
AGENDA ITEM: 8 Pages 29 – 35

Meeting	Cabinet Resources Committee
Date	7 November 2011
Subject	Catalyst Care Home Contract Renegotiation
Report of	Cabinet Member for Adults Cabinet Member for Resources and Performance
Summary	This report sets out progress on the renegotiation of the Catalyst Care Home Contract and requests approval to conclude the negotiations within the parameters set out in the report.

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Status (public or exempt)	Public, with separate exempt report
Wards affected	All
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

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1. RECOMMENDATIONS

- 1.1 That approval be given to the terms of the broad agreement, with Catalyst, as set out in paragraph 9.3 below, subject to the commercial aspects meeting the requirements of the Medium Term Financial Strategy.**
- 1.2 That the consultation process for the closure of an old care home should commence immediately.**
- 1.3 That the position in respect of the negotiation of outstanding abortive costs as set out in 6.3 is noted.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Council, 23 October 2000 (Decision item 62) – approved the selection of Ealing Family Housing Association (now part of the Catalyst Group) to take a transfer of the majority of the Council's elderly persons residential care homes and day centres on the basis that these would be replaced with modern purpose built facilities and achieve an ongoing revenue saving for the Council from the commencement of the contract.
- 2.2 Cabinet, 5 November 2002 (Decision item 10) – approved the swap of sites in Claremont Road, Brent Cross NW2 and East Road, Burnt Oak HA8 with Ealing Family Housing Association upon which to develop replacements for the Perryfields and Merrivale elderly persons care homes and day centre.
- 2.3 Cabinet Resources Committee, 8 August 2004 (Decision item 14) – subject to conditions, agreed:
 - i. the freehold interest in an appropriate area of land at Claremont Road, NW2 be transferred to Ealing Family Housing Association for the building of a replacement for the Perryfields elderly persons care home and day centre in exchange for the transfer back to the Council of the current Perryfields site at Tyrrel Way; and
 - ii. the freehold interest in an appropriate area of land at East Road, Burnt Oak HA8 be transferred to Ealing Family Housing Association for the building of a replacement for the Merrivale elderly persons care home and day centre in exchange for the transfer back to the Council of the current Merrivale site at East Road, Burnt Oak.
- 2.4 Cabinet Resources Committee, 3 September 2007 (Decision item 7) – noted the disagreement with Catalyst in respect of its Deficit Claim and also agreed that the dispute with Catalyst in respect of the Perryfields/Claremont Road and Merrivale/Child Guidance Centre sites swaps agreements, and the Project and Abortive Costs claims arising there from, be referred to arbitration and/or independent expert as appropriate.
- 2.5 Cabinet Resources Committee, 2 September 2008 (Decision item 16) – noted the action taken by Catalyst to initiate the arbitration procedure and instructed the appropriate Chief Officers to appoint Counsel and other appropriate consultants and that the costs relating to this would be met from reserves.
- 2.6 Cabinet Resources Committee, 23 April 2009 (Decision item 14) – noted the stage proceedings were at and the amount of money spent in relation to the arbitration.
- 2.7 Cabinet Resources Committee, 8 December 2009 (Decision item 18 and X2) – noted the stage proceedings were at; the amount of money spent in relation to the arbitration and formally agreed not to offer Catalyst a “drop hands” settlement.

- 2.8 Cabinet Resources Committee, 17 June 2010 (Decision item X7) – noted the stage proceedings were at; the amount of money spent in relation to the arbitration and the likely need to renegotiate the Care Home Contract, as well as the retention of Eversheds as legal advisors to the Council.
- 2.9 Cabinet Resources Committee, 19 October 2010 (Decision item 11 and X3) – noted the stage proceedings had reached; that a further hearing was to be held; the estimated cost of the preliminary arbitration award; that a renegotiation strategy was being developed.
- 2.10 Cabinet Member Delegated Powers Report No 1264, 18 February 2011 – approved the Council's contribution to Catalyst's legal costs in respect of the Arbitration.
- 2.11 Cabinet Resources Committee, 2 March 2011 (Decision item 6) – set out the results and consequences of the arbitration proceedings and the Council's initial objectives for a renegotiation of the contract.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The 2010-2013 Corporate Plan priority of 'Better Services with Less Money' relates to the objectives of the contract renegotiation which are to remove the contractual deficit clause which allows for a deficit claim to be made by Catalyst to the Council, reduce the number of block beds the Council is required to purchase and to ultimately reduce the bed price.

4. RISK MANAGEMENT ISSUES

- 4.1 The risks associated with the renegotiation and its consequences have been formally logged in the Adult Social Care Risk Register.
- 4.2 Whilst negotiations are close to completion and agreement has been reached in principle the monetary values which might be attached to rentals for future leases taken by the council; for void sharing; and future block beds are critical to the Council's future residential care costs and there remains a risk that, on one or more of these items, Catalyst will not agree to the Council's offer.
- 4.3 The proposal to close one of the older and less efficient homes will be subject to consultation. However, closure would allow residents to transfer to a much newer, purpose built facility that would afford them the dignity they deserve and provide a much safer living environment. As with any closure of a residential care facility there are reputational risks particularly given the recent press coverage in respect of residential care.
- 4.4 Negotiations have continued in respect of the outstanding abortive cost claims reported to Cabinet Resources Committee on 2 March 2011. Whilst Catalyst have now accepted the Council's arguments in respect of the claim they will be seeking to recover an element of the costs through the renegotiation which increases the risk that the commercial elements will be difficult to resolve to the mutual satisfaction of both parties.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Under the Equality Act 2010, the council has a public sector equality duty to have due regard to three specified matters when exercising its functions:

- 5.1.1 stopping unlawful discrimination, harassment and victimisation;
 - 5.1.2 promoting equality of opportunity between people who share protected characteristics and those who do not; and
 - 5.1.3 promoting good relationships between people who share protected characteristics and those who do not.
- 5.2 The service is inclusive and provided to all older people eligible for residential care or requiring day care. There are specialist units for people who have dementia, people who have learning disabilities and a unit for Asian people. However, the proposed closure of one of the older homes will require full consultation with residents, day care users, users' families and staff which will be conducted in accordance with national recognised best practice. A full equalities impact assessment will also be undertaken, prior to a decision being reached and the results taken into account in arriving at a decision.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 Since the outcome of the initial arbitration hearing in July 2010 the Council has utilised external support to advise on the renegotiation as well as to assist the negotiation of legal costs in respect of the arbitration and the abortive costs claims. To date this has cost £50,000 and has been funded from the Council's Risk Reserve. This support will be terminated when agreement with Catalyst is reached and any remaining costs will be funded from the Adult Social Care and Health Departmental Budget although they are not expected to exceed a further £15,000.
- 6.2 Once agreement with Catalyst has been reached further investment will be required in order to facilitate implementation which will be funded from the Adults Social Care and Health budget. This has been estimated as set out below:
- Project management, procurement and negotiation support - £60,000.
 - Legal support to develop new contracts - £20,000.
 - Pensions specialist - £5,000

It is also envisaged that external procurement support will be required following implementation but this will be subject to a separate report to this Committee.

- 6.3 The issues over land swaps have been reported previously. The claim in respect of Perryfields was received following the CRC meeting on 2 March 2011 and amounted to £523,000 which when coupled with the outstanding claim of £140,000 in respect of Merrivale resulted in a total claim of £663,000.

The Council have to date offered Catalyst £93,000 to settle the position with respect to Merrivale, this offer has recently been accepted and is within the £110,000 ear marked reserves agreed at the CRC meeting on 2 March 2011. The Council rejected almost all of the claim in respect of Perryfields and Catalyst have recently confirmed they accept the arguments put forward that their claim is not legally valid. However, they have also indicated a wish to discuss the costs incurred as part of the renegotiation process and may attempt to submit a smaller claim on a different basis. However, at this stage the negotiations have reduced the initial claim by £570,000. Whilst any payment to Catalyst in respect of this issue will be resisted consideration will be given to any proposals

received as long as they are in accordance with the overall objectives of the renegotiation and meet the requirements of the Medium Term Financial Strategy.

7. LEGAL ISSUES

Existing contractual arrangement

- 7.1 The, existing, contract between the council and Catalyst is for the development of new homes and the provision of care in those homes. Catalyst, in turn, sub-contracted the provision of the care services to Freemantle.
- 7.2 In the event that the negotiations culminate in agreement to terminate the upper level contract, between the council and Catalyst, the sub-contract between Catalyst and Freemantle will, as part of the new arrangements, be novated to the council.
- 7.3 Relevant contract documentation will need to be completed and executed by the, relevant, parties.

Procurement

- 7.4 Within the context of European procurement rules and in any contract re-negotiations, care must be taken to ensure that changes to the contract are not such as to constitute a new contract which should be subject to EU procurement. However, Social care services fall within Part B of the Public Contracts Regulations 2006 (as amended) and are, therefore, not subject to the full European procurement regime. The Treaty principles of transparency, non-discrimination and fair treatment will apply.

Consultation

- 7.5 There is a public law duty on local authorities to consult on the proposal to close the, relevant, care home. Case law has established that consultation must be carried out properly and must be undertaken at a time when the proposals are still at a formative stage. Sufficient reasons must be given to allow those consulted to give intelligent consideration and an intelligent response. There must also be adequate time for a response.
- 7.6 The purposes of consultation:
- for all stakeholders to be given the opportunity to engage in the consultation process;
 - for their feedback to be carefully considered by the council in arriving at a final decision.
- 7.7 The consultation process will involve as many users, carers, local people and partner organisations as possible.

8. CONSTITUTIONAL POWERS

- 8.1 The Council's constitution, Part 3, Responsibility for Functions, paragraph 3.6 states the terms of reference of the Cabinet Resources Committee.

9. BACKGROUND INFORMATION

9.1 Following the Arbitrator's conclusions, the Adult Social Care and Health Directorate began exploring a range of options to minimise the losses likely to be incurred by Catalyst and thus the level of deficit funding which Barnet might need to meet in future.

9.2 The core aim of the renegotiation, as reported to Cabinet Resources Committee on 2 March 2011 was to develop a mutually acceptable option which:

- Facilitates the removal of the deficit clause to reduce the Council's exposure to funding future losses.
- Is financially sustainable and meets the requirements of the Medium Term Financial Strategy which provides for savings to be achieved in respect of this contract of £300,000 in 2012/13 and £700,000 in 2013/14.
- Meets the Council's needs in terms of the availability of residential care beds in a more flexible way and avoids the need to pay for beds which are not required.
- Continues the use of the new care homes beyond the existing contract term.
- Links back to the developments in West Hendon/Brent Cross and thus supports the Council's regeneration objectives.
- Ensures that a suitable range of day care is available to meet the needs of Older People in Borough with social care needs.

9.3 Discussions with Catalyst have resulted in broad agreement being reached as follows:

- Catalyst will lease all of the new homes to the Council at which point the existing Care Contract will be terminated. This removes the deficit clause.
- The leases will be for 21 years and 1 day with a break clause at an appropriate stage, giving the Council access to the new homes for a period well beyond the current contract.
- The Fremantle contract for care provision will novate to the Council, ensuring that the total cost per bed (covering both buildings and care) does not exceed the current bed price paid to Catalyst. This novation will enable the Council to either negotiate a contract more appropriate to its needs or, retender the care provision and thus provide more flexibility in terms of block beds, the price per bed and the form and location of day care services.
- Subject to consultation with staff and engagement with residents and residents' families, one of the older homes will be closed. Thus will result in the removal of beds which are not required and more importantly enable existing residents to be moved to new, modern homes which provide improved facilities and give the residents the dignity they deserve. It also reduces the health and safety risks associated with older premises.

This headline agreement thus meets the objectives set out in paragraph 9.2 and through a much more flexible working arrangement is expected to meet the requirements of the Medium Term Financial Strategy, subject to the commercial considerations in the accompanying Exempt Report.

9.4 Assuming the outstanding commercial issues can be resolved with Catalyst in the near future the indicative timetable for implementing the agreement is:

- November 2011. CRC give approval to implement the negotiated agreement. Respite care in the home earmarked for closure is transferred to one of the new homes immediately.
- Any necessary Consultation and stakeholder engagement process for the closure of the rest of the home by Catalyst commences in collaboration with the London Borough of Barnet.
- February 2012. Consultation on the home closure ends. The final decision will be made, taking into account the results of the Equalities Impact Analysis and consultation and subject to resolving any consultation issues arising, the closure process commences
- March 2012. If the decision to close is made then legally binding contracts are signed with Catalyst and The Fremantle Trust for the new operating model to be introduced as soon as the home proposed for closure is closed.
- December 2012 will, subject to the result of the consultation, be the due date for closure of the old home with all residents being relocated.
- January 2013. The Council takes over the operation of the new homes under a lease arrangement and directly manages Fremantle as the care provider. Depending on the success of negotiations with Fremantle at that point either a revised contract will be entered into which is more appropriate to the Council's needs or the contract will be terminated with 12 months notice and a procurement exercise commenced.

10. LIST OF BACKGROUND PAPERS

10.1 None

Legal – SS
CFO – MC/JH

