1 Executive Summary

1.1 This report seeks approval to trigger the one (1) year extension option allowable under the Independent Living Support Services Framework Agreement ("ILSSFA"), and negotiate a variation to include a London Living Wage ("LLW") clause to the Framework’s terms and conditions.

1.2 The provision of home care is a critical preventative service that improves the quality of life for residents by supporting them to live as independently as possible in their own homes.

1.3 The Council currently has a framework in place for the delivery of home care and this report makes recommendations to extend this current contract and to make contractual variations.

1.4 The variations will enable our current providers on the ILSSFA to pay their staff...
the LLW and meet the council’s priority to meet the LLW for home care workers in 2019/20 and support the implementation and adoption of the Unison Ethical Care Charter ("UECC").

To meet these commitments we will change the current framework rate paid from a current fixed price of £14.40 per hour to £18.00 per hour enabling a step change in the funding to our provider market and benefitting up to / over 700 care workers the majority (average 85%) of whom are Newham residents.

1.5 Funding for this commitment will be used from the money allocated to support the implementation of the LLW as agreed by Council as part of the budget setting process to support key council priorities.

1.6 Approval was given at Mayoral Proceedings 7th April 2016 to issue a 3+1 Framework Agreement. It is recommended that the one year extension from 1st August 2019 should be used subject to providers agreeing to a Variation making payment of the LLW and UECC criteria a contractual requirement. The use of the one-year extension will also enable sufficient time for the development of a new “Open” home care framework, which will reflect learning from the current contract before the expiry date.

2 Recommendations

2.1 For the Cabinet to approve, in accordance with Contract Standing Orders ("CSO") 23, and the Public Contracts Regulations 2015 ("PCR 2015") 72, the extension and negotiated variation of the ILSSFA as outlined below:

2.1.1 To trigger the one year-contract extension clause of the ILSSFA, for a further 12 months at a total cost of c.£19.5 million (inclusive of LLW uplift), with a variation (to be negotiated) to include a new LLW clause, effective 31st July 2019, until 30th June 2020.

2.1.2 An increase of the fixed hourly cost from £14.40 to £18.00 per hour from the 1st August 2019.

2.1.3 Approve the transfer of £3m held in the budget strategy for the implementation of the LLW for Care Workers for 2019/20 to Adult Social Care, rising to £6m in 2020/21.

3 Background

3.1 Approval was given at 7th April 2016 Mayoral Proceedings to agree to enter into the ILSSFA and delegate to the Director Adult Social Care the authority to enter into call-off contracts to meet Newham’s homecare needs. The duration of the Framework Agreement was three years with the option to extend for a further one year. The ILSS contract was fully mobilised and providers assessed prior to the commencement of the new contract on the 1st August 2016.

3.2 The providers awarded onto the Framework, deliver packages of homecare to Newham residents both in their own home and provide support to access the community as part of an overarching support plan either directly commissioned by the Council or purchased by residents using a Direct Payment. This also includes residents who receive care as part of living in Extra Care Housing.
3.3 The Council pay a fixed hourly, half hourly and forty-five minute rate to all providers on the ILSSFA without exception. The minimum unit of service specified for any visit to the resident requiring care is thirty minutes. The current rate for the framework is £14.40 per hour. Adult Social Care spent £16.6m on 1.2 million hours of direct care delivery during 2018/19.

3.4 The unit costs for home care in Newham have traditionally been comparatively low and previously the lowest unit costs in London. Over the years, Adult Social Care have worked with providers to improve quality including; better conditions for staff, such as travel time as part of payments, sick pay and training. Unit costs have remained lower than other boroughs due to Council budgetary constraints. Whilst quality has demonstrably improved, the current fixed priced is still not sufficient for providers to pay their staff the LLW, which is currently £10.55.

3.5 To fully meet the council’s commitment to sign up to the UECC, a self-assessment identified that 11 of the 13 required elements are being met by LB Newham. The areas that need further work and where plans need to be in place to meet the requirements of the UECC are:

- All home care workers will be paid at least the Living Wage;
- All home care workers will be covered by an occupational sick pay scheme to ensure staff do not feel pressurised to work when they are ill in order to protect the welfare of their vulnerable clients.

Unison have recently (April 19) confirmed that they are satisfied that LBN have sufficiently met enough of the criteria outlined in the guidance set and that they would like to proceed with a signing ceremony for accreditation.

3.5 The 2019/20 budget identified an investment of £3million that would facilitate the key council priority of paying care staff the LLW.

4 Key Considerations & Proposals

4.1 To fully meet the UECC and action the Council’s motion to pay care staff the LLW, it is proposed to use the available one year contract extension on the ILSSFA when the current contract ends 31st July 2019. The extension will be subject to a contract variation requiring providers to meet the two outstanding elements of the UECC, namely payment of the LLW and the introduction of an Occupational Sickness Scheme for all staff.

4.2 During the extension period a new ILSSFA will be developed and procured. The new LSSFA will address learning from the previous contract, meet all of the criteria of the UECC and will need to be mobilised and implemented by August 2020. Commissioning intentions will be presented to Cabinet for approval within this period.

4.3 Financial Modelling using the UK Homecare Association rate builder, consultation with the current provider market and benchmarking with
neighbouring boroughs illustrates that providers will be able to meet all required commitments by uplifting the current hourly cost to £18 per hour. The Financial impact from 1st August 2019 to 31st July 2020 is estimated to be c. £2.1m, which will be met by the additional £3 million commitment by Cabinet for 2019/20 to specifically pay the LLW. The full year affect of these changes is expected to be c. £4.5m to which £6m has been set aside within the budget for 2020/21. This therefore ensures that this change is sustainable over the long term.

4.4 A third of care hours are currently commissioned on a 'spot contract' basis and fall outside of the current ILSSFA. The most consistent reason for this is providers ability to recruit suitable local people, including male carers and those with specific language skills. It is anticipated that the payment of LLW will attract more staff to the local market and reduce the use of the spot market.

4.5 Significant work has been undertaken to meet the UECC and LBN Officers are hopeful that clarity will be provided shortly regarding a date to officially sign up to the UECC.

4.6 A Commissioning Plan will be presented to September Cabinet that identifies a strategy to re-model, re-procure and ensure appropriate services are in place before the final contract expires. 31.07.2020

5 Policy Implications & Corporate Priorities

5.1 This proposal will directly contribute to the objective - “Improve quality and accessibility of local services” identified in Priority 5: Quality of life – improving our health and care system so it works for Newham residents. Payment of the LLW to care staff will attract a more skilled local workforce and drive-up quality through the commitment to meet the UECC.

5.2 In addition this policy fits in with Mayoral commitments to become a LLW employer, as well as to become a “beacon of Community Wealth Building”. Better paid employment not only puts people at the heart of what the borough does, but also means care workers have more disposable income to be reinvested into the Newham economy. On average 85% of homecarers are Newham Residents

6 Alternatives considered

6.1 The payment of the LLW to Care Staff is a Council priority for 2019/20, which has been supported by a Council Motion, therefore an alternative on this occasion was not considered.

7 Consultation

7.1 Name of Lead Member consulted: Councillor Susan Masters, Position: Cabinet Member - Health and Adult Social Care Date: 13.03.19

8 Implications
a. Financial Implications

- This report is to request a one year extension to the current ILSSFA, to enable a variation to the current contract to include the implementation and introduction of the LLW;
- Funding to pay the provider the additional LLW element will be met from the MTFS growth built into the Budget Strategy for 2019/20. As part of the Budget Strategy, an amount of £3m has been set aside for the introduction of the LLW component;
- The London Borough of Newham currently has a framework fixed price for home care of £14.40 per hour. Because of the introduction of the LLW it is proposed that this rate increase to £18 per hour. In order to ascertain this rate the Council has undertaken market research with providers and other Local Authorities and reviewed models such as the UKHCA calculator;
- Detailed modelling has been carried out to identify all the related components to increasing this rate to £18 per hour for framework providers. The financial impact in years 2 and 3 assumes increases to the LLW which will need to be kept under review;
- The cost of implementing the LLW and varying the home care Contract is expected to cost £2.2m in 2019/20. As the implementation will be undertaken in August, this results in a part year additional cost to the Council. The cost increases in 2020/21 to £4.5m due to the full year effect of the implementation and this will rise again to a total of £5.5m in 2021/22 due to assumed increases in LLW;
- The modelling also assumes increases to spot providers and other elements of care;
- Later years costs will be subject to the procurement of a new ILSSFA;
- Funding for this change will be met from the funding set aside for LLW agreed by Cabinet as part of the Councils MTFS on 5th February 2019;
- Future years’ budgets are subject to review given the substantial reductions in Local Authority Funding over the next three years. Any commitments against future years’ budgets may pre-empt funding decisions that may be required in the context of savings elsewhere in the budget.

b. Legal Implications

- This report is seeking an extension of the existing ILSSFA, for a period of up to 12 months, as well as authority to negotiate a variation to the terms and conditions of the ILSSFA to include a LLW clause, and to adjust the costs associated with the proposed inclusion of the LLW clause;
- The extension of the ILSSFA is specifically provided for under the terms and conditions of contract as originally tendered;
- The value of the proposed contract variation involves an additional spend over and above the originally agreed price which is in excess of £2.1 million pounds. Under CSO 23 the Council is allowed to modify and extend a contract as long as the modification is less than 10% of the initial contract value, and extend the contract where it was contemplated at the time the contract was awarded;
The body of the report indicates that the estimated value of the proposed variation (if agreed by the current Provider) will be less 10% of the initial contract value;

**Clause 2.2 of the ILSSFA states:**

- “The Framework Agreement may be extended for a further period of up to twelve (12) months by the Council giving the Provider three (3) months’ prior written notice of its intention to extend the Framework Agreement.”

- The proposal to extend the contract by an additional 12 months is allowable under clause 2.2 of the ILSSFA by means of the client department following the procedures set out within clause 2.2. and give at least three months written notice, and is unlikely to be considered a substantial change to the contract under regulation 72 of the PCR 2015;

Regulation 72 says that the Council may not make a "**substantial modification**" without running a new procurement process. It then lists out several types of modification which are permitted, as follows.

**Permitted modifications:**

- Where the change is set out clearly, precisely and unequivocally in the original contract and does not change its overall nature (see regulation 72(a));

- Where the change was not set out in the original contract, but nonetheless it is not "substantial" (as defined at Regulation 72(8)); or

- the (cumulative) change in value is under 10% (services & supplies) or under 15% (works) and is also under threshold; or

- the change is needed due to unforeseen circumstances and it doesn’t change overall nature of contract and price increase is less than 50% of the original contract price (see regulation 72(1)(c));

- additional works, services or supplies are necessary and a change in contractor: can’t be made for economic or technical reasons e.g. interoperability with existing kit, AND would cause significant inconvenience or duplication of costs;

- the change is the replacement of contractor following corporate restructuring, insolvency, merger etc. and new contractor still meets selection criteria and there is no other substantial modification;

The report indicates that the client department is relying upon regulation 72(1) (a) to justify the proposed inclusion of a new London Living Wage (LLW) clause into the contract terms and conditions.

Schedule 7 of the ILSSFA sets out the procedures for the parties to the agreement to negotiate modifications to the contract.
The London Living Wage (LLW) was introduced in 2005 and takes into account the higher cost of living in the capital and the rate of inflation, which is needed to be paid to someone to allow them an acceptable standard of living above the poverty threshold. It is defined by GLA Economics as “a wage that achieves an adequate level of warmth and shelter, a healthy palatable diet, social integration and avoidance of chronic stress for earners and their dependants”.

There is no legal requirement to adopt the LLW; however, under Part 1 of the Local Government Act 2000 enables the council to undertake activities that are either economically, socially or environmentally beneficial for the authority and residents.

Section 137 of the Local Government Act 1972 gives the Council the power to “incur expenditure which in their opinion is in the interests of and will bring direct benefit to their area or any part of it or all or some of its inhabitants...”

The Council also has the power of general competence under section 1 of the Localism Act 2011 to do anything an individual may do (subject to certain restrictions).

Under the proposed arrangements, it is possible for the Council to request a variation of the current service provision to include the payment of the LLW.

However, this must be negotiated with the Provider as any variation to the service provision must be mutually agreed between the parties.

Please note that should the Council successfully negotiate the inclusion of the new LLW clause then, an OJEU “contract modification notice” must be published in accordance with regulation 51.

c. Equalities Implications
   i. An EqIA has been completed and it is concluded that there will be no impact on any of the protected groups.

d. Other Implications relevant to this report:
   i. Procurement – The strategic Procurement Unit is working closely with ASC and supports the proposed approach.

9 Background Information used in the preparation of this report

9.2 ILSS Framework Agreement 2016, including Service Specification and Terms and Conditions