



City of Westminster

Cabinet Member Report

Decision Maker:	Cabinet Member for Adult Social Care and Public Health
Date:	16 November 2021
Classification:	Public with confidential/exempt appendix Part A – Public Part B – Private is currently exempt from disclosure on the grounds that: (i) it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972, (ii) it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under paragraph 5 of Schedule 12A of the Local Government Act 1972; (iii) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
Title:	Extra Care Housing Contract Award
Wards Affected:	The service is located in Maida Vale. All awards are affected by the decision.
Financial Summary:	The total gross cost anticipated are £601k per annum, however, circa £239k of this cost is funded from Public Health. Therefore, the net impact on Adult Social Care is £362k.
Report of:	Sharon Thurley – Strategic Commissioner, Adult Social Care and Health Gareth Wall – Director Integrated Commissioning, Adult Social Care and Health Bernie Flaherty - Executive Director, Adult Social Care and Health

1. Executive Summary

- 1.1. This report seeks approval from the Deputy Leader and Cabinet Member for Adult Social Care and Public Health to directly award an Extra Care and Support Service contract to Octavia.
- 1.2. Octavia is the incumbent provider delivering both the extra care and support service as well as the housing service to Leonora House. Residents have legal tenancies to live within the schemes.
- 1.3. The existing contractual arrangements with Octavia for the extra care and support service are ending.
- 1.4. In the short term, amidst the Covid-19 pandemic, it is not the best time to be seeking a new contract. It has been a challenging time and most providers in the marketplace have been focussing on the safe delivery of their services. Therefore, the market is far from ideal and there is a high probability of risk pricing further to the challenges and Covid-19 cost pressures providers have experienced.
- 1.5. A direct award is sought for the short term, for a period of up to two years, to ensure service provision for some of the most vulnerable residents within the borough and market stability. Should there be a requirement to undertake a procurement exercise there would be a need of eighteen plus six months to be able to complete such an exercise.
- 1.6. Furthermore, it is not thought that a procurement exercise could deliver any commercial benefits or service improvement. It is quite the contrary, there is a risk of cost pressures and decrease in service quality through a procurement exercise.
- 1.7. The incumbent provider owns the property the contracted service is delivered within. For the incumbent provider to allow another commercial operator to provide services within their building they have advised that they would be charged i.e. 'licence to occupy building costs'. These would ultimately be built back into the contract costs. No such costs are currently incurred. Octavia also fund the activity co-ordination for the service through their own charitable fundraising not from within the current service budget. This added value would be lost and would likely have to be met via adult social care budgets. This would create additional cost pressures.
- 1.8. It could be argued that another commercial operator could absorb these costs through having a more effective business model or their own charitable endeavours. This is also thought to be highly unlikely as any new provider would incur contract set up costs (installing their own IT/telephony), and it is not thought, whilst maintaining current staffing levels, that there are efficiencies easily found within the business model.
- 1.9. A tender for extra care and support services was undertaken within the borough in 2019, for another extra care and support service. Despite a healthy number of initial expressions of interest, there were only three ultimate bidders. A cost ceiling

was specified to providers at the outset and anecdotal feedback was that this had led to a lack of market confidence around the commercial profitability of the service. It is noted that the unit costing for this service was and is already higher than the Octavia contract.

- 1.10. The other service ultimately was awarded to the incumbent provider. Similar to Octavia, the incumbent provider delivered both a) the Housing service and b) the Care and Support service. This was the model extra care housing was first designed with. The integrated service enabling efficiency opportunities that are lost when there are different providers for each of the services. This model also very much strengthens the quality aspect of the service with their being no questions or debates over responsibilities.
- 1.11. Furthermore, the bulk of the costs within a care and support service are through staffing and TUPE would apply. The incumbent provider, Octavia, is a local charity organisation, who was an early adopter of paying London Living Wage.
- 1.12. It should be noted all the services are regularly inspected by CQC and are classified as 'Good' services.
- 1.13. Further to the short-term direct award it is further requested that longer term direct award extensions are approved, subject to appropriate checks and balances in due course including good performance and quality standards being met.
- 1.14. The table below highlights the cost to extend these contracts for the requested periods. Should it be agreed to extend for all three direct award periods the maximum aggregate financial value is £3,603,900.

	Annual Contract Value	36 months Direct Award Value	36 months Direct Award Value	Maximum Direct Award Value
	(Cost as of Contract price 21-22)	1.6.21 – 31.5.24	1.6.24 – 31.5.27	1.6.21 – 31.5.27
Service Cost	£600,650	£1,801,950	£1,801,950	£3,603,900

2. Recommendations

- 2.1. Further to the approval of the Commercial Gateway Review Board, it is recommended that the Deputy Leader and Cabinet Member for Adult Social Care and Public Health gives approval to:

- 2.1.1 Direct award an Extra Care Housing, Care and Support contract to Octavia for an initial term of up to 36 months, with the option to extend for terms of 36 months, subject to ongoing endorsement of the Commercial Gateway Review Board and the necessary extension approvals in due course.
- 2.1.2 Grants a waiver to the tendering requirements of the Procurement Code following a recommendation from the appropriate Executive Leadership Team Member and Director of Commercial Partnerships, to directly award the above WCC listed contracts for the reasons described in this report.
- 2.2. Officers ask that the Legal Comments in section 9 of the report be noted, and that a balanced approach to risk management be taken as set out in section 6.

3. Reasons for Decision

- 3.1. The Health and Social Care Act 2012 sets out the public health duties conferred to Local Authorities which includes a duty to improve the health of the people that live in the area.
- 3.2. The Care Act 2014 places a duty upon Local Authorities to ensure older people receive services that prevent their care needs from becoming more serious or delay the impact of their needs.
- 3.3. The Care Act 2014 also stipulates a duty to Local Authorities to meet residents assessed needs.
- 3.4. Extra care housing services supports people assessed as needing access to 24/7 care and support in a highly effective and popular way that facilitates individual preferences relating to personal outcomes and wellbeing.
- 3.5. Extra care housing services also play a vital role in supporting vulnerable people to maintain their independence, remain in the borough, prevent and reduce the need for emergency and more costly health and social care services.
- 3.6. With the existing service contract reaching expiry it is essential that a good quality service is in place in order to achieve the service outcomes being sought and maintain the health and wellbeing in a time of unprecedented challenges.
- 3.7. The contract award enables service continuity with an effective, local, third sector, highly experienced, highly responsive, provider as well as delivering value for money.

4. Background

- 4.1. The Leonora Service is a twenty-six unit scheme, located in Maida Vale, at 49 Lanark Rd, London W9 1AP, supporting residents from across the borough.

- 4.2. The service is predominantly made up of older residents but also supports a range of other user groups and ages including adults with a learning disability and adults with a mental health diagnosis. The general units (21) can support an element of cognitive impairment and there are 5 units that supports those with more pronounced cognitive impairment and or formal dementia diagnosis.
- 4.3. There have been many different organisations looking at the value for money that extra care housing services deliver for the Health and Social Care Economy, with consistently strong findings.
- 4.4. The Housing LIN¹ published a case study undertaken by East Sussex County Council² evaluating their extra care housing preventative model. East Sussex Council findings indicated that 63 per cent of residents within the schemes would have been placed in residential or nursing care if extra care housing had not been available. Their study concluded that the cost of extra care housing was on average half the gross costs of alternative placements.
- 4.5. The study also showed that care needs reduced after admission to extra care housing. A study against a control group of residents receiving homecare in the community showed that further to moving and residing in extra care housing their 'care package' needs reduced and were 16% lower compared to pre-admission.
- 4.6. Studies undertaken by Kneale³ found that after five years within extra care those residents were less likely to enter long term residential care compared to those residents living in the community in receipt of homecare.
- 4.7. A similar study was undertaken by Southampton City Council⁴ who found that extra care housing had an average cost benefit/saving of £2,441.02 per year per person. This was from reduced activity in the following; GP visits, community nurse visits, relays to hospitals, delays in transfers from hospitals, falls, homecare services, and services to support with isolation and loneliness.
- 4.8. Value for money has been explored and the service reflects highly effectively, cost comparison details are available within appendix one.
- 4.9. Any opportunities for efficiencies will be sought continuously through the life-time of the contract.

¹ The Housing LIN is the organisational name used, it stands for The Housing Learning and Improvement Network

² [The Business Case for Extra Care Housing in Adult Social Care: An Evaluation of Extra Care Housing schemes in East Sussex - Resource Library - Resources - Housing LIN](#)

³ Kneale D. (2011) Establishing the extra in Extra Care: Perspectives from three Extra Care Housing Providers. ILCUK.

⁴ [An Independent Living Market Review \(housinglin.org.uk\)](http://housinglin.org.uk)

5. Options, Analysis and Proposals

- 5.1. In determining the recommendations for the service contract, four key options have been considered:
- 5.2. **Option 1** – End Service Provision with expiry of contract
- 5.3. This is not a recommended option. There are vulnerable residents living within the extra care housing schemes very much in need of support. There are clear duties upon the Council to ensure assessed needs are met, service cessation or service transformation would need an appropriate period of consultation and engagement to inform this option. The Council would be open to challenge and complaint if lacking provision of statutory services.
- 5.4. **Option 2** – All the contract to expire and give customers a direct payment to purchase their own service.
- 5.5. This is not a recommended option. One of the features of extra care services is the provision of 24/7 staffing to meet unplanned care needs as well as planned (timed and scheduled needs) care needs. Direct payments do not lend themselves to unplanned care needs and an individual being able to fund staff presence 24/7 in a cost-effective method. The Council would be open to challenge and complaint if lacking provision of statutory services.
- 5.6. **Option 3** – Competitively Procure New Services
- 5.7. This is not recommended for the here and now. Firstly, there is a duty to ensure clarity and certainty to inform an effective procurement exercise to deliver positive outcomes for residents and effective value for money for the Council. Furthermore, there is a lack of confidence that a procurement exercise in this case is both an effective value for money exercise that will add value.
- 5.8. **Option 4** – Direct award a contract to the incumbent provider
- 5.9. This is the recommended option. The service is well established and well regarded. This option enables service stability and continuity in a very challenging period. Going to market could present new financial risks, with costs relating to a different commercial operator using the providers premises. Whilst a cost ceiling may curtail risk of these cost pressures, this may in turn give rise to challenges in the procurement exercise around the sustainability of costs. Commercial operators would have to absorb new costs into an existing service budget. Given TUPE and London Living Wage applies there are not thought to be efficiencies that could easily offset the new cost pressures. The Council could be challenged on failure to meet their duties under the Public Contracts Regulations 2015.

6. Risk Management – Procurement

- 6.1. The Council is required to comply with their respective procurement codes which require competitive tendering for contracts valued at £25,000 or above. However, waivers can be sought, further to the approval from the Cabinet Member for Adult Social Care and Public Health and a recommendation from the appropriate Executive Leadership Team Member and Director of Commercial Partnerships.
- 6.2. Local Authorities are required to comply with the Public Contract Regulations 2015, where contracts which fall under the 'Light Touch Regime' are valued at £663,540 or higher. Failing to advertise opportunities by way of Find a Tender (FTS) at an EU level and directly awarding contracts to a provider without the opportunity for competition may give rise to a potential challenge and a claim could be made for damages and a declaration of ineffectiveness.
- 6.3. This risk of procurement challenge from a supplier in the market, cannot be completely removed (as it cannot from any procurement). However, market engagement has shown that many Extra Care Providers would like to operate integrated schemes so are less likely to challenge our preference for this.
- 6.4. There is higher risk of challenge from home care providers who also deliver care and support in Extra Care schemes. However, this risk is mitigated by the forthcoming home care tender with new contracts in place by October 2022. The home care 'patch' contracts across bi-borough will deliver services to around 1100 residents in Westminster and 600 in Kensington and Chelsea so providers will be more interested in this than the smaller scale Extra Care contract.

7. Risk and Issues

- 7.1. The below summarises the key risks and issues:

Risk	Mitigation	RAG
1. Procurement Challenge – Challenge from other providers regarding direct award	Market engagement had determined that the ECH market prefer integrated models. Other boroughs have undertaken direct awards in similar circumstances hence other ECH providers have benefitted from similar scenarios. There are market opportunities forthcoming for homecare providers	

<p>2. Service Quality Issues Reduction in service quality during additional contract life.</p>	<p>Traditionally the service quality has been strong in all the services. The service has been highly responsive to challenges and new initiatives and very much supports the continuous improvement agenda.</p> <p>The service offer under Covid-19 evolves to meet changing needs and times.</p>	
<p>3. Value for Money (VFM) The services do not represent value for money.</p>	<p>Traditionally all the services have represented VFM with better unit costings than the neighbouring borough and excellent unit costings against other service types.</p>	
<p>4. Provider Failure Provider failure or provider exits market</p>	<p>Prior to Covid-19 it was felt that there was stability within the incumbent provision and credit checks supported the financial resilience of the organisations.</p>	
<p>5. Increased Costs - Service</p> <p>The profile of residents using the service has been growing in its complexity, in addition to price increases (re national wage increases, London living wage increases and Pensions contributions) giving justification to requests for increase. These factors may lead the provider to needing to re-negotiate the contract price.</p>	<p>There is a fundamental requirement to ensure sufficient funding for a safe good quality service.</p> <p>Any request for contract uplift will need to be evidence based and will be scrutinised to determine appropriateness of the request.</p>	

8. Consultation and Community Engagement

- 8.1. This report seeks to maintain the status quo and therefore has not been subject to any formal consultation with any parties.
- 8.2. There is iterative and ongoing engagement activity.

8.3. Market Engagement

- 8.4. In September 2020 a market engagement activity was undertaken. There were ten extra care housing respondents including the incumbent providers within the Borough.
- 8.5. One of the key messages coming out was the market's 'preference' to undertake both the care and housing management in order to deliver a cost effective and high-quality service.
- 8.6. The feedback from the engagement activity resonated with learning from the extra care and support procurement exercise undertaken in Westminster in 2019 when, aside from the incumbent provider, the interest came not from the extra care housing provider market but from the homecare market that had not the experience in running a 24/7 site based registered service.

8.7. Resident & Relative Engagement

- 8.8. The pandemic has curtailed usual consultation and engagement activities. Currently most of the residents are digitally excluded, be it through access to technology and or interest and capabilities in using technology, reducing alternate mechanisms of group and or one to one engagement activity. It should be noted that there are plans in place to explore what and how this may be addressed and there are current technological pilots in progress within Leonora.
- 8.9. Over the past few months the annual service survey has been issued to residents and relatives of services. The returns to date have been low. Work is now in place to explore different mechanisms including one to one interview's with residents.
- 8.10. Regular feedback of service user satisfaction is sought through contract management activity. Satisfaction is also seen through the absence of complaints, residents improved wellbeing and with relatives asking for their family members to be admitted to particular services based on their experiences of those services.
- 8.11. There is confidence that service users are satisfied with the service, contract management regularly touches base with care management staff, provider staff to seek feedback and where appropriate to talk to residents and relatives about their experiences.

9. Legal Implications

- 9.1. The Council is seeking to directly award a contract for extra care services to Octavia for an initial period of 3 years, with the provision to extend the contract by

3 years. This report has set out the Council's legal duties under the Care Act 2014 around service provision

- 9.2. The contract is the subject of this report is a contract for 'services' under the Public Contracts Regulations 2015('PCR's'), which fall within the scope of Schedule 3 services of the PCR's.
- 9.3. As the contract value (as stated in section 11 below) exceed the relevant threshold of £663,540 for 'light touch services the full implications of the PCR's apply.
- 9.4. Under section 8 of the Council's Procurement Code ('the Code') ('Regulations') approval of a waiver from the Code's requirement to competitively procure this service may be granted from the Cabinet Member following a recommendation to approve from the appropriate Executive Leadership Team Member, the Director of Commercial Partnerships and CGRB.
- 9.5. Approval of the contract award is required from Cabinet Member following recommendation to approve from the appropriate Executive Leadership Team member and CGRB endorsement the Lead member, or Leadership team, as appropriate.
- 9.6. Approval to extend the direct award contract as proposed in this report would also require business justification, review and endorsement by CGRB, prior to approval from the appropriate Cabinet Member in accordance with their Terms of Reference.
- 9.7. Appropriate Contract award notices will need to be issued in accordance with the PCR's and the Regulations.
- 9.8. Legal input should be sought in the preparation of the contract. Moreover, the contracts should be executed in accordance with the Council's Contract Regulations.
- 9.9. Further legal implications which are legally privileged and/or commercially sensitive are contained in Part B to this Report.
- 9.10. Legal implications by Christina Worrell, Solicitor (Contracts), Bi-Borough Shared legal Services.

10. Procurement Implications

- 10.1. Over the last few months detailed conversations have taken place with legal about options of this these Extra Care services.
- 10.2. A direct award for a period of 3 years, plus an additional 3 year extension is seen as an optimal commercial model for the following reasons:
 - Preferred model of care - The same provider offering housing and care services both to ensure a joined up integrated care offer is considered good practice. Feedback from market engagement with the extra care market, has outlined a

strong desire from the market to have one provider delivering an integrated model of housing and care services.

- Value for money – There is high risk of an ineffective tendering outcome if this were to be procured from the open market. It is likely that costs will increase if a different provider delivers care with the Extra Care landlord invoking licence to occupy costs on other commercial operators utilising their premises. Also, the impact of the pandemic, could mean providers inflate tender prices to cover future COVID related costs. With Octavia owning the property, there are economic advantages and added value activity derived from the contract being with the same provider.
- Current service – The current service is a well-performing service measured by local monitoring and the 'good' rating of the Care Quality Commission. Changing the care current provider will create upheaval for residents and staff without necessary increases in quality.

10.3. A 3 plus 3 year direct award is suggested because it is proposed a new Extra Care facility will be built on the Carlton Dene site and to be operational from approximately 2025/26. Therefore, the length of contract allows for continuity of a high performing service, whilst the new service provision is developed.

10.4. This risk of procurement challenge from a supplier in the market, cannot be completely removed, as it cannot from any procurement). However, market engagement has shown that many Extra Care Providers would like to operate integrated schemes so will not challenge our preference for this. There is higher risk of challenge from home care providers who also deliver care and support in Extra Care schemes. However, this risk is mitigated by the forthcoming home care tender with new contracts in place by October 2022. The home care 'patch' contracts across bi-borough will deliver services to around 1100 residents in Westminster so providers will be more interested in this than these much smaller scale Extra Care schemes.

10.5. Procurement implications for WCC verified by Ed Humphreys, Head of Commercial, Adults, Children & Public Health Procurement Services, ehumphreys@westminster.gov.uk

11. Financial Implications

11.1. The total gross cost anticipated are £601k per annum, however, circa £239k of this cost is funded from Public Health. Therefore, the net impact on Adult Social Care is £362k.

11.2. There is sufficient budget to meet this commitment.

11.3. If the proposed timeline for future incremental direct awards are approved subject to Commercial Gateway Review Board scrutiny then the total costs would equate to £3,604k over the 6-year period.

- 11.4. There is a saving commitment initiative called review of contracts within ASC, a target of £390k is anticipated to be achieved from 22/23. However, currently, this contract is not anticipated to deliver any savings that could assist in bridging the saving target set. Consideration should be given before approval for a 6-year contract to assess if financial savings could be delivered through negotiations or service specifications changes in the medium term with the care provider.
- 11.5. Finance implications for WCC verified by Zohaib Nizami, Strategic Finance Manager, znizami@westminster.gov.uk

12. Property Implications

- 12.1. Leonora House is not a Council Property and as such there are no property implications.
- 12.2. For those services which are run from buildings which are not owned or maintained by the Council, it is recommended that, as a matter of good practice, service providers be asked to provide copy documentation to confirm that those premises are compliant and suitable for service delivery.
- 12.3. Property implications verified by Mike Hodge

13. Equalities Implications

- 13.1 The Council has statutory duties in meeting the needs of adults. All the residents within receipt of extra care housing care and support services, will have protected characteristics as defined under equalities legislation, be it age and or disability as well as other factors such as faith, ethnicity and sexuality.
- 13.2 The very aim of the service is to support need and promote increased health and wellbeing for these residents that all have protected characteristics. The equalities agenda is at the core of the service.
- 13.3. There are clear equalities duties within the provision of the service both under statute and contractual responsibilities regarding both residents and staff working in the service.
- 13.4. The continued provision of services supports the equalities agenda. Whilst the proposal and award request relates to service continuity, 'continuous improvement' is also fundamental to all services and relevant opportunities are sought to promote the wellbeing of individuals in line with their choices and preferences.
- 13.5. Any longer-term change would be subject to an equality impact assessment.

14. Privacy Impact Assessment and GDPR

14.1 All providers were required to submit GDPR compliancy documentation as part of a Council exercise in May 2018 and are required to maintain GDPR compliancy as per contractual terms and national legislative requirements. Privacy Impact Assessments will be undertaken as part of any procurement/transformation activity.

15. Sustainability and Impact on the Environment

15.1. There is ongoing dialogue with the provider around sustainable recruitment.

15.2. Conversation includes activity the provider is undertaking to utilise local community employment initiatives such as apprenticeship schemes and other back to work schemes.

15.3. It is noted that these drivers have to be balanced with recruiting staff with the right values and behaviours who are more likely to stay. There have been many historic schemes focussing on getting people into the care industry, none with any notable success.

15.4. The reality is that care and support work is not easy and the remuneration compared to other industries is poor. There will be a need to deliver personal care and support with toileting and bathing for residents including those who are doubly incontinent. Residents whose behaviours can be challenging, typically due to pain and frustration that comes with physical and cognitive impairments.

15.5. It is testament to the success of the incumbent provider that their staff retention rate is strong and their attrition rate 8.72% is well below the industry average c30%. This is a key factor in delivery of a safe and successful service where residents know staff and importantly staff know residents and are better able to understand non-verbal communication in terms of residents' wellbeing and needs.

15.6. The incumbent provider is a London Living Wage employer. They were voted the Best National Care Employer of the Year at the Great British Care Awards (2017) and the Registered Manager of the Bi-Borough Burgess Field extra care housing service won Best Carer London Region (2018). They have Registered Managers within their services that have come via the care and support worker route demonstrating a clear career pathway for those looking to develop. They have recently been published in the Housing LIN for their work within the extra care schemes enhancing End of Life care (see below).⁵

15.7. Recruitment, training, staff initiatives, are picked up as part of monitoring activity.



- 15.8. Similar to sustainable recruitment there has been dialogue with the incumbent around initiatives to support the environment. These have included, staff transport discussions, resident transport discussions, use of local supply chains, use of green products, recycling.
- 15.9. The incumbent is aware that environment and sustainability are tested through procurement exercises and these dialogues are there to help prepare providers with the relevant agendas.
- 15.10. The pandemic with the need for high volumes of antibacterial produces and single use personal protection equipment to minimise transference and support effective infection control has paused much of these conversations, officers are however mindful and conversations will be resumed when appropriate.
- 15.11. It is noted that there are financial pressures, that 'green' alternatives and choices are not always currently as cost effective do not align with efficiency saving objectives. It is recognised that the things are constantly changing and there is a need to seize the right opportunities presented, hence the continued conversation.

Gareth Wall
Director of Integrated Commissioning, Adult Social Care and Health

Local Government Act 1972 (as amended) – Background papers used in the preparation of this report

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Appendices

Part B appendix A is circulated under separate cover.