



## Adults and Safeguarding Committee

19<sup>th</sup> September 2019

<b>Title</b>	<b>Update report: New Delivery Model for Care Home and Day Care Services</b>
<b>Report of</b>	Chairman of the Adults and Safeguarding Committee
<b>Wards</b>	All
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	Yes
<b>Enclosures</b>	None
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### Summary

On 18<sup>th</sup> March 2019, the Adults and Safeguarding Committee authorised the implementation of a new delivery model for 3 residential care homes and 2 day care services, via the termination of the council's contract with the Fremantle Trust (TFT) and contract novation to Your Choice Barnet (YCB).

This report provides an update on the implementation of the Committee's decision, progress made in the transfer and next steps.

### Officers Recommendations

- 1. That the Committee notes the termination of the council's residential and day care services contract with the Fremantle Trust, with subsequent contract novation to Your Choice Barnet and successful mobilisation of residential and day care service delivery on the 8<sup>th</sup> July 2019.**

## **1. WHY THIS REPORT IS NEEDED**

- 1.1. The Adults and Safeguarding Committee has responsibility for all matters relating to adult safeguarding and adult social care. Following the Committee's authorisation on 18<sup>th</sup> March 2019, the Committee requested an update report on implementation of the new delivery model for care home and day care services at its September meeting.
- 1.2. This paper details progress to date on the transfer of care homes service provision from the Fremantle Trust (TFT) to Your Choice Barnet (YCB).

## **2. BACKGROUND**

- 2.1. On 18<sup>th</sup> March 2019, Adults and Safeguarding Committee received a report detailing the contract negotiations between TFT and the council, with respect to 3 care homes and 2 day care services, which had not resulted in a mutually acceptable resolution.
- 2.2. Officers recommended the termination of the care contract with TFT and subsequent novation to YCB, in order to ensure the delivery of safe, high quality, financially sustainable residential and day care services, in alignment with the council's goals.
- 2.3. The Adults and Safeguarding Committee approved the implementation of a new delivery model for 3 residential care homes and 2 day care services, via the termination of the council's contract with TFT and contract novation to YCB.

## **3. UPDATE**

- 3.1. A service transition period commenced on 19th March 2019, and concluded with successful transition of service provision at the three residential care homes and two day care services on 8th July 2019. The contract with TFT was terminated in early July 2019. The council's care contract with YCB was sealed on 8th July 2019.
- 3.2. The transition period for transfer to YCB was necessarily brief due to Care Quality Commission (CQC) enforcement actions in relation to Apthorp Lodge; therefore, all activities occurred concurrently in order to prevent any slippage on the agreed timescale.
- 3.3. During the transition period, TFT was required to remain committed to continued delivery of service improvement work identified as part of routine contract management, and as mandated by the CQC.

- 3.4. Fortnightly transition project board meetings commenced on 28<sup>th</sup> March 2019. The parties agreed a joint communications and engagement approach; the board also agreed key milestones for transition activities and established weekly operational action group meetings to oversee and ensure timely delivery of actions.
- 3.5. The transition activities undertaken included:
- Stakeholder consultation, communications and engagement
  - Tripartite Data Sharing Agreement
  - TFT Variation agreement
  - Asset Purchase Agreement between YCB and TFT
  - TUPE transfer of eligible staff from TFT to YCB
  - Execution of a new care contract with YCB
  - Council's grant of Licences to occupy the Care Homes to YCB, pending the completion of the under-leases and finalising the associated schedules of condition.
  - Surrender of under-leases for the premises and subsequent grant of the same to YCB with consent of the superior/head Landlord, Catalyst (in progress)
- 3.6. On 8<sup>th</sup> July, all services successfully transferred to YCB with no impact on resident services or care. Staff remained in post and continued to support individuals and maintain continuity.
- 3.7. The Variation Agreement with TFT was signed without prejudice to the outcome of negotiations to agree the final financial settlement between TFT and the council. These are pending the conclusion of the terminal schedule of dilapidations and the associated invoice detailing the monies to be recovered from TFT for repair and maintenance obligations under the contract, as well as the reconciliation of outstanding Adult Social Care costs. Council officers are progressing all required actions to accomplish this as soon as possible.

#### **4. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

4.1. N/A

#### **5. POST DECISION IMPLEMENTATION**

5.1. N/A

#### **6. IMPLICATIONS OF DECISION**

##### **6.1. Corporate Priorities and Performance**

6.1.1. The council's strategic priorities articulated within the Corporate Plan, Barnet 2024 include:

- Collaboration with local, regional and national partners to make Barnet the place of opportunity and a place where people can improve their quality of life and where responsibility is shared fairly
- Helping people to help themselves, recognising that prevention is better than cure

- Delivering services efficiently to ensure value for money for the taxpayer

6.1.2 The proposed new service delivery model is consistent with the council's corporate priorities and strategic vision, and is aimed at improving service quality, delivering better outcomes for service users, and ensuring resources are deployed effectively to achieve the optimal benefit.

## 6.2. Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

6.2.1 The table below shows the current annual value of the contract:

<b>HOME</b>	Apthorp Care Centre	Meadowside Lodge	Dell Field Court	<b>GRAND TOTAL</b>
<b>Total cost per care home PA</b>	£1,700,181	£1,075,752	£586,888	<b>£3,362,821</b>

6.2.2 The costs outlined above will be met from the Adult Social Care budget.

6.2.3 In the medium to long-term (three to five years), it is expected that efficiencies will be realised and higher occupancy levels established.

## 6.3. Social Value

6.3.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits.

6.3.2 Therefore, prior to initiating a procurement process, commissioners should consider whether and how the services they procure or the procurement methodology could secure additional value and benefits for their area or stakeholders.

## 6.4 Legal and Constitutional References

6.4.1 The council and TFT agreed terms to end the contract by mutual agreement.

6.4.2 Once the council and TFT reached a mutual agreement to terminate the contract, the council could award the contract to YCB under Regulation 12 of the Public Contracts Regulations 2015 (PCR). Regulation 12 of the PCR permits the award of contracts by the council to YCB where:

- The council exercises over YCB a control similar to that which it exercises over its own departments.
- More than 80% of the activities of YCB are carried out in the performance of tasks entrusted to it by the council

- There is no direct private capital participation in YCB
- 6.4.3 YCB is a subsidiary of The Barnet Group which is 100% owned and controlled by the council so the council can award contracts to YCB without conducting a competitive tendering exercise under the PCR.
- 6.4.4 The Terms of Reference for the Adults and Safeguarding Committee are set out in the council's Constitution (Article 7, Section 7.5 Committees, Forums, Working Groups and Partnerships). The Adults and Safeguarding Committee has the following responsibilities:
- Responsibility for all matters relating to vulnerable adults, adult social care and leisure services.
  - To receive reports on relevant performance information and risk on the services under the remit of the Committee.
  - To recommend for approval fees and charges for those areas under the remit of the Committee.
- 6.4.5 The council has complied with its legal duties under the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014" (TUPE).
- 6.4.6 Local authorities are given powers under Section 123 of the Local Government Act 1972 (as amended) to dispose of land held by them in any manner they wish. An underlease is a disposal of land. S 123(2) states that, except with the consent of the Secretary of State, a council cannot dispose of land, other than for the grant of a term not exceeding seven years, for a consideration less than best that can reasonably be obtained. The underleases to be granted to YCB are an annual rent of £1 per annum but these are for a term of less than 7 years and consequently S123 (2) will not apply to these disposals.
- 6.4.7 The council's Constitution, Article 10 - Decision making, Table A sets out the authorisation thresholds and delegated powers of officers for land and property transactions. Financial arrangements of up to £181,302 can be approved by an officer with the delegated authority as per the council's scheme of delegations. Unless it is for the disposal of land or property for a less than best consideration, in which case it must be reported to the Assets, Regeneration and Growth Committee. Although the rental is at a pound, this requirement is satisfied as the underleases are linked to the care contract.

## 6.5 Risk Management

- 6.5.1 As part of the ongoing support offer, the Care Quality Team has provided a high level of support to the care homes, particularly to Apthorp Care Centre, in order to drive up quality standards.
- 6.5.2 The council has also established a weekly recovery group meeting to develop a robust contingency plan for the services, with programme management and regular reviews by the Joint Commissioning Service and Care Quality Team, through the weekly

mobilisation group meetings.

- 6.5.3 The council has an established approach to risk management, which is set out in the Risk Management Framework. Key corporate risks are assessed regularly and reported to the Performance and Contract Management Committee on a quarterly basis.

## **6.6 Equalities and Diversity**

- 6.6.1 Section 149 of the Equality Act 2010 sets out the public sector equality duty which obliges the council to have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity between those covered by the Equalities Act and those not covered e.g. between disabled and non-disabled people; and foster good relations between these groups. The protected characteristics are age, disability; gender reassignment; pregnancy and maternity; religion or belief; sex; sexual orientation.
- 6.6.2 By section 149(2) of the Equality Act 2010, the duty also applies to 'a person, who is not a public authority but who exercises public functions and therefore must, in the exercise of those functions, have due regard to the general equality duty'. This means that the council, The Barnet Group LTD, Your Choice (Barnet) Limited and Barnet Homes LTD will be required to demonstrate having due regard to the general equality duty.

## **6.7 Corporate Parenting**

- 6.7.1 In line with Children and Social Work Act 2017, the council has a duty to consider Corporate Parenting Principles in decision-making across the council.
- 6.7.2 There are no implications for Corporate Parenting in relation to this report.

## **6.8 Consultation and Engagement**

- 6.8.1 YCB and the council has engaged and worked closely with residents and their carers and relatives, as well as with staff in order to ensure the safe implementation of the proposed delivery model with a view to minimising disruption and risks to residents.

## **6.9 Insight**

- 6.9.1 The proposed model of delivery provides an opportunity for the council to develop residential and day care services further, in line with its medium to long-term strategic objectives, including increasing the supply of nursing beds in line with rising demand.
- 6.9.2 Furthermore, working with YCB as a strategic partner will enable the council to acquire significant in-depth information about the operational aspects of service delivery, which would serve to inform any future procurement exercise or contract negotiations.

## **7 BACKGROUND PAPERS**

- 7.1 Cabinet Resources Committee; 24 June 2013: Catalyst Contract Renegotiation – Future Role of The Fremantle Trust in Care Provision  
<http://barnet.moderngov.co.uk/documents/s9235/CRC%20Fremantle%20Report.pdf>