

## Approved Provider Lists - Contract Extensions

9<sup>th</sup> April 2021

<b>1</b>	<p><b>Key purpose of the report</b>                  Health and Adult Services (HAS) utilise a number of Approved Provider Lists (APLs), which enable care and support teams to commission packages of care and social care services, to support people within North Yorkshire. Three of these APLs are due to expire and the Service Development Team is seeking to obtain a Key Decision, in accordance with the Council's Contract Procedure Rules to enable these to be extended until 30th June 2022.</p>																		
<b>2</b>	<p><b>What type of report is this?</b></p> <p>Information/briefing item</p> <p>Decision required</p> <p>Does the report contain any confidential information?</p>	<p>Y</p> <p>Y</p> <p>N</p>																	
<b>3</b>	<p><b>Report details</b>  <b><u>Background</u></b>                  The three APLs that the Service Development Team is seeking to extend are:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">APL title</th> <th style="text-align: left;">Contract Term</th> <th style="text-align: left;">Estimated contract value</th> <th style="text-align: left;">Actual spend 2019-20</th> </tr> </thead> <tbody> <tr> <td>NYCC APL for Care Homes and Homes with Nursing</td> <td>01/07/2016 – 30/06/2021</td> <td style="text-align: center;">£350m</td> <td style="text-align: right;">£105,968,013</td> </tr> <tr> <td>NYCC APL for Domiciliary Care and Other Regulated Services</td> <td>01/07/2016 – 30/06/2021</td> <td style="text-align: center;">£90m</td> <td style="text-align: right;">£55,467,633</td> </tr> <tr> <td>NYCC APL for Non-Regulated Services</td> <td>01/02/2017 –31/01/2022</td> <td style="text-align: center;">£21m</td> <td style="text-align: right;">£4,726.143</td> </tr> </tbody> </table> <p>The Care Homes and Homes with Nursing APL and Domiciliary Care and Other Regulated Services APL are both due to cease on 30 June 2021 with no provision to extend included in the contract.</p> <p>In relation to the Non-regulated Services APL, neither the OJEU Notice or Contract Award Notice confirm the original start date, therefore, Procurement and Legal have agreed that in the absence of a start date, the date of 1 February 2017 is assumed. As such the APL is due to cease on 31 January 2022 with no provision to extend included in the contract.</p> <p>A Gateway 4 has been completed for each of the APLs and has been attached as appendices for reference.</p>			APL title	Contract Term	Estimated contract value	Actual spend 2019-20	NYCC APL for Care Homes and Homes with Nursing	01/07/2016 – 30/06/2021	£350m	£105,968,013	NYCC APL for Domiciliary Care and Other Regulated Services	01/07/2016 – 30/06/2021	£90m	£55,467,633	NYCC APL for Non-Regulated Services	01/02/2017 –31/01/2022	£21m	£4,726.143
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### **Transformation work**

Under the authority of Dale Owens, Assistant Director – Commissioning and Quality, the Service Development Team have established a Market Development Board.

The Market Development Board (the Board) is the strategic lead for:

- Managing supply and demand to support sufficient market capacity;
- Building on and developing community assets;
- Promoting collaboration and NHS integration;
- Identifying opportunities to innovate;
- Providing better care pathways for the population and safe hospital discharges;
- Developing a workforce development strategy;
- Developing models of home care; and
- Analysing and report on the actual cost of care.

One identified outcome of the Board is to develop a series of transformation plans in key service areas. Six work streams shall deliver the Boards initial outcomes including the transformation plans. The transformation plans shall relate to the following areas: development of a residential and nursing strategy; supported living and accommodation; reimaging homecare and redesigning day services. The work will consider the significant issues within the market to ensure effective and sustainable services for the future. Each of these transformational plans shall impact the services delivered by the APLs, enabling the Council to manage costs and quality, whilst determining an appropriate contracting mechanism(s) for the future.

Pursuing contract extensions will enable this transformation work to be undertaken and ensure this informs the future commissioning strategy and intentions for the arrangements post June 2022.

### **Contract extension**

Extending the 3 APLs and making the end dates co-terminus shall enable the transformation work lead by the Market Development Board to be undertaken. It shall also allow time to pilot some of the new ways of commissioning services in order to inform the longer term intentions in relation to these services.

There has been limited/ no availability of resource internally to progress the re-commissioning work in readiness for a contract start date of 1 July 2021 for the Care Homes and Homes with Nursing and Domiciliary Care and Other Regulated Services. It is also important to consider the markets ability to respond to any tendering exercise in the current climate. The services delivered via the APLs have been impacted significantly by the Covid-19 pandemic. The providers continue to feel the effects of the pandemic and the longer term impact on the market is still unknown. These are key factors which need to be taken into consideration to ensure North Yorkshires commissioning strategy supports a sustainable market that meets the needs of people.

### **4 Significant risks and mitigation Procurement and Legal advice**

Procurement and Legal have reviewed the contracts for the APLs. As outlined in this report undertaking a re-procurement exercise would mitigate any risks. However it is acknowledged that given the timescales and the other factors associated with the market this is not achievable.

Procurement and Legal are therefore recommending extending the APLs under Regulation 72 (1) (e) of the Public Contract Regulations 2015 which states:

72 (1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:-

(e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8);:-

8) A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where one or more of the following conditions is met:—

(a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;

(b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—

(i) allowed for the admission of other candidates than those initially selected,

(ii) allowed for the acceptance of a tender other than that originally accepted, or

(iii) attracted additional participants in the procurement procedure;

(c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(d) the modification extends the scope of the contract or framework agreement considerably;

(e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d).

There is a potential argument that the proposed extension is a substantial change.

The APL will continue to operate in the same way so there will be no alteration to the overall scope of the contracts.

The Non-Regulated Services and Domiciliary Care and Other Regulated Services APL both have a set time limit for receipt of applications, (Non-Regulated 31/3/2021 and Domiciliary Care – 30/6/2021). There was no time limit on receipt of applications for the Care Homes and Homes with Nursing APL. During the extension period the council will continue to accept applications to the provider list. This will ensure the APLs do not prevent providers from applying to join the list. This therefore mitigates the points under 8 (b).

As we will have commenced the re-procurement activity, if any challenge were brought, the council would be able to demonstrate that we are actively working on the re-procurement of the arrangements.

The issue of the commencement date for the Non-Regulated Services APL will be addressed when we extend the APL via a variation.

It should be noted that the e-tendering system is currently being re-procured. The current system will cease 31 December 2021. As such the publication of the procurement documentation for the new APLs cannot take place during December 2021.

**5 Financial implications/benefits Financial**

There are no anticipated savings from extending the APLs.

Each of the APLs includes a discretionary inflationary uplift clause.

	The Cost of Care exercise has been undertaken which will inform fee setting.
<b>6</b>	<p><b>Recommendations</b> (<i>please state specific recommendations</i>)</p> <p>HAS Executive is recommended implement a Key Decision to enable the extension of the three Approved Provider List (APL) until 30 June 2022.</p> <p>The exact extension period for each APL is detailed below:</p> <ul style="list-style-type: none"> <li>• Care Homes and Homes with Nursing APL - Proposed Extension: 01/07/2021 – 30/06/2022</li> <li>• Domiciliary Care and Other Regulated Services APL - Proposed Extension: 01/07/2021 – 30/06/2022</li> <li>• Non-Regulated Services APL - Proposed Extension: 01/02/2022 – 30/06/2022</li> </ul>
<b>7</b>	<p><b>Next steps</b></p> <p><b><u>Governance</u></b></p> <p>The following approvals for the contract extensions have been achieved:</p> <ol style="list-style-type: none"> <li>1. Adult Social Care Leadership Team 3<sup>rd</sup> March 2021</li> <li>2. Procurement Assurance Board 5<sup>th</sup> March 2021</li> <li>3. Health and Adult Services Leadership Team 11<sup>th</sup> March 2021</li> </ol> <p>The Head of Legal Services shall be party to the approval process. Legal Services have been engaged throughout in order to agree the recommendation to extend the APLs.</p> <p>Following a Key Decision, contract extensions shall be provided to each provider.</p>

**Helen Thirkell, Service Development Manager – Harrogate, based on the HASLT report completed by Procurement**