

Wiltshire Council

Audit and Governance Committee

1st March 2022

Subject: Wiltshire Care Home Alliance Internal Audit Response

Cabinet Member: Councillor Jane Davies Cabinet Member for Adult Social Care, SEND, Transition and Inclusion

Key Decision: The Committee is asked to note the actions taken in response to the Care Home Alliance internal audit report which was finalised in November 2021.

Executive Summary

This report presents an update about actions taken following a 'no assurance' internal audit of the Care Home Alliance tender process. The report identified 3 actions under priority 1 and a further 3 under priority 2.

The report concluded that immediate action was required to 'address fundamental gaps, weakness or non-compliance identified' and that the system of governance, risk management and control was 'inadequate to effectively manage risks'. SWAP stated in their report that there were 'good prospects for improvement' and this report provides a further update and assurance to the Committee of the actions taken by management to mitigate and rectify the weaknesses identified.

Significant work has been undertaken to address the areas of concern and all actions have been completed. Officers have also held an internal learning review which will be used to inform the governance, risk management and control of future commissioning exercises.

Proposal(s)

It is recommended that the Audit and Governance Committee note the actions taken in response to the internal audit.

Reason for Proposal(s)

The Director of Procurement and Commissioning is required to update the Committee on actions taken in response to the internal audit.

Helen Jones

Director of Procurement and Commissioning

Wiltshire Council

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Purpose of Report

1. This report presents an update about actions taken following a 'no assurance' internal audit of the Care Home Alliance tender which was finalised in November 2021.

Relevance to the Council's Business Plan

2. The Director of Procurement and Commissioning is required to update the Committee on actions taken in response to the internal audit.

Background

3. A review to assess the readiness to re-tender residential and nursing care home beds under the Wiltshire Care Home Alliance was carried out in October 2021, with a 'no assurance' report completed in November 2021.
4. In early 2021 a tender was issued for the purchase of residential and nursing care home bed services under the Wiltshire Care Home Alliance. The tender was due to start on the 1st April 2021, when incumbent contracts came to an end.
5. The tenders returned were not financially viable, with prices creating a total potential impact of 34% over previous block contract costs. As a result, no contracts were awarded. To maintain service delivery, incumbent provider contracts were extended for one year, where agreed was reached between the Council and provider, while the tender could be re-visited for a revised contract start date of 1st April 2022.
6. The audit assessment reported ongoing fundamental issues that needed to be addressed to put the Council in the best possible position for a successful outcome of the re-tender. It can be reported that the re-tender has met all planned deadlines, going 'live' on the 10th of January 2022. Tenders were closed on 7th February and preferred providers will be notified on the 11th March following evaluation. There remains the risk that prices will again be

unaffordable given a whole range of factors, not least the prevailing economic conditions and inflationary pressures. However, officers have taken significant steps during the re-tender to mitigate the risks that are within our control.

Main Considerations for the Council

7. The following actions have been taken in response to the audit.

Governance

Priority 1: The Project Governance is not effective. Without good oversight there is no effective challenge or monitoring to ensure the project remains on track to deliver the expected outcomes.

Action taken: Oversight and working groups, each with clear and agreed terms of reference had been established at the time of the audit but were not effective. Membership made full use of colleagues across health, finance, legal and procurement ensuring the right skills were available to provide specialist support.

Following the audit, the groups met weekly, with the Oversight group being chaired by the Director of Procurement and Commissioning who signed off all documentation. Actions were successfully tracked and documented in a tracker. The governance structure also created a platform for open discussion throughout the process ensuring risks were raised at the right level. The governance function was supported by a project management resource and provided the focus needed to meet a challenging timeline.

Data Reliability

Priority1: There is a lack of confidence in the data held in LAS/Controcc. It is essential that the Council has a single and accurate point of reference for data such as block bed usage to enable accurate information to be utilised and presented to inform decision making.

Action taken: Targeted resources were deployed to get a definitive number for voids, both for this exercise and for longer term understanding and reporting purposes. The data was used to develop a robust rationale for the number and type of beds and the relevant pricing options. The continued collection of the data is being included in planned training prior to the contract and during contract management. Officers in finance and IT were and continue to be working with commissioners on this.

Legal Implications

Priority 1: There are concerns over the ability to complete a cost of care exercise and whether the alternative methods proposed by the Council will be effective or attractive to providers. In addition, there is a limited timeframe for legal to provide the necessary amendments to the terms and conditions prior to the re-tender 'go live' date.

Action taken: It was ensured that Legal was consulted in a timely manner in order that the legal framework for the Care Home Alliance was appropriate and any deviations from the original intentions were consulted on.

The Oversight and working groups' terms of reference made legal representation core and minutes provide evidence of regular attendance by legal colleagues at these meetings. Legal colleagues were also consulted in the development of the project plan, to ensure deadlines for documents met their needs in terms of providing sufficient time for review.

Relationships

Priority 2: Relationships between the services with the Care Home Alliance are not working effectively. Services have been asked to complete critical steps in the tender process with insufficient time to complete the tasks or review the information.

Action taken: The responsibilities and accountabilities of those involved in the project was made clear and incorporated in the overall project governance through the terms of reference for the oversight and working groups. The Director of Procurement and Commissioning took oversight of the programme to ensure effective working relationships.

Additional project management support was introduced in early November, which brought dedicated resource to plan deadlines and manage delivery dates. While timescales were limited, the project plan gave warning of future work needed with lead-in times and any pre-requisites to consider. This included papers for Cabinet and other Committees. It resulted in better resource management within teams where actions and deadlines were agreed, and resources confirmed (often weeks) in advance.

This process facilitated the regular review of risks including the impact of key resources being unavailable.

Provider engagement

Priority 2: Whilst there has been engagement with Providers in relation to the initial tender and cost of care exercise, it is not clear how this feedback is being utilised. Feedback from the tender debrief is available and this should be used to improve the new tender exercise and so reduce risk. Should meetings with providers result in actions, progress updates on these should be reported which will also help encourage engagement.

Providers have reported that there is a high level of dissatisfaction with the initial tender documentation. Notes reference the fact that the wrong Local Authority name was used in the documents. This again reinforces the impression the tender was ill thought out and rushed.

Action taken: The Council has undertaken engagement with the local provider market to shape the new tender. This has included two market engagement events, meetings with Wiltshire Care Partnership (the Wiltshire care provider

representative body) and detailed feedback from 16 providers on the draft specification. Further feedback was sought via the Wiltshire Care Partnership on the final documentation.

Many of the comments were responded to by way of amendments to the specification. These were highlighted to providers at the provider engagement event.

A provider forum was also held where providers were updated on pricing bands, changes to the specification and timescales for the tender. Questions were responded to in written format and sent to providers following the event. A snap poll was taken during the event where providers were asked to rate the Council on how well they felt we had responded to their feedback regarding the tender (with 1 being 'not at all' and 5 being 'completely satisfied'). The response was positive with 70% of the 17 providers attending rating the Council at 3 or 4.

Additional effort was made to increase the number of providers signed up to the Alliance, to effectively increase the number of providers eligible to tender. The benefits of being a member of the Alliance were promoted in partnership with Wiltshire Care Partnership and after targeted analysis of the membership, the Commissioning team undertook promotion on a one-to-one basis with providers. This has resulted in a small increase in members and these efforts will continue.

The lessons learned exercise highlighted provider engagement for longer-term development to ensure that there is a more co-production approach.

Lessons learned

Priority 2: Key tasks that were not completed for the initial tender such as the cost of care exercise, pricing policy and market position statement have still not been completed. In some cases, these tasks are yet to be commenced leaving insufficient time before the proposed date to re-tender.

The Council has not completed a cost of care exercise to inform the re-tender. The previous cost of care exercise did not return enough results to be utilised. It is reported that this was due to the timing of the exercise as providers were entering another period of COVID measures, with resources being too stretched to complete the exercise.

Action taken: Since the audit, officers took steps to both apply lessons learned from the first tender and continue to capture lessons learned as the re-tender progressed. A lessons log was created and a lessons learned report delivered as part of the overall project management of the tender. This report has informed discussion on wider sharing of the lessons as well as longer-term changes to commissioning processes. The following examples demonstrate where practices were changed in response to lessons learned.

To reduce the risk of unaffordable prices and failure to attract quality tenders to meet demand:

- The Council will move to paying gross rather than net, reducing financial risk and administrative burden on providers

- Lots were established to increase flexibility to award contracts for different bed types. This included the development of Lots for complex beds which will allow the Council to provide services to a specific cohort of customers with complex needs, whilst reducing the price of the main block. The distinction will enable providers to bid for the services that are best suited to their operating models and prices will be relevant to the types of care and support that is being delivered
- Tender prices will be agreed for the first 2 years only and an uplift applied for year two using a formula set out in the contracts. This is more appealing to providers who were pricing for 'known unknowns' in the original tender. It also provides transparency as to the uplift to be applied
- Pricing bands based on existing prices were established to ensure limited exposure to increased prices. In the first tender providers were able to submit prices with no banding or benchmark which proved unaffordable
- The Council added a break clause of two years for the block beds to prevent frontloading of prices and to understand the implications of legislative changes expected following the Health & Care Bill 2021

The Market Position Statement was completed in time to inform the drafting of the specifications and determining pricing options.

A cost of care exercise was not pursued further during the re-tender. Provider feedback evidenced little appetite for one, so other research was used to inform our pricing options. This included using cost of care benchmarks such as the LaingBuisson ones and making comparison with our existing average costs for different bed types.

Next Steps

8. The lessons learned from this tender will be shared for future tender processes. There are some 'quick wins' as well as some longer-term actions we plan to take to ensure lessons are implemented for the benefit of the Council.

9. Developing and sharing good practice:

The team used several templates, both procurement and project management related. These templates can be adapted and used by other tenders. The project plan template for example will provide a good basic set of tasks to consider as well as indicative resource required. Other templates such as risk management, decision logs etc can be adapted from core Council ones developed by the Programme and Systems-Thinking team. We will encourage use of these templates in future tenders through the development of a toolkit.

10. Co-Production:

While engagement with providers was well planned and executed during the re-tender the engagement came at such a time in the process where it could be no more than feedback on largely already agreed actions. There is much greater value in co-production; working with providers to consider solutions to issues around service delivery. Communication and engagement plans will be encouraged as part of the suite of guidance.

Overview and Scrutiny Engagement

No overview and scrutiny engagement has taken place. The Audit and Governance Committee are responsible for the review and approval of internal audits.

Safeguarding Implications

There are no safeguarding implications associated with this report.

Public Health Implications

There are no public health implications associated with this report.

Procurement Implications

There are no procurement implications associated with this report.

Equalities Impact of the Proposal

There are no equalities impacts arising from this report.

Environmental and Climate Change Considerations

There are no environmental and climate change considerations arising from this report.

Risks that may arise if the proposed decision and related work is not taken

The paper being presented does not require a decision to be made.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

The paper being presented does not require a decision to be made.

Financial Implications

There are no financial implications to this report. Background paper of the Cabinet Report of 14 December 2021 identifies the financial implications of the tender process.

Legal Implications

There are no legal implications associated with this report.

Workforce Implications

There are no workforce implications associated with this report.

Options Considered

The Director of Procurement and Commissioning is required to address the issues raised in the audit of the WCHA tender as soon as reasonably practicable.

Conclusions

It is recommended that the Audit and Governance Committee note the action taken following the internal audit of the WCHA Tender and the progress made.

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21st February 2022

Appendices

None

Background Papers

Audit Action Plan

Cabinet Report for the 14 December 2021-Block and framework contracts for care homes beds on the Wiltshire Care Homes Alliance (WCHA)