

<b>Meeting:</b>	CMT (Council Management Team) and Executive
<b>Meeting date:</b>	12/09/2023
<b>Report of:</b>	Jamaila Hussain - Corporate Director of Adult services and Integration (DASS)
<b>Portfolio of:</b>	Councillor Jo Coles - Member for Health, Wellbeing and Adult Social Care

## Decision Report: Approved Provider List (“APL”) Dynamic Purchasing System

### Subject of Report

1. Under public procurement regulation every public procurement must be in accordance with public procurement legislation. The legislation makes it clear what procurement process must be used when spend is at a certain level as well as what the buying authority is hoping to achieve. Currently the Council of the City of York (“**the Council**”) uses an individual case by case approval and contract method called a “pre-placement agreement” that is no longer appropriate to meet the needs of the organisation. Rather than individual agreements for each provider there is a need to move towards overarching agreements clustered under four categories. As a result of the current process and considering procurement legislation there is a need to move towards an “approved provider list.”
2. An Approved Provider List (“**APL**”) is a pre-approved list of providers the Council can choose from to make a purchase which covers a defined set of services. APLs are recommended under Public Contract Regulations 2015 (“**PCRs**”) and is best practice across Local Government when procuring/purchasing the services outlined within the paper. Adopting this approach will ensure we are compliant with legislation and will help mitigate against the risks within the

current individual pre-place agreements process which is a process that is dated and requires a complete refresh.

3. The Council is intending to identify Providers to be included as part of an APL. The APL will have an initial term of 3-years with an option to extend for up to a further 4-years (2-years, plus 2-years), leading to a maximum duration of 7-years. Service contracts awarded as call-off contracts from the APL will be up to a maximum 7-years in length, with initial periods, break points and potential extensions configured to balance the stability of care for service Providers and manage service Provider performance. This will help to inform efficiencies and enable the establishment of a legal agreements for these APLs. The work will be undertaken on a phased approach until summer 2024, due to ongoing negotiations with Providers.
4. The Paper seeks for executive members to approve the procurement of the following APL for the following services on a phased approach:
  - a) Care at Home (Domiciliary care) (APL 1)
  - b) Residential care with and without nursing (APL 2)
  - c) Community Based Support (APL 3)
  - d) Supported Living (APL 4)

## Benefits and Challenges

5. Adult Services are currently developing the four service specifications for the APL and will approach the market via an open transparent process.
6. The proposed APL and approaching the market via a fair, open, and transparent process in order to commission the required services has several advantages and disadvantages, and they are outlined in **Table 1** below, with key risks highlighted:

<b>Table 1 – Pros and Cons detail</b>
<b>Advantages (Pros)</b>
<ul style="list-style-type: none"><li>• Establishing an APL will ensure that the Council has a consistent, timely and legally compliant process by which to procure bespoke services from the care market based on individual need.</li></ul>

- The APL will enable the Council to retain control of the ceiling rates and thereby reduce costs incurred, ensuring efficiencies in budgetary allocations.
- The APL will have an initial term of 3-years, with an option to extend for up to a further 4-years (2-years, plus 2-years), leading to a maximum duration of 7-years. 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.
- The proposed APL provides an important opportunity to shape the market with a re-developed specification, outlining clear expectations of service delivery and outcomes for our customers.
- The proposed APL will help to ensure going forward that the Council will be fully compliant with the Council Procedure Rules and the Public Contract Regulations 2015, by tendering our service requirements through 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 the Council requires.

#### **Disadvantages (Cons)**

- Tendering services does not mean that there is a guarantee of Providers bidding on the APL, due to Providers not wanting to be capped on certain thresholds/ceiling rates.
- To complete the tendering exercise can be time consuming and will require commitment of staff resources from various departments. The open procedure will be used that will combine stages of the process and is the fastest procedure to progress.

#### **Risks of having an APL**

- Tendering services does not mean that there is a guarantee of Providers bidding to enter the APL and this would lead to an increase in exception Providers and the Council not providing statutory services in line with the Care Act 2014.
- Delays within the process, as this may not allow sufficient time to embed the APL.

#### **Risks of not having an APL**

- Lack of standardisation of terms and conditions of services.
- Market unsustainability which affects person's care plans.

## **Policy Basis for Decision**

7. 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 the Council will work with existing and new Providers within the market to provide sustainable, quality and value for money services as part of the APL.
8. Section 5 of the Care Act 2014 places duties on local authorities to promote the efficient and effective operation of the market for adult care and support. The due diligence process is part of activities that helps the Council facilitate market shaping duties by on-boarding new Providers through a robust vetting process to minimise operational risks and provide superior quality services that serve and safeguard our residents.
9. Local authorities with Adult Social Services responsibilities are required by the Care Act of 2014 to oversee the care market, collaborate with Providers to develop high-quality services, guarantee capacity to meet local needs, and ensure the safety of service users.
10. The APL will comply with the key principles of the York Health and Wellbeing Board including working together in true partnership for the good of the people of York and Involve local people in identifying the challenges and redesigning services.
11. The APL is in line with the Council's ambition and plan 2019-23 of good health and wellbeing.

## **Financial Strategy Implications**

12. The estimated annual value of the APL based on the will be £67,500,240 (Gross), while the estimated value of the APL over the initial 3-year term with inflationary rate of 2.5% every year will be £213,070,306, and if extended up to the full 7-years will be £522,863,890. This is expected to increase due to pressures within the care sector.
13. In York, the proportion of people who pay for their own care has continued to grow due to a high demand which increases costs compared to our neighbours.

14. The financial tariffs will remain what they are now when the APLs are advertised later this year.

## Recommendation and Reasons

15.

- a) **Recommendation:** to approve the establishment of the APL.

**Reason:** The proposed APL will ensure that services are procured in line with our statutory duties and obligations under the Care Act 2014 and the Public Contract Regulations 2015, as well as our own standing orders set out within the Council's Contract Procedure Rules under Appendix 11 of the Council's Constitution, as well as ensure efficiencies and enable the Council to have more control of current and future contracts, for example ceiling rates.

- b) **Recommendation:** to delegate authority to the Corporate Director of Adult Services and Integration ("**DASS**"), in consultation with the Director of Governance, to determine the provisions of the new APL, and to award positions on to the APL following an open, fair, and transparent competitive process and evaluation criteria.

**Reason:** To ensure the proposed APL is set up in accordance with and continues to be used/managed thereafter in line with the Light Touch Regime under the Public Contract Regulations 2015 and the Council's Contract Procedure Rules, to ensure open, fair, and transparent commissioning of services required to meet our statutory duties under the Care Act 2014, and to ensure the APL is set up within the procurement timescales.

## Background

16. The current procedure in place involves Pre-Placement Agreements ("**PPAs**") for Residential Care Homes and Care Homes with Nursing. PPAs are also in place for Homecare Services and Disability Services (including Mental Health). There is a current framework in place for Homecare and Supported Living Services.
17. The new APL will be in place for an initial term of 3-years, with an extension option of 2-years, plus 2-years years totalling a 7-year contract.

18. The service specifications for the APL have been developed by all age commissioning team in collaboration with operational teams, which will enable monitoring and reporting on the outcomes of the services.
19. The APL will be an open list: applicants can apply to join during its term if the applicant satisfies the Council's minimum selection requirements. The APL will be open for new applications from the date of publication of the invitation to participate documents and will remain open for new applications at any time during the APL term. Following an evaluation process, applicants will receive an outcome notification.
20. Service users will be working age adults with learning disabilities, mental health needs & physical disabilities, but will also include a number of any other service user category.
21. Successful applicants will be required to sign an APL Agreement and will be appointed as a Provider. Providers on APL need to agree to conditions that they will continue to deliver packages of care and support within specific quality standards, follow appropriate policies and procedures and comply with CYC monitoring requirements.
22. The APL will be used by the Council to call-off when care and support is required. The call-off procedure provides flexibility in the way the Council will formulate and award service contracts with the intention of providing the best possible care and support to people and will be based upon the core service specification and core service contract. Existing business is anticipated to be retained by existing Providers who have been successful in applying to the APL, based on service user choice. It is also anticipated that new business will arise each year. The associate bodies, or their successors that can call off from this agreement are the York Health and Care Partnership.
23. Successful Providers may be required to produce an annual service development plan for each service contract called off from the APL, to respond to changing needs and have regard to service efficiency and improvement.
24. The approval to implement an APL for Working Age Adults Care & Support Services, including accommodation-based services, domiciliary support, outreach and day opportunities will provide professionals and residents of York, clear information on the services available to meet needs, with assurances that there is a contract in

place, due diligence has been completed and there is contract management relationship with the Provider. All specifications will be developed to include Mental Health and Learning Disabilities.

25. The APL will replace the current PPAs that are between the Council and individual organisations. Therefore, organisations that are not signed up to an APL will not have a contractual agreement with the Council and will therefore be unable to provide services on behalf of the Council. Bidders shall be made aware that the APL is a non-exclusive arrangement, that the Council will not provide any kind of volume guarantee for the Provider's services, and that the Council is always free to sign other contracts and agreements with other Providers to provide any of the services.

## Consultation Analysis

26. A market engagement is planned once approved with all the Providers involved. Consultation has also taken place across internal and external stakeholders.

## Options Analysis and Evidential Basis

27.

- a) **Recommendation:** to approve the establishment of the APL.

**Reason:** The proposed APL will ensure that services are procured in line with our statutory duties and obligations under the Care Act 2014 and the PCRs, as well as our own standing orders set out within the Council's Contract Procedure Rules under Appendix 11 of the Council's Constitution, as well as ensure efficiencies and enable the Council have more control of current and future contracts, for example ceiling rates.

- b) **Recommendation:** to delegate authority to the Corporate Director of Adult Services and Integration ("**DASS**"), in consultation with the Director of Governance, to determine the provisions of the new APL, and to award positions on to the APL following an open, fair, and transparent competitive process and evaluation criteria.

**Reason:** To ensure the proposed APL is set up in accordance with and continues to be used/managed thereafter in line with the Light Touch Regime under the Public Contract Regulations 2015

and the Council's Contract Procedure Rules, to ensure open, fair, and transparent commissioning of services required to meet our statutory duties under the Care Act 2014, and to ensure the APL is set up within the procurement timescales.

## Organisational Impact and Implications

### 28. Financial

The estimated value for the APLs is summarised below; mental health is included in all the portfolios including over sixty-fives. The below figures summarise the Gross and Net Out-turn annually based on 2022/23 actuals and over initial 3-year term and the full 7 years. An inflationary uplift of 2.5% every year has been considered.

<b>Table 1: Finances</b>		
<b>Portfolio</b>	<b>22/23 Annual Value (£)</b>	
	<b>Gross</b>	<b>Net</b>
Home/day care	13,346,734	1,808,386
Residential	25,861,495	16,518,945
Nursing	9,886,379	5,986,386
Supported Living	18,492,783	15,375,589
<b>Total Value</b>	<b>67,587,391</b>	<b>39,689,306</b>
Budget	61,857,680	35,069,510
<b>Overspend</b>	<b>5,729,711</b>	<b>4,619,796</b>
	<b>3-year Value with 2.5% inflation</b>	
Home/day care	42,075,786	5,700,964
Residential	81,528,766	52,076,232
Nursing	31,166,966	18,872,177
Supported Living	58,298,788	48,471,783
<b>Total Value</b>	<b>213,070,306</b>	<b>125,121,157</b>
<b>Budget</b>	<b>195,007,303</b>	<b>110,557,178</b>
<b>Overspend</b>	<b>18,063,003</b>	<b>14,563,979</b>
	<b>5-year Value with 2.5% inflation</b>	
<b>Portfolio</b>	<b>Gross</b>	<b>Net</b>
Home/day care	71,908,686	9,743,106
Residential	139,334,925	88,999,727
Nursing	53,265,210	32,253,074
Supported Living	99,634,248	82,839,624



<b>Total Value</b>	<b>364,143,069</b>	<b>213,835,531</b>
Budget	333,272,894	188,945,287
<b>Overspend</b>	<b>30,870,174</b>	<b>24,890,244</b>
	<b>7-year Value with 2.5% inflation</b>	
Home/day care	103,251,877	13,989,882
Residential	200,067,520	127,792,473
Nursing	76,482,177	46,311,380
Supported Living	143,062,315	118,947,336
<b>Total Value</b>	<b>522,863,890</b>	<b>307,041,070</b>
Budget	<b>478,538,182</b>	<b>271,301,794</b>
<b>Overspend</b>	<b>44,325,708</b>	<b>35,739,276</b>

- The figures shown above are taken from the actual spend in 2022/23 inflated at 2.5% per year. As the intention is that the APL will have a ceiling rate built in the actual costs of the Dynamic Purchasing System over the next 7-year should be less than shown above.
- The existing PPAs have specific rates at the point of application from Providers, though due to the current cost of living climate and market pressures, Providers have submitted higher inflationary rates than expected. The APL will have a ceiling rate which is that of the rates in 2023/24 therefore there will be no increase in spend per APL or call off from the APL. These rates are:

<b>Approved Provider List</b>	<b>Category of service</b>	<b>Weekly Rates £</b>	<b>Ceiling Rate £</b>	<b>Hourly rates £</b>
Residential care with or without Nursing (APL 1)	Residential home	700	£700	N/A
	Residential home with dementia care	730	£730	N/A
	Nursing home (includes FNC)	919.71	919.71	N/A
	Nursing home with dementia care (Includes FNC)	949.71	949.71	N/A
Care at Home (APL 2)	Care at Home (Domiciliary Care) Services	N/A	23.58	£23.58

*For Community Based (APL 3) and Supported Living (APL4), there are ongoing negotiations hence this will be confirmed later.*

## 29. **Human resource**

As this appears from the information provided in the report to being a move from a Pre-Placement Agreement to an Approved Provider List model, there are no Human Resources implications.

## 30. **Legal**

### ***Statutory Duties***

The procurement of a new Contract is necessary for us to comply with our statutory duties under the Care Act 2014, ss 2 and 5:

#### ***2. Preventing needs for care and support***

*(1) A local authority must provide or arrange for the provision of services, facilities, or resources, or take other steps, which it considers will: -*

- a. contribute towards preventing or delaying the development by adults in its area of needs for care and support;*
- b. contribute towards preventing or delaying the development by carers in its area of needs for support;*
- c. reduce the needs for care and support of adults in its area; and*
- d. reduce the needs for support of carers in its area.*

*(2) In performing that duty, a local authority must have regard to: -*

- a. the importance of identifying services, facilities, and resources already available in the authority's area and the extent to which the authority could involve or make use of them in performing that duty;*
- b. the importance of identifying adults in the authority's area with needs for care and support which are not being met (by the authority or otherwise);*
- c. the importance of identifying carers in the authority's area with needs for support which are not being met (by the authority or otherwise).*

#### ***5. Promoting diversity and quality in provision of services***

(1) *A local authority must promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishing to access services in the market: -*

- a. has a variety of Providers to choose from who (taken together) provide a variety of services;*
- b. has a variety of high-quality services to choose from;*
- c. has sufficient information to make an informed decision about how to meet the needs in question.*

(2) *In performing that duty, a local authority must have regard to the following matters in particular: -*

- a. the need to ensure that the authority has, and makes available, information about the Providers of services for meeting care and support needs and the types of services they provide;*
- b. the need to ensure that it is aware of current and likely future demand for such services and to consider how Providers might meet that demand;*
- c. the importance of enabling adults with needs for care and support, and carers with needs for support, who wish to do so to participate in work, education, or training;*
- d. the importance of ensuring the sustainability of the market (in circumstances where it is operating effectively as well as in circumstances where it is not);*
- e. the importance of fostering continuous improvement in the quality of such services and the efficiency and effectiveness with which such services are provided and of encouraging innovation in their provision;*
- f. the importance of fostering a workforce whose members are able to ensure the delivery of high-quality services (because, for example, they have relevant skills and appropriate working conditions).*

(3) *In having regard to the matters mentioned in subsection (2)(b), a local authority must also have regard to the need to ensure that sufficient services are available for meeting the needs for care and support of adults in its area and the needs for support of carers in its area.*

(4) *In arranging for the provision by persons other than it of services for meeting care and support needs, a local authority must have regard to the importance of promoting the well-being of adults in its area with needs for care and support and the well-being of carers in its area.*

*(5) In meeting an adult's needs for care and support or a carer's needs for support, a local authority must have regard to its duty under subsection (1).*

## **Procurement & Contract Law Implications**

Under Rule 10.4 of the Council's Contract Procedure Rules ("**CPRs**"), authorised officers (in conjunction with Commercial Procurement and Legal Services) may establish a Dynamic Purchasing System ("**DPS**"), which is what the APL will effectively be. Both the Chief Procurement Officer and relevant Assistant director must agree the establishment of any DPS prior to any selection or procurement processes being undertaken. The APL must otherwise be treated as any other procurement and will follow the same levels and process as required by the value and object of the APL. Note, there are additional requirements under the Public Contracts Regulations 2015 ("**PCRs**") for the establishment and further use of DPS, and advice must be sought from Commercial Procurement and Legal Services to ensure the PCRs are adhered to.

CPR Rule 11.5 confirms that where the value of a proposed contract is above the relevant Procurement Threshold, officers are required to procure the contract in accordance with the requirements of the PCRs. The nature of the services to be provided under the APL will fall under the category of "social and other specific services" for the purposes of the PCRs, for which the current threshold is £663,540 inclusive of VAT, and therefore brings this arrangement within the scope of Chapter 3 of the PCRs – otherwise known as the Light Touch Regime.

The Light Touch Regime offers a degree of flexibility when determining the appropriate route for procurement, subject to compliance with the overarching principles of transparency and equality of treatment of Providers. Officers should ensure that there is a robust procurement strategy in place prior to going out to tender and must not depart from this strategy once details of the chosen procedure have been published. Legal Services must be consulted in order to draft the appropriate contract which will sit behind the APL and govern the provision of services by Providers.

Should the establishment of the APL become delayed in anyway, necessitating any variations and/or extensions to any current PPAs,

further guidance must be sought from Legal Services and Commercial Procurement under such circumstances, with enough lead-in time to commence work on any necessary Deeds of Extension, Deeds of Variation and/or Waivers for any PPAs.

Consideration will also need to be given to the status of existing PPAs and the way in which services will be migrated from the current model to the new APL model. Where a Provider is delivering services under an existing PPA, the term of which has not yet expired, Legal Services should be consulted to establish whether there is an option for the PPA to be terminated for convenience or whether it is possible for the Council and Provider to mutually agree to bring the PPA to an end. Where PPAs do include an option to terminate, it is likely that this will be subject to the provision of a specified period of notice by the Council, therefore officers should factor this in when considering timescales for implementation of the APL model. It should be noted that individual services being delivered under a PPA may remain subject to its terms even after the PPA itself is terminated unless agreed otherwise with the relevant Provider – again, Legal Services will be able to advise on this point.

As part of the Council's obligation to promote equality of treatment for economic operators, any Providers currently delivering services under a PPA must be subject to the same selection process as new Providers when applying to join the APL and there must be no automatic migration of Providers from PPAs to the APL.

With regards to the current PPA, any procurement strategy must also factor in the relevant exit management provisions under the PPAs. Relevant advice from Legal Services and other officers (e.g., HR in relation to TUPE (If applicable)) should be sought on any relevant provisions of the current Contract.

### **Property Law Implications**

The Client Department has confirmed to Legal Services that at present no Council-owned premises are used to deliver the services under our current PPAs. Providers under our current PPA model, and under the proposed APL model, will be responsible to supply the property from which to deliver the services. The Council will not be transferring or leasing any Council-owned premises to any Providers appointed to the APL.

As such, there are no Property Law implications in relation to this Report.

### 31. **Procurement**

The procurement procedure is subject to the Light Touch Regime under the PCRs 2015. The APL will be an open list: applicants can apply to join during its term if the applicant satisfies the minimum selection requirements and therefore would be a Dynamic Purchasing System (“**DPS**”). The APL will be open for new applications from the date of publication of the invitation to participate documents and will remain open for new applications at any time during the APL’s term through an electronic system where providers can join at any time. Following an evaluation process applicants will receive an outcome notification.

By issuing the overarching contract bundle to the currently used SPOT Providers, it ensures that continued service and minimum disruption to service users, ensuring that Providers currently chosen to be used by individuals are under contract and have clear standards and expectations in place. However, for these Providers to be added to the APL and be appointed any new business, they will need to pass an application process and due diligence, providing greater oversight.

The APL will allow value for money work to be completed with all Providers that are approved for the list during due diligence and before the commencement of services, allowing greater oversight by the Commissioning Team. The procurement will be conducted at a phased approach due to ongoing negotiations with Providers regarding uplifts, i.e., supported living.

Through summer 2023, the commissioning team would like to conduct market engagement through Provider meetings. These meetings will prepare the market for the APLs and help to answer any questions and issues Providers may have. It will also be a good opportunity to share the draft service specifications with the market and make any amendments following the engagement, where appropriate.

### 32. **Health and Wellbeing**, no specific implications on Health and Wellbeing, this will be reviewed throughout the life of the contract.

33. **Environment and Climate action**, No specific implications on environment and climate action.
34. **Affordability**, the APL recognises the significance of Low Income Groups to the York health and social care system and driving up quality and sustainable employment in the sector.
35. **Equalities and Human Rights**

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).

An **Equalities Impact Assessment ("EIA")** has been carried out and is annexed to this report at **Annex A** In summary, the result of the assessment is set out findings from EIA.
36. **Data Protection and Privacy**, as there is no personal data, special categories of personal data or criminal offence data being processed, there is no requirement to complete a DPIA for the DPS This is evidenced by completion of DPIA screening questions under Annex B.
37. **Communications**, With the exception of possible reactive media work, the report does not have any communications implications.
38. **Economy**, no specific implications on Economy.

## **Risks and Mitigations**

39. Risks are regularly reviewed and managed with required mitigations and controls put in place to minimise likelihood and impact.

## **Wards Impacted**

40. All wards will be impacted as this service is provided for all areas in York. The **EIA** annexed to this report at **Annex A** provides details of

the potential impacts and how this will be managed whilst this service is tendered and implemented.

## Contact details.

For further information please contact the authors of this Decision Report.

### Author

<b>Name:</b>	Abid Mumtaz
<b>Job Title:</b>	Head of All Age Commissioning & Contracting
<b>Service Area:</b>	All Age Commissioning and Contracts
<b>Telephone:</b>	01904 554099/07954090648
<b>Report approved:</b>	Yes
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### Co-author

<b>Name:</b>	Edward Njuguna
<b>Job Title:</b>	Commissioning Manager
<b>Service Area:</b>	All Age Commissioning and Contracts
<b>Telephone:</b>	01904 55 1053
<b>Report approved:</b>	Yes
<b>Date:</b>	04/09/2023

## Background papers

### Annexes

- Annex A: Equalities Impact Assessment (EIA)
- Annex B: DPIA Screening Questions.

### Specifications

- Annex C: Care at Home (APL 1)
- Annex D: Residential Care With and Without Nursing (APL 2)
- Annex E: Community Based Support (APL 3)
- Annex F: Supported Living (APL 4)