment for Intermediate Care and how to deliver the service. The service is jointly funded through Health and Social Care and the outcomes of NG74 will be reported through Key performance measures.

Financial Strategy Implications

17. Please refer to paragraph 9 of the previous report set out in **Appendix D**.
18. The Reablement Service supplied by HSG currently has a Rapid Response element within the current contract. There is also a Rapid Response Service supplied by a different provider SFH. This is a similar service with the same delivery outcomes and target times. Both services are important delivery elements of the Intermediate Care and Support Pathway. The combined services are delivered to over 900 people and enables them to return home rather than go into residential care or more expensive services. 98% of people accessing the Services returned home, 44% with no additional care. 14% of these people returned home with reduced care packages as people had been enabled to maximise their independence and connections to their local communities.
19. The current Reablement and Rapid Response Services are funded through the Better Care Fund, a pooled budget between Health and City of York Council. They currently run as two separate contracts. There is £1.5m set aside in the Better Care Fund Plan for 24/25 to provide both services. Better Care Funding is generally announced in one-year settlements but the funding has been received for a decade or so and the risk that we will commission a service and funding ceases is highly unlikely.

20. The budget of £1.5M is set aside. The current Reablement contract with HSG costs £1,200,000 and buys 647-hours of weekly care: 539 hours of reablement and 109-hours of rapid response. The current Better Care Funded Rapid Response Contract with SFH costs £300,000 and purchases 196-hours per week. There may be potential to draw in additional health funding to increase the hours, but this will not be known in the timescale needed to procure.
21. We are not getting the full value for what we purchased. Reablement is delivering 80% of the contract value and Rapid Response approximately 20%. We will introduce an incentive for providers to deliver to full capacity. The procurement will work within the budget envelope and CYC will pay 85% of the contract value with 15% payable on delivering specified outcomes and fulfilling the total contract value.
22. The new combined contract will be for an initial term of 2-years with a potential to extend the term by 2-further 1-year periods. The total budget for the contract and all proposed extensions for both the services described above is £6,000,000 (total budget for the entire 4-years).

Recommendation and Reasons

23. Recommendation(s):

- a. to note the current progress and delays to the recommissioning of the Reablement Service since the previous report to the Executive attached to this report as **Appendix A**;
- b. to approve the approach to incorporate the Rapid Response Service into the current re-commission of our Reablement Service through a joint competitive tendering process, joint specification, and joint contract;
- c. to approve the revised Open Procurement Procedure timetable set out at **Appendix A**;
- d. to approve the extension of the current Reablement Service Contract with HSG;
- e. to delegate authority the DASS (and their delegated officers) in consultation with the Chief Finance Officer (151 Officer) (and their delegated officers) to seek Providers from the market for the delivery of the new combined Reablement and Rapid Response Service contract (with an initial term of 2-years, and an option for 2-further extensions of 1-year each) via an open, fair and transparent competitive procurement process and evaluation criteria in compliance with the new Procurement

Timetable at **Appendix A** of this Report, the CYC CPRs and the Light Touch Regime under Regulations 74 to 76 and Schedule 3 (the “**Light Touch Regime**”) of Procurement Regs;

- f. to delegate authority to the DASS (and their delegated officers), in consultation with the Director of Governance (and their delegated officers), to determine the provisions of the new combined Reablement and Rapid Response Service contract, and to award and conclude the Community Wellbeing contract following an open, fair and transparent competitive procurement process and evaluation criteria in compliance with the new Procurement Timetable at **Appendix A** of this Report, the CYC CPRs and the Light Touch Regime under the Procurement Regs;
- g. to delegate authority to the DASS (and their delegated officers), in consultation with the Chief Finance Officer (151 Officer) (and their delegated officers) and the Director of Governance (and their delegated officers), to determine the provisions of and conclude any subsequent extensions and/or variations to the new combined Reablement and Rapid Response Service contract in compliance with the new contract’s terms and conditions, the CYC CPRs and the Light Touch Regime under the Procurement Regs; and
- h. to delegate authority to the DASS (and their delegated officers), in consultation with the Director of Governance (and their delegated officers), to determine the provisions of and conclude with HSG the 6-month extension to the current Reablement Contract commencing on 1st April 2024 until 30th September 2024, to allow CYC time to commission and transition to the new combined Reablement and Rapid Response Service contract in compliance with the new Procurement Timetable at **Appendix A** of this Report, the CYC CPRs and the Light Touch Regime under the Procurement Regs; and

24. **Reason(s):**

- a. Approval The Reablement Service was given by Executive on 12th October 2023 to proceed with a competitive tendering process resulting in a new service being implemented from the 1st April 2024.
- b. The Reablement Service is funded by the Better Care Fund and has contributions from both the Council and the ICB. Additional stakeholder engagement has been completed via workshops and multi-agency meetings and this has enabled the specification to be finalised whilst all partners made the necessary contribution to the service specification.

Completing this work has caused a delay from the previous timescales submitted.

- c. Further, during this delay period it became clear that there was an opportunity to incorporate the Rapid Response Service into the Reablement Service which would provide efficiencies, improved outcomes, and simplified pathways for people to access both Services. Reducing the need for more costly care such as Residential care.
- d. Tendering both the Reablement and Rapid Response Services together will maximise the use of CYC resources and comply with the CYC CPRs Rules in terms of completing an open, fair, and transparent process.
- e. The market has not been approached since 2017 and 2019 for these services therefore CYC need to ensure we are receiving value for money. This approach also avoids having to complete two separate tendering exercises. The procurement procedure is subject to the Light Touch Regime under the Procurement Regs and will be completed as an Open Procurement Procedure (see **Appendix A** for the revised Open Procurement Procedure timetable).
- f. Approving both the revised timetable at **Appendix A** and the proposed 6-month extension to the current HSG Reablement Service contract will provide the necessary additional time to incorporate the Rapid Response Service into the new contract and allow sufficient time to tender, award and mobilise the new joint service with a start date of 1st October 2024.
- g. If the new timetable and proposed extension to the current Reablement Service contract are not approved, then the Reablement Service contract with HSG will expire on 31st March 2024, CYC will have no replacement service in place, and CYC is at risk of breaching its statutory duties under the Care Act 2014.
- h. Further if, CYC do not proceed to the market, it is highly likely that a challenge from providers would be presented as they have, they have not been given the opportunity to bid for new business in a fair, open, and transparent manner. This would be in direct conflict with the Procurement regs and the CYC CPR's. If provider/s were successful in challenging CYC there could be potential legal fees and additional costs in terms of service provision to be paid.
- i. Finally, CYC is at risk of reputational damage if Procurement Regs and the CYC CPR's are not complied with by not tendering business opportunities as this could be perceived as collusion with particular providers within the market.

Background

25. CYC and other Local Authorities have a statutory duty to provide Reablement Services for its residents under Section 2 of the Care Act 2014. The main principle of the Care Act 2014 is to help to improve people's independence and wellbeing and for care providers and carers to promote a person-centred approach to the care and support they provide. This means early intervention to prevent deterioration and reduce dependency on support from others. Reablement and Rapid Response are just some of the ways that CYC can fulfil this duty.
26. On 12th October 2023, the Executive approved that CYC proceed with a competitive tendering process for a new Reablement Service, which was originally to be implemented from 1st April 2024 – **see Appendix D**.
27. However, there has been some delay to the timetable originally proposed to the Executive for the re-tender of the new Reablement Service. The primary reason for this delay is that extra time has been necessary to undertake further stakeholder engagement workshops and multi-agency engagement meetings at the request of CYC's Adult Social Care Management Team. This was to ensure all partners made the necessary contribution to the Reablement Service specification before it went out to the market, including new members of Staff and the Management team. Stakeholders included CYC and Health Operational teams and Managers, Managers of Hospital Teams, Brokerage Teams and ICB colleagues. Stakeholder availability was restricted due to a range of factors, for example limited resource in staff teams to manage multiple priorities. Surges in people to discharge, managing provider failures and finding alternative packages of care for people to maintain their care and support.
28. As such, CYC will not be able to meet its original timetable for the retender of the Reablement Service.
29. A new, revised timetable has been proposed and has been submitted with this report for Executive approval – see **Appendix A** to this report.
30. In addition, in order to facilitate the retender of this Reablement Service in line with the revised timetable at **Appendix A**, officers now seek Executive approval for a 6-month extension to the current Reablement contract with HSG, which expires on 31st March 2024.
31. The proposed extension of the current Reablement Contract with HSG would commence on 1st April 2024 and expire on 30th September 2024, and would be formalised by way of a variation to the current contract in

accordance with its terms and conditions, and subject to the advice of CYC Legal Services and Commercial Procurement.

32. Officers have already discussed the proposed extension with HSG, who have agreed to this extension in principle.
33. During the extended tender period the Reablement Services shall continue to be provided by HSG and are a short term, time-limited intervention service, for up to a maximum of six weeks. Within the Reablement services there is a Rapid Response element with enhanced turn round times.
34. 720 customers received the Reablement Services in 2022/2023 with an increase of a further 3% in 2023/2024. Delivery hours for the service has and continues to improve with the contract management process. The target delivery of 647 hours a week has been achieved since December 2023.
35. 98% remained at home following a short-term intervention in 2022/2023 and this remains the same at this current time for 2023/2024.
36. Rapid Response services currently provided by SFH are also a short term, time-limited intervention service for up to a maximum of 28 days with the same enhanced turn round times as the HSG Rapid Response service.
37. 196 customers received the Rapid Response services in 2022/2023. There has been a decline in the number of customers using this service as there is now more throughput in the HSG Reablement service in terms of all the service elements. This is a key reason why combining both services are important so we can use the services in line with the new specification. Maximising the utilisation of the joint capacity and resources within the services to increase the throughput to enable more people to access the services.
38. 80% remained at home following a short-term intervention in 2022/2023 and this remains the same at this current time for 2023/2024.
39. The hours delivered as part of the SFH Rapid Response services range between 99 and 196 a week of the 420 hours currently commissioned. This is due to a variety of reasons such as, insufficient referrals as the current pathway is complex and needs to be simplified. By combining the services there will be a central point where all demand is managed and allocated. The service does not always actively promote their services within the referral teams and this will be addressed through the recommission.

40. Both the services detailed above have different hourly rates, different terms, and conditions. There are multiple similarities for the service purpose and delivery, and they are described in the table below:

Both Services enable CYC to meet their statutory duties under the Care Act 2014 Section 2. – see paragraph 24 above.
Goal focused, short term intervention service to enable people to remain independent at home, avoid hospital admission and facilitate hospital discharges to an individual person’s home.
The Rapid Response element of both the services stipulates that a package of care should commence within 1 day of the referral being received by the Provider.
The front-line services both operate from 7.00am to 10:00pm, 7 days per week, 365 days per year.
The providers both attend the daily enhanced ‘One Team’ meeting also known as ‘Single Point of Access’ (“ SPA ”). Both providers actively contribute in terms of service availability, solution finding and share packages of care when required with other service Providers in the market and Health teams to provide seamless care for people.
Referrals for both the services come from the same sources (partners) but currently have complex pathways. Simplifying the pathways and combing the services will result in the right resource being the right place at the right time providing more throughput through both services removing duplication in systems, staff and processes.
Both services provide support for people over 18yrs and over, most people who use the services are 65 years plus.
Contracts both expire on the 31 st March 2024 and require a competitive tendering exercise to avoid challenges from the market and to comply with CYC’s Contract Procedure Rules and Public Contract Regulations 2015. A joint tendering exercise removes duplication in terms of staff time, processes and system changes.

41. The new combined contract will have an initial term of 2-years, with an option to extend for up to a further 2 years (1 plus 1). The new eligibility criteria will be based on need rather than condition to ensure an equality access to services, and this has been written into the final service specification.

42. The newly developed contract will have initial contract periods, break points and the potential to extend the service in line with the extension periods enabling flexible options for the Council. This option will also provide sufficient time at exploring other models of delivery and insourcing solutions.
43. Advice will be sought from our Human Resource colleagues regarding both the Reablement and Rapid Response Services and if TUPE applies. If it does, officers will source the necessary data and incorporate into the tendering process.

Budget

44. The Reablement service annual budget is currently £1,169,100 for 2023/2024. This budget includes 647 hours of service delivery per week at a cost of £25.79 per hour, totalling £867,678.76. The remainder of the annual budget consists of overhead costs and 2nd generation TUPE costs from outsourcing the original service in 2017.
45. The total delivery target for the 42-week period (1/4/2023 – 15/01/2024) was 27,291 hours and the hours delivered were 20,899. The shortfall in hours over the 42-week period is a total of 6,392 hours at a cost of £164,849. The lowest level of hours during this period was 406 hours and the highest 648 hours.
46. The total delivery target for the Rapid Response service (SFH) for a 43-week period (1/4/2023 – 21/01/2024) was 15,180 hours and the hours delivered were 3,020. The shortfall in hours over the 43-week period is a total of 12,160 hours at a cost of £320,896. The lowest level of hours during this period was 99 hours and the highest 196 hours.
47. The Reablement service is fully funded by the Better Care Funds and any changes in budget need to go through the BCF Board and the Rapid Response service is funded through a range of funding streams.
48. The new contract will be for an initial two years with a potential to extend for two further 1-year periods. The total budget for the contract and all proposed extensions for both the services is £6,000,000 (total budget for four years).
49. The value of the HSG contract to date since it commenced on 20th October 2017 is £7,307,591. The cost of the proposed 6-month extension to the HSG contract would be £585K commissioned through the Better Care Fund.

Consultation Analysis

50. The original report that was presented at the Executive meeting on 12th October 2023 (see **Appendix A**) included the 'Voice of the Customer Report' representing the outcomes of surveys completed by Customers, potential future Customers, Carers, Professionals, Voluntary Sector and other supporting networks.
51. Further stakeholder engagement has been completed to fully inform the finalised specification for both services. This was in the shape of workshops and multi-disciplined teams to ensure all partners have made the necessary contribution to the service specification and the agreed pathways. Stakeholders included CYC and Health Operational teams and Managers, Managers of Hospital Teams, Brokerage Teams and ICB colleagues.
52. A key outcome from the surveys were that everyone should be able to access these services. The service specification clearly stipulates that the service is for individual people and not on condition alone. Fully inclusive for people with mental health needs, Learning Disabilities, Autism, Neurodiversity, and Dementia who can engage with Reablement services are to access the service.

Options Analysis and Evidential Basis

53. The original report that was presented at the Executive meeting on 12th October 2023 was supported by an **Equality Impact Assessment** and has been updated (see **Appendix B**). This shows that the impact on customers would be minimal, and the customer voice and feedback from a wide range of stakeholders has been utilised to shape the final specification developed.
54. Compliance with CYC CPRs and the Procurement Regs would reduce any challenges from the market and provides an important opportunity to incorporate the Rapid Response service into the Reablement service to source the best value for money and the best solution from the market whilst improving services.
55. The points above fully support the option to go to the market and tender both services as this would fulfil several key policies and priorities for our population for the reasons outlined above.

Organisational Impact and Implications

56. *Financial Implications*

The current budget for the reablement service is £1,169.1k p.a. It should be noted that the service is funded by the Better Care Fund (BCF) not by Council budgets, and as such any saving made on the contract would be returned to the BCF Board for a decision about how it should be used.

57. *Human Resources (HR) Implications*

- a) As this is a second-generation transfer, CYC has an ongoing pension obligation to protect the pension rights of those named individuals that transferred originally from CYC to HSG where they are still in employment with HSG at the time at which the service is transferred to a new Provider.
- b) This means that the new provider will need to provide a pension scheme for those named individuals that is broadly comparable to the LGPS, and they ordinarily will do so by applying for admitted body status in the North Yorkshire Pension Fund

58. *Legal Implications*

- a) Section 1 of the Localism Act 2011 permits the Council to do anything that individuals generally may do.
- b) The procurement of a new combined Reablement and Rapid Response contract is necessary for us to comply with our mandatory statutory duties under the Care Act 2014, Sections 2 and 5.
- c) Due to the value of both the proposed Reablement and Rapid Response Service contract and the proposed extension to the current HSG Reablement contract, and their likely impact on two or more wards within the City of York, each of these decisions would constitute a Key Decision under Article 7 of the CYC Constitution. A decision maker may only make a key decision in accordance with the requirements of the CYC CPRs, and also the Executive Procedure Rules and the Access to Information Procedure Rules annexed to the CYC Constitution as Appendices 4 and 7. Under Rule 8.11 of the CYC CPRs, only the Executive may agree, or authorise another officer to enter a contract under their delegated powers where the aggregate contract value (including any extensions) is worth more than £500,000 or is otherwise treated as a Key Decision, unless the

Chief Finance Officer and Director of Governance have approved the Procurement as Routine. For the avoidance of any doubt, neither a decision to reprocure the Reablement and Rapid Response Services, nor a decision to extend the current Reablement contract with HSG should be treated as routine. Any Key Decision (and any decision as to whether a matter should be considered a Key Decision) is subject to Call-In.

- d) Due to its value, any procurement exercise for the new Reablement and Rapid Response Service contract must be carried out in under a compliant, open, transparent, and fair procedure in accordance with the Procurement Regs and the CYC CPRs Further advice regarding the procurement process and documentation must be sought from Commercial Procurement (see **Procurement Implications** below). However, the proposed timetable at **Appendix A** is in line with the requirements for an Open Procedure set out in Reg. 27 of the Procurement Regs.
- e) An appropriate form of contract for the new Reablement and Rapid Response combine service will need to be drafted and completed with support from Legal Services. The same is true for any subsequent modifications and/or extensions to the contract post-award.
- f) With regards to extending the current Reablement contract with HSG, such an extension will also need to be drafted with support from Legal Services.
- g) As it stands, there are no available extensions left under the current HSG contract, and at present the contract is due to expire on 31st March 2024. In order to comply with both the variation procedures under the contract and Rules 19.3, 20.1 and 20.2 of the CYC CPRs, this will require both CYC and HSG agreeing and entering a Deed of Variation to amend the terms of the Contract. Such a Deed will need to be drafted (and ultimately sealed) by Legal Services to ensure compliance with the CYC CPRs and Reg. 72 of the Procurement Regs.
- h) Reg. 72 limits the circumstances in which public contracts can lawfully be varied. If CYC is successfully challenged (by way of a CPR, Part 7 procurement claim and/or a CPR, Part 8 judicial review claim) for failing to commence a new procurement procedure, the courts may impose a number of sanctions, including the payment of damages by the contracting authority to the claimant, a declaration of ineffectiveness, a fine, or contract shortening. Following consultation with both Legal Services and Commercial Procurement, the Deed of Variation shall be entered on the basis of Reg, 71(1)(b) (i.e., “*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...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”). The value of the proposed six-month variation compared to the original contract value of £5.5 million does not exceed the 50% threshold and does not need to be aggregated together with the value of any of the previous variations. It is worth noting that CYC would be required to publish a notice on UK Procurement Portal, Find-a-Tender of the variation. Therefore, there is a small risk of challenge against varying and extending the Reablement Service this way, but this risk falls away after 30 days after the notice has been published, and as part of its notice CYC can inform the market of its timetable for recommissioning/replacing the current contract with HSG with newly combined Reablement and Rapid Response contract, which should also help to assure the market and mitigate any risk of challenge. Any required notices to market will be subject to the advice of Commercial Procurement (see **Procurement Implications** below).

- i) To avoid the risk of challenge, any further extensions to this contract must be avoided wherever possible.
- j) With regards to the current Reablement Contract with HSG and the Rapid Response contract with SFH, any procurement strategy must factor in the relevant exit provisions under the current contracts, including (but not limited to) any TUPE and Pension related provisions, and any exit management requirements. This will play an important part during the transition and mobilisation period up to the commencement of the new contract, which is anticipated to take place on 1st October 2024. Relevant advice from Legal Services and other officers (e.g., HR in relation to TUPE (see **HR Implications** above) should be sought on any relevant provisions of the current contracts.

59. **Procurement Implications**

- a) The Reablement and Rapid Response Service will be advertised on the e-tendering website Yortender and a Contract Notice will also be published in the UK Government portal “Find a Tender” for the commencement of the procurement exercise for the new Contract which will be conducted in an a compliant, open, transparent, and fair procedure in accordance with the current legislation of the Procurement Regs and

also our internal rules the CYCs Contract Procedure Rules (November 2023). The estimated total contract value for the Reablement Service for the duration of the contract including extensions, initial contract term of 2-years with a potential to extend the term by 2-further 1-year periods, is stated as £6,981,828 and therefore exceeds the current Light Touch Regime threshold of £663,540 which is applicable to Health and Social Care contracts. Therefore, the Procurement Regs stipulates that where a contract exceeds the Light Touch Regime threshold a Contract Notice must be published in the public domain i.e., the website “Find a Tender”, to invite competitive tenders and ensure the evaluation and award of the contract enable CYC to fully assess the provider market and achieve the best outcomes for our customers, Value for Money whilst follow the principles of equal treatment and transparency throughout the procurement exercise.

- b) The proposed procurement timetable which is attached to this report at Appendix A is in accordance with the requirements for an Open Procedure set out in Reg. 27 of the Procurement Regs where all of the tender documents and associated appendices will be published on an open e-tendering website called YORtender where interested providers will be able to register their interest and submit a tender response by the tender return deadline as stated within the tender documents published.
- c) CYC awarded the Reablement Service contract on 20th October 2017 following an advertised competitive tendering exercise which was awarded. This contract has been varied through additional agreements up to and including 31st March 2024 and has exhausted all available contract extensions. Therefore, there are no further extension options available for this current contract and within this report the recommendation i. is seeking approval for a proposed 6-month extension of the HSG Reablement Contract commencing on 1st April 2024 until 30th September 2024 to enable the completion of the procurement and award of a new contract.
- d) In order to comply with the Procurement Regs and the CYC CPRs and ensure CYC is achieving the best outcomes for the customers of the new combined Reablement and Rapid Response Service and obtain Value for Money then a competitive tendering exercise must be advertised to invite any suitable providers. This will in turn ensure CYC complies with the Procurement Regs and the CYC CPRs by receiving competitive tenders and the completion of the evaluation of those tender submissions received, and award a contract to the bidder that is ranked first based on the assessment of tenders against the tender evaluation weightings and the scores awarded by the evaluation panel.

- e) The Commercial Procurement team is working alongside colleagues in the All Age Commissioning and Contracts team, Legal, Finance and HR Services will support commissioning colleagues to prepare the procurement documentation to draft an appropriate form of contract and the tender documentation, including evaluation methodology and criteria to assess quality and price and identify the bidder that represents the Best Value to the council for the award of the new Reablement and Rapid Response Service contract.

60. ***Health and Wellbeing Implications***

- a) CYC Public Health is in support of this proposal for the recommissioning of the Reablement and Rapid Response Service. Reablement provision in city makes an important contribution to sustaining the independence of residents, reducing avoidable pressures on NHS and social care services and generally better outcomes for people.

61. ***Equalities and Human Rights Implications***

- a) The Council recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).
- b) An Equalities Impact Assessment (“EIA”) has been carried out and is annexed to this report at **Appendix B**.

1.

The impact of the proposals on protected characteristics has been considered as follows:

- Age – Positive/High;
- Disability – Positive/Medium;
- Gender – Positive/Low;
- Gender reassignment – Positive/Low;

- Marriage and civil partnership – Positive/Low
- Pregnancy and maternity – Positive/Low
- Race – Positive/Low
- Religion and belief – Positive/Low
- Sexual orientation – Positive/Low
- Other socio-economic groups including:
 - Carer - Positive/Medium (see Disability);
 - Low-income groups – Positive/Medium;
 - Veterans, Armed Forces Community– Positive/Low

62. ***Data Protection and Privacy Implications***

Data Protect Impact Assessments (“**DPIAs**”) are an essential part of our accountability obligations. Conducting a DPIA is a legal requirement for any type of processing, including certain specified types of processing that are likely to result in a high risk to the rights and freedoms of individuals. Under UK GDPR, failure to conduct a DPIA when required may leave the council open to enforcement action, including monetary penalties or fines. A DPIA is a ‘living’ process to help manage and review the risks of the processing and the measures the service area(s) have in place on an ongoing basis. It will need to be kept under review and reassess if anything changes.

The DPIA “screening questions” identified there will be processing of personal data, special categories of personal data and / or criminal offence data in the procurement of the new Reablement and Rapid Response Service and the ongoing provision of this service and so a DPIA is required as part of the ongoing project/ plan/ procurement.

The DPIA will help to:

- a) systematically analyse, identify, and minimise the data protection risks of this project;
 - b) assess and demonstrate how we comply with all our data protection obligations; and
 - c) minimise and determine whether the level of risk is acceptable in the circumstances, considering the benefits of what we want to achieve.
- d) A DPIA is currently being developed, the latest version of which is annexed to this report at **Appendix C**.

63. **Communications Implications**

The implications of this report for the communications service are minimal, with any post-decision involvement expected to be reactive only in relation to media enquiries about the number and/or quality of commissioned services, and potentially when and if commissioned services come to an end.

64. **Affordability Implications**

65. Implications are included in the Equality Impact Assessment (Appendix B)

Risks and Mitigations

67 Risks and Mitigations are detail below in **Table 3** below:

Table 3 – Risks and Mitigations	
Risk	Mitigation
Tendering services does not mean that there is a guarantee of Providers bidding for the Reablement Service and this would lead to CYC not providing statutory services in line with the Care Act 2014.	CYC currently contracts with 24 providers who provide similar services with more Providers coming through our due diligence process. Providers have verbally expressed an interest for the service being recommissioned. A notice will go out to our existing service providers, out to the Independent Care Group and out via our YORtender service to advertise widely.
Timescales to reprocur the Reablement Service are sufficient currently (see Appendix A Procurement Timetable) but if there are delays within the process this may not allow sufficient time to embed the new service if there is a new Provider.	A new Procurement timetable (see Appendix A details activities and timescales to enable the service to be in place by 30 th September 2024. The 6-month extension request cannot be extended further. The specification for the services has now been finalised. The new timeline incorporates sufficient time for the tendering exercise,

	contract evaluation, contract award with a 4-month mobilisation period.
CYC have an ongoing pension obligation to protect the pension rights of those named individuals transferring to a Provider. This means that the Provider will need to provide a pension scheme for those named individuals that is broadly comparable to the LGPS, and they ordinarily will do so by applying for admitted body status in the North Yorkshire Pension Fund.	The Pension obligations will be clearly articulated in tendering and Contractual documents. Procurement, Commissioning, Contracts and Pension colleagues are aware that this is a requirement of the Provider who is awarded this Contract.
Incorporating the Rapid Response services (SFH) may result in an additional TUPE transfer.	Advice and guidance from our Human Resource colleagues will be sought to advise whether TUPE applies. If this is the case then TUPE information will be collected and included in the tender documentation pack.
Resource implications for various departments to enable this project to be successfully delivered.	This is a priority project for all departments involved. All departments are aware of this activity and the implications on resource.

Wards Impacted

68. All wards will be impacted as this service is provided for all areas in York. The **EIA in Appendix B** provides details of the potential impacts and how this will be managed whilst this service is tendered and implemented.

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Appendix List

Appendix A – New Procurement Timetable

Appendix B – Equality Impact Assessment (EIA)

Appendix C – Data Protection Impact Report – currently being developed

Appendix D – Report to the Executive dated 12th October 2023 - Re-Commissioning Of The Reablement Service In York

Appendix E – Decisions from 12th October 2023 The Executive