



Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

## **NEATH PORT TALBOT COUNCIL**

### **SOCIAL SERVICES, HOUSING AND COMMUNITY SAFETY CABINET BOARD**

**27 June 2022**

#### **Report of the Head of Adult Services – A. Thomas**

##### **Wards Affected**

All Wards, however this report also provides information on a proposed pilot that would affect the following wards only:

- Lower Brynamman
- Gwaun-Cae-Gurwen
- Cwmllynfell
- Pontardawe
- Ystalyfera
- Godre'r Graig
- Rhos
- Alt-Wen
- Trebanos
- Crynant
- Seven Sisters
- Resolven
- Blaengwrach
- Glynneath
- Olwyn

#### **ARRANGEMENTS FOR THE PROVISION OF DOMICILIARY CARE SERVICES**

## **Purpose of the Report**

To:

- Inform Members of the Head of Adult Services intention to implement a pilot within the Upper Valley Network area relating to the delivery of domiciliary care.
- Request that Members suspend Rule 11 of the Contract Procedure Rules (CPRs) and grant permission for the Head of Adult Services to extend the life of the current Dynamic Purchasing System (DPS) to allocate packages of domiciliary care within the Neath Port Talbot unitary area.
- Inform Members that Officers are currently developing proposals to rebalance the domiciliary care market.

## **Executive Summary**

In 2017 Neath Port Talbot Council (the Council) established a DPS in order to commission individual packages of domiciliary care for people assessed as having an eligible need for such services.

The DPS went live on 14.08.2017 and was established for a period of five years. As such the current arrangement will end on 13.08.2022.

The planned intention was to undertake a competitive procurement process in order to establish a new DPS that would run from 14.08.22 onwards and that there would be a continuation of the current service model and commissioning approach.

Due to the impact of COVID-19 on the social care system, Officers have been unable to undertake a competitive procurement process in order to re-procure a new DPS by 14.08.22.

COVID-19 has created a level of market instability, resulting in a significant number of people waiting to commence a package of domiciliary care.

In response to these challenges, it is proposed the Council pilot a new model of domiciliary care for a period of six months, within the Upper Valley Network area.

It is requested that Officers extend the current DPS, whilst they undertake a pilot to test a new model of domiciliary care. This pilot will inform the re-procurement of a new DPS.

The Public Contract Regulations 2015 require contracts for social services of a value exceeding £663,540 (inclusive of VAT) to be advertised on the UK e-notification service (Find a Tender). Furthermore, the Council's Contract Procedural Rules (CPRs) state that social care contracts which exceed the light touch regime threshold are subject to a requirement for competitive tendering.

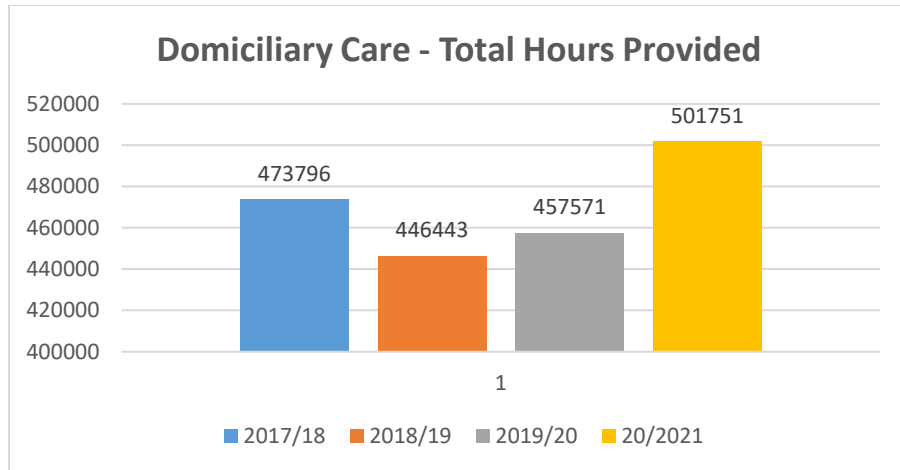
It is therefore requested that Members give permission to suspend Rule 11 of the Council's CPRs and give permission for the Head of Adult Services to extend the current DPS for a period of 12 months, with an option to extend for a further period of 12 months. This period being subject to the Council being able to terminate the DPS early by providing three months' notice to the providers.

It is also proposed that the Council begin to rebalance the domiciliary care market by increasing its in house provision (Community Wellbeing Team – CWT).

### **Background**

Domiciliary care is support that is delivered within people's homes to help people remain independent and safe. Over the years there has been an increasing demand for domiciliary care due to people with care needs choosing to remain in their own homes, rather than enter a care home. As at 04.05.22 the Council supported 712 people through the delivery of 9,699 hours of domiciliary care per week, this figure includes both externally commissioned provision and in-house provision (Community Wellbeing Team - CWT).

The below graph shows how the demand for domiciliary care has increased, with a 17% rise in 20/21 when compared to 2017/18. It is likely that this demand will continue to increase.



In 2017, a DPS was established in order to allocate individual packages of domiciliary care to providers that had passed the Council's quality assurance process and subsequently issued a contract.

There are 16 providers on the DPS that have contracts with the Council to provide domiciliary care. The breakdown of the market share of these providers is:

	NUMBER	NUMBER OF SERVICE USERS	PERCENTAGE OF MARKET	ANNUAL CONTRACT VALUE
	1	2	0.30%	£36,010.52
	2	28	8%	£735,548.84
	3	4	0.50%	£50,166.48
	4	52	9%	£820,790.36
	5	26	5.60%	£507,497.64
	6	57	6.60%	£599,451.84
	7	39	7.10%	£653,622.84
	8	29	8.00%	£723,698.04
	9	15	2.00%	£170,504.88
	10	27	5.00%	£464,148.36
	11	21	5.10%	£474,617.00
	12	3	0.50%	£54,017.60
	13	42	3.10%	£288,306.20
	14	145	25.00%	£2,269,049.12
	15	74	9.00%	£813,707.96
	16	41	5.20%	£477,067.76
<b>TOTAL</b>	<b>16</b>	<b>605</b>	<b>100.00%</b>	<b>£9,138,205.44</b>

The above providers deliver a total of 8,017 hours of domiciliary care per week. The average hourly rate paid to these providers is £21.20.

The current DPS is due to expire on 13.08.22. The original intention was for Officers to undertake a procurement exercise for the establishment of a new DPS, based on the current service model and contract.

Over the last 9 months, there has been significant and unprecedented pressure within the domiciliary care market. This has been negatively impacting on the Council's ability to offer timely and sustainable services to those assessed as requiring domiciliary care.

The impact of COVID-19 has been significant in regards to the sustainability of domiciliary care services, with a noticeable number of care workers leaving the care sector around mid-2021 and providers subsequently reporting an inability to recruit new carers in sufficient numbers. This, alongside contained rising demand for domiciliary care has resulted in delays to people commencing a package of care.

The below table demonstrates the rising number of referrals per month to brokerage in 2021, compared to 2019 and 2020.

<b>Referral numbers by year</b>		
<b>Period</b>	<b>Total to Date</b>	<b>Monthly Average</b>
1 <sup>st</sup> January -31 <sup>st</sup> December 2019	505	43
1 <sup>st</sup> January -31 <sup>st</sup> December 2020	641	53
1 <sup>st</sup> January -31 <sup>st</sup> December 2021	793	66
01 <sup>st</sup> January 2022 – 30 <sup>th</sup> April 2022	245	61

As at 04.05.22, there were 154 people waiting for a new package of domiciliary care to be arranged.

Challenges in sourcing packages of care impacts on families, who often need to support their loved ones whilst a package is obtained and is also negatively impacting on timely hospital discharge. When it is not possible to implement interim community arrangements whilst waiting for a package of care to commence (such as family support), there is sometimes a need to temporarily move a person into a care home in order to keep them safe, which presents a risk to their independence.

This current situation is far from ideal in terms of the Council supporting people to achieve their preferred outcomes. Although significant work has already been undertaken to help improve domiciliary care capacity, such as working with the sector to improve workforce terms as conditions, the Council is still facing ongoing challenges to meet demand.

In light of these challenges, Officers have been reviewing how the current domiciliary care model operates in order to explore opportunities to improve the way in which people receive these services.

The present domiciliary care model is not as personalised or outcome focused as it could be, as it is not flexible in line with people's changing needs and requirements. In addition, the way in which times and tasks are prescribed makes it more difficult for providers to be able to take new clients into their service, as they currently need to 'slot' new clients into their existing staff rotas.

In light of these challenges and the need to further build upon the Council's outcome focused approach, there is a need to consider fundamentally changing the way in which we provide domiciliary care.

A pilot is being developed that looks to move away from a social worker prescribing daily tasks, times and call lengths. Instead the social worker will work with the person to identify the type of service that is needed in order to help that person remain safely in their home. Once a domiciliary care provider is identified, that provider will meet with the person requiring a service and agree a plan for how the service will be delivered over the course of a week.

Rather than the Council prescribing what happens each day, the provider can deliver the services more flexibly over the course of the week, in line with the needs and requirements of the person. This will help to ensure that the support is tailored to how a person's needs and level of support might change over the week.

Some people require what is known as a 'time sensitive call'. This means that a person needs a service to be delivered at a particular time, often this due to the administration of certain medication. In these cases, the social worker will notify the provider of this requirement and the provider will be required to attend to the person at the specified time.

This is a fundamental but positive change to the way that the Council currently arranges the delivery of domiciliary care. As such, we are intending to pilot the proposal over a six month period within the Upper Valley Network area. This area has been chosen because it is a location where the Council has historically experienced issues sourcing sufficient domiciliary care to meet demand.

The pilot will be closely monitored to understand if its impact has positively improved outcomes for people requiring domiciliary care, including reducing the time a person waits to commence a package of care.

Part of this monitoring will involve undertaking spot checks of a providers Electronic Call Monitoring (ECM). ECM logs the times in which a care worker arrives and leaves a person's property and can be used to help ensure that care is being delivered in line with the agreed weekly hours and also can be used to ensure that care workers are spending appropriate lengths of time with the person requiring care.

In addition, contract monitoring will visit a selection of people that are part of this pilot to get their feedback on the care they receive. Further quality assurance will also come from the usual reviewing process undertaken by a member of the social work team.

An evaluation of this pilot will take place in order to understand its impact and whether it has achieved its intended aims. The outcome of

this evaluation will be brought back to Members in order to agree whether to implement this model across Neath Port Talbot.

It is anticipated that the work to take forward and evaluate the pilot, review the current service model, consult on the proposals (if it is decided to implement a different model to that which we currently deliver) and procure a new DPS through a competitive tender process will take around 18-24 months.

In order to complete this work, it is requested that Members approve the suspension of Rule 11 of the Council's CPRs and provide delegated authority for the Head of Adult Services to extend the current DPS for a period of 12 months, with an option to extend for a further period of 12 months. The DPS contract will include a no-fault termination clause, which will enable the Council to end the agreement by providing three months' notice. This means that the Council can end the arrangements earlier if there is an ability to conclude the re-procurement of a new DPS within a shorter timeframe.

Market testing indicated that all domiciliary care providers on the existing DPS were in agreement to delay the re-procurement of a new DPS and to extend the current DPS. Providers noted that ongoing pressures within the sector would make it difficult for them to allocate the resources needed to apply for a new DPS.

The above resource pressure facing existing providers could present a risk of the Council receiving a low number of submissions to enter a new DPS by suitably experienced domiciliary care providers if we were to go out to tender in the next few months. This would then result in the Council having a reduced number of providers contracted to deliver domiciliary care, thereby exacerbating current pressures on sourcing packages of care and the overall sustainability of the market.

New organisations will still be able to apply to be placed onto the Councils existing DPS within the proposed extension period. Those that are able to meet our quality assurance measures will be granted a contract, so that they can deliver domiciliary care on behalf of the Council. This should significantly reduce the risks associated with not undertaking a procurement process to re-establish a new DPS.



Furthermore the current DPS has a competitive process to award individual packages of domiciliary care. This means that continuing to use the DPS will ensure that the Council can demonstrate value for money, taking into account the quality and cost of the providers, again reducing the risks associated with extending the DPS.

Officers also wish to review the current market split between domiciliary care delivered by a commissioned provider and domiciliary care delivered by the Council's CWT.

Over the years, the number of people receiving domiciliary care by CWT has significantly reduced and the number of people receiving a domiciliary care service through the Council commissioning an external provider has significantly increased.

The breakdown of services as at 04.05.22 was:

Provider	Service Users	Weekly Hours
CWT (Council)	130	1,682
External (Commissioned)	582	8,017

The primary reason for this change was that the cost of commissioning an external provider is much lower than the cost of delivering the same service in-house. The average hourly rate for external providers is £21.20 per hour, whereas the hourly rate for CWT in 2021/22 is £50.62

Overall there is no difference between external providers and CWT in regards to the quality of service a person receives. However, Officers are becoming increasingly concerned about the ongoing viability and sustainability of the external market.

Commissioned providers are increasingly finding themselves in situations where they are unable to deliver services in line with their contract. Since August 2021, Officers have experienced ongoing situations where external providers have been unable to continue delivering contracted services. In a significant number of cases the Council has been required to find alternative provision with less than

48 hours' notice. To date, Officers have been successful in sourcing alternative interventions; however there is concern that this ongoing issue will eventually become unmanageable.

Furthermore, in the last year a number of providers have either handed back all their contracts to the Council or have been bought out by another company. Over the last 12 months five providers have been taken over by a different company. In the last four years, contracts with two external providers were terminated due to financial failure, including one provider in the last 12 months where they were unable to meet their payroll expenses.

Although it is acknowledged that external provision is less costly than CWT, this does not necessarily mean that it represents best value for the Council, when taking into account the wider concerns with service sustainability.

Officers believe that there is a need to re-balance the market in order to reduce the risks of market failure by increasing the market share of CWT, so that the Council are not over-reliant on external companies for our provision. In doing this, the Council will be mindful of how recruitment may impact on external providers to ensure that it does not further de-stabilise external provision.

### **Financial Impacts**

The current annual allocated budget for commissioned domiciliary care is £10,037,850 and the current annual allocated budget for CWT is £3,700,560.

The pilot should not have a noticeable impact on the domiciliary care budget. However financial monitoring will take place. This will include analysing any differences between the pilot and non-pilot areas in regards to the average price for a weekly package of care and the average size of a weekly package of care.

Re-balancing the market so that more domiciliary care is delivered by CWT is likely to have a budgetary impact, as the costs of providing an in-house service is higher than providing commissioned care. This

rebalancing would be undertaken in a planned way so that any additional costs are in line with the Directorate's available budget.

### **Integrated Impact Assessment**

A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016). The first stage impact assessment has indicated that a more in-depth assessment was required.

An overview of the Integrated Impact Assessment has been included below in summary form only and it is essential that the Members read the Integrated Impact Assessment, which is attached to the report at Appendix 1, for the purposes of the meeting.

- Equalities - The indication is that the proposal will have a positive impact; however, systems will be in place that will allow Officers to check that the proposal is having its intended outcomes and not resulting in any unintended negative consequences for people with a protected characteristic.
- Socio Economic Disadvantage - The indication is that the proposal will have a positive impact; however, systems will be in place that will allow Officers to check that the proposal is having its intended outcomes and not resulting in any unintended negative consequences for people in regards to social economic disadvantages.
- Community Cohesion/ Social Exclusion/Poverty - The indication is that the proposal will have a positive impact; however, systems will be in place that will allow Officers to check that the proposal is having its intended outcomes and not resulting in any unintended negative consequences for people in regards to community cohesion, social exclusion and/or poverty.
- Welsh Language - The indication is that the proposal will have a positive impact; however, systems will be in place that will allow Officers to check that the proposal is having its intended

outcomes and not resulting in any unintended negative consequences for people wishing to use the Welsh Language.

- Biodiversity - Not applicable.
- Well-being of Future Generations - The indication is that the proposal will have a positive impact; however, systems will be in place that will allow Officers to check that the proposal is having its intended outcomes and not resulting in any unintended negative consequences against the aims of the well-being of future generations.

### **Valleys Communities Impacts**

It is proposed that the pilot will be delivered within the Upper Valley Network areas of:

- Lower Brynamman
- Gwaun-Cae-Gurwen
- Cwmllynfell
- Pontardawe
- Ystalyfera
- Godre'r Graig
- Rhos
- Alt-Wen
- Trebanos
- Crynant
- Seven Sisters
- Resolven
- Blaengwrach
- Glynneath
- Olwyn

Valley communities are traditionally harder areas to source social care services, due to the challenges of attracting staff from these areas and the time carers have to travel in order to attend care calls. As such, some valley communities are at higher risk of providers no longer being able to deliver existing services, or experiencing increased waiting times for a package of care to commence.

It is for this reason that the Upper Valley Network area has been selected for the pilot. The expectation is that this pilot will have a positive impact on residents within these valley areas by providing a more outcome focused service and reducing waiting times to commence a package of care.

The pilot will be for new placements and will not impact on existing placements. However for information purposes, the below shows a breakdown of service delivery in the Upper Valley Network areas.

Ward	Clients	Providers	Weekly hours	Avg hrs per client
Alt-Wen	10	6	337.5	33.75
Blaengwrach	10	4	142.5	14.25
Crynant	13	3	242.8	18.68
Cwmllynfell	5	2	95.7	19.14
Glynneath	20	4	203.3	10.17
Godre'r Graig	2	2	29.8	14.90
Gwaun-Cae-Gurwen	18	3	167.2	9.29
Lower Brynamman	8	3	86	10.75
Onllwyn	4	1	47.8	11.95
Pontardawe	23	7	288.5	12.54
Resolven	14	4	152.2	10.87
Rhos	12	6	240.5	20.04
Seven Sisters	11	2	99.5	9.05
Trebanos	6	5	39.7	6.62
Ystalyfera	12	5	152.2	12.68
<b>Total</b>	<b>168</b>		<b>2325.2</b>	<b>13.84</b>
As at 5th May 2022				

### Workforce Impacts

Whilst the pilot will be delivered by CWT as well as commissioned providers, it will not result in any changes to employee's workforce terms and conditions or job specification.

Rebalancing the care sector would result in a need to recruit more people into CWT. This recruitment would be in line with established recruitment policies.

## **Legal Impacts**

### Extending the current contracts

The intention is for Officers to extend the current DPS for a period of 12 months, with an option to extend this for a further period of up to 12 months. This would amount to a direct award for the providers that are already allocated a position on the DPS.

Contracts for social services of a value exceeding £663,540 (inclusive of VAT) fall into the light touch regime under the Public Contract Regulations 2015 and require advertisement on the UK e-notification service (Find a Tender). Based on the value of the contract set out above, the contract is above the light touch regime threshold and therefore the associated requirements apply.

The awarding of contracts must also comply with the Council's CPRs. The Council's CPRs require a competitive tender process for contracts which exceed £25,000 in value.

Technically the Council could potentially be exposed to the risk of legal challenge from potential providers when there is a direct award. They may wish to challenge by way of Judicial Review the Council's decision which could risk the particular decision being declared unlawful.

Alternatively an aggrieved provider could bring a challenge under the Public Contract Regulations if they have a cause of action under these regulations. Such a challenge could result in the particular arrangement being declared ineffective and a claim for monetary loss.

It would be contended that the risk of legal challenge is considered to be low in the circumstances due to the intention to carry out a competitive procurement exercise for a new DPS within the next 18-24 months.

The fact that perspective providers will still be able to apply for a place on the DPS means that any perspective provider will not lose out on an opportunity to apply for a place on the DPS, which further reduces the risk of challenge. In addition, the DPS, is a way of transparently and competitively allocating contracts to ensure that the Council

obtains best value for money. The risk is also lowered due to the current providers agreeing with the proposal to extend the current DPS.

In any case, any risk is deemed to be outweighed by the operational need to ensure that the Council is able to continue providing these important services after the ending of the existing DPS and also the need to make sure that the model of domiciliary care services commissioned in the future sufficiently meets demand.

### Pilot

Commissioned providers that work in the pilot area will be issued with a contract variation letter that sets out the changes between the current contractual delivery of services and the pilot.

Where a contract variation satisfies any of the six permissible grounds under regulation 72 of the Public Contract Regulations 2015, it can be made without the need to follow a new procurement exercise. In particular, a variation that is otherwise not substantial, irrespective of its value, is permitted without a new procurement procedure under regulation 72(1)(e).

A substantial variation is defined under regulation 72(8) as one satisfying one or more of the following conditions: the variation renders the contract or the framework agreement materially different in character from the one initially concluded; the variation introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected; allowed for the acceptance of a tender other than that originally accepted, or attracted additional participants in the procurement procedure; the variation changes the economic balance of the contract or the framework agreement in favour of the contractor in a way not provided for in the initial contract or framework agreement; the variation extends the scope of the contract or framework agreement considerably or the variation replaces a contractor in cases other than those provided for in regulation 72(1)(e).

It is contented that the contract variations here would not be substantial as none of the aforementioned conditions are satisfied on the facts. In addition the variation is considered to be a de minimis variation as the

contract values are not affected and the overall nature of the contracts are not altered, in accordance with Regulation 72(5) and rule 23.4.5 of the Council's Contract Procedure Rules.

Delivering more outcome focused services, as the pilot proposes, is in line with the aims of the Social Services and Wellbeing Act 2014. Part 4 Code of Practice places a duty on Local Authorities to ensure that domiciliary care call lengths are sufficient to meet the assessed needs and outcomes of the person requiring care. The pilot should enhance the achievement of this aim by enabling more flexibility in line with a person's changing needs. The monitoring process noted within this report will place a safeguard against call lengths being insufficient.

### **Risk Management Impacts**

The purpose of this proposal is to help manage the risks associated with the Council's current and future ability to achieve its statutory duty to meet a person's assessed eligible social care needs.

Potential risks of this pilot in relation to finance and service user experience will be managed through planned monitoring as set out in the main body of this report.

The risks associated with delaying the procurement process and extending the DPS can be managed as set out in the legal section of this report.

### **Consultation**

There is no requirement for external consultation on this item.

### **Recommendations**

Having had due regard to the integrated impact assessment it is recommended that Members:

- a) Endorse the intention to implement a pilot within the Upper Valley Network area,
- b) Agree to suspend Rule 11 of the Council's Contract Procedural Rules,
- c) Provide permission for the Head of Adult Services to extend the current DPS for a period of 12 months, with an option to extend for a further 12 months. This period being subject to the Council



- being able to terminate the DPS early by providing three months' notice to the providers,
- d) Endorse the Officers proposals to rebalance the domiciliary care market through the recruitment of additional CWT members.

### **Reasons for Proposed Decision**

So that there is a legally binding contract enabling the continuation of essential services whilst Officers undertake a pilot and develop recommendations for a new service model that ensures the Council is best placed to meet its statutory duties and that the Council has a more resilient domiciliary care market.

### **Implementation of Decision**

The decision is proposed for immediate implementation with the agreement of the Scrutiny Chair.

### **Appendices**

Appendix 1: Full Integrated Impact Assessment

### **List of Background Papers**

None.

### **Officer Contact**

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