

Record of operational decision

Decision title:	Decision to extend the current Dynamic Purchasing System (DPS) used for the supply of services to secure adult care home provision for a further period of up to five years.
Date of decision:	Monday 5 th July 2021
Decision maker:	Director for Adults and Communities
Authority for delegated decision:	<p>Chief Executive Scheme of Delegation SA09 – Updated 29 September 2020</p> <p>Each senior manager identified in appendix 1 has delegated to them power to act on behalf of the council in relation to any incidental operational matters within the service areas for which they are responsible, including spending decisions, subject to the following overriding provision: Any action taken under delegated powers shall be in accordance with:</p> <ul style="list-style-type: none"> i. the overall policies approved by full Council, the Cabinet or a committee; ii. the provisions of the constitution, including the contract and financial procedure rules; iii. no contracts, of any value, may be approved or authorised below the level of Assistant Director1; iv. human resources policies and procedures; v. approved capital and revenue budgets; and vi. the requirements of the relevant legislation.
Ward:	Countywide
Consultation:	N/A
Decision made:	The extension of the current Dynamic Purchasing System (DPS) to secure adult care home provision for a further period of up to five years until 5 th September 2026; review the DPS to consider inclusion of a block purchase option.
Reasons for decision:	<p>The Council has a statutory duty to ensure that there is sufficient and fit for purpose provision of care services to Herefordshire residents who are eligible under the Care Act 2014 and that a sustainable market is maintained providing choice and quality. Care home services contribute to the offer of services to meet assessed need. Plus under the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 ('choice of accommodation regulations'). Local Authorities have a duty to offer residents (whose care they are funding) choice over where they receive their care provided the home accepts the funding terms and conditions, including how much the Council is willing to pay.</p> <p>A DPS is designed to give buyers access to pre-qualified Suppliers and ensures that the end-to-end process is competitive, fair and transparent. Suppliers need to meet the online entry criteria to get onto the DPS. New suppliers can join at any time during the lifetime of the DPS.</p> <p>These call-off contracts represent approximately £30m of annual spend by the Council on adult care home provision, but no guarantee is given as to the actual value of the Contract for each Provider/Supplier due to fluctuations in demand for the Service and any National Living Wage and inflationary increases that may be applied during the lifetime of the contract. The DPS does require a 12 month Termination Notice period to be given to suppliers to terminate.</p>

	<p>As lead commissioner the council undertook a procurement exercise in 2016 with a view to establishing an accredited list for the council and CCG of Providers in Herefordshire.</p> <p>Colleagues in our Procurement Team have reviewed the Proactis tender opportunity and the term of the DPS as advertised was 5th Sept 2016 – 5th Sept 2020 (approx. £19m) (please note this is an annual fig which is higher now). This was advertised as a DPS and was entitled - 'Residential and Nursing Accredited List'. The DPS was extended in 2020 by 1 year until 5th Sept 2021.</p> <p>Regulation 34 of the PCRs 2015 sets out the rules on Dynamic Purchasing Systems, including specific rules regarding the ability to change the period of validity of the DPS that provides flexibility if the authority's circumstances change or developments in technology and markets mean that the DPS, as originally set-up, outlives its usefulness. It is useful to note there is no specific maximum duration of a DPS.</p> <p>The council will submit for publication on the UK e- notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system setting out the extension provisions.</p> <p>Over 300 care homes have successfully applied to join the DPS from the 1st September 2016 to date.</p> <p>The Council currently have 798 individual placements with 132 contracted care homes under the DPS. This number of individual placements has remained fairly constant over the last five years, with an average churn of 30 new placements per month.</p> <p>This is a dynamic situation with the introduction of the Integrated Care System and we are actively scoping cross border opportunities with both the HWCCG and Worcestershire County Council (WCC) to establish and secure their potential support/commitment for a joint approach to secure adult care home provision across the two Counties. The extension period will allow time to review and facilitate the above scoping exercise.</p> <p>The council needs to the ability to put in emergency/urgent block contracts as issues arise which need to be responded to promptly therefore the additional ability to do temporary short term block contracts through a mini tender will allow flexibility to enable the council to do this.</p>
Highlight any associated risks/finance/legal/equality considerations:	<p>A DPS is a fully electronic system designed primarily to allow Local Authorities to procure care services in a way that complies with the Care Act 2014 but also complies with the Public Procurement Regulations 2015, to enable a fair and transparent system of sourcing suppliers and ensuring service user choice is respected.</p> <p>Legal and Procurement colleagues have advised that the DPS can be extended for a further period of time in accordance with Reg 34 of the PCRs.</p> <p>Although the CCG and Council jointly established the accredited list and Unified Contract (which included a shared service specification and Quality Assurance process) through the DPS, the CCG have shifted their stance since the merger of the local CCG with Worcestershire. As a result the CCG have withdrawn from the DPS and now re-introduced the National contract for Health adult care home placements.</p> <p>We are actively scoping cross border opportunities with both the HWCCG and WCC to establish and secure their potential support/commitment for a joint approach to secure adult care home provision.</p> <p>The budget is in place.</p>
Details of any alternative options	<p>a) Do nothing and allow the DPS to expire on the 1st September 2021. This would leave the DPS in an anomalous position as the contractual terms have no expiry date and requires 12 months'</p>

considered and rejected:	<p>notice of termination yet under the PCR the DPS would have expired. This would lead to legal uncertainty;</p> <p>b) Implement a new DPS which would also require the development of a new call-off contract for Council use only. Suppliers would have to successfully complete the online application. It would take some time to develop and implement a new call-off contract and then undertake a consultation exercise with the Suppliers;</p> <p>c) Scope cross border opportunities to secure a joint approach and commitment to implement a new DPS which would also require the development of a new call-off contract for use potentially across Herefordshire and Worcestershire. Suppliers would have to successfully complete the online application and the financial value would be much higher and take more administrative time. However, the advantages are that there will be a single set of contractual T&C's across the two Counties and will streamline joint funded care packages;</p>
Details of any declarations of interest made:	N/A

Signed..... Date:

Please ensure that signatures are redacted before publishing.