

**COMMISSIONING OF DOMICILIARY CARE AND PROCURING
CARE HOME SERVICES**

**SOCIAL CARE, HEALTH & WELL-BEING (COUNCILLOR SUSAN
ELSMORE)**

AGENDA ITEM: 8

Reason for this Report

1. This report proposes a clear direction for the future commissioning of domiciliary care in Cardiff to support people with care and support needs to live as independently as possible for as long as possible in their own homes and communities. The report recommends the following decisions by Cabinet:
 - a) Approval of an outcome focussed, locality approach to domiciliary care commissioning;
 - b) Approval of a revision to the procurement timeline approved by Cabinet in January 2018 to enable this new commissioning approach to be co-produced with people with care and support needs, their carers and providers of care. The recommendation is these new commissioning arrangements will be fully implemented by November 2020;
 - c) Note the new arrangements for the payment of residential and nursing care providers;
 - d) Request that authority be delegated to the Director of Social Services, in consultation with the Cabinet Member for Social Care, Health & Well-being, the Section 151 Officer and the Director of Law and Governance to put in place interim commissioning arrangements until November 2020, and deal with all associated matters.

Arrangements for commissioning domiciliary care for adults

Background

2. The Council commissions 30,000 – 35,000 hours of domiciliary care per week for approximately 2,200 people. This is done through an accreditation of providers onto an Approved Provider List (APL), which operates as a Dynamic Purchasing System (DPS) to support and develop an active market of quality providers. An IT supplier called *adam* provides

the end-to-end IT system that underpins the processes of procuring and managing domiciliary care packages. The specific contractual arrangements the Council currently has in place are:

- a) An APL arrangement that accredited providers must be part of in order to be considered to deliver domiciliary care on behalf of Cardiff Council;
 - b) Individual contracts with providers for the delivery of domiciliary care to individual people;
 - c) A contract with *adam* for the delivery of the IT system that supports the APL.
3. Each of these individual contracts are due to expire on 3rd November 2018, and in preparation a report approved by Cabinet on 18th January 2018 included a recommendation to introduce new commissioning arrangements by November 2018. The recommendations and proposals in that Cabinet report were based on a review of the current commissioning arrangements which recognised the considerable strengths the APL commissioning arrangements have had on the i) scale of provision; ii) cost of provision; and iii) fairness and transparency of the current commissioning arrangements. These strengths were recognised by the Care and Social Services Inspectorate for Wales (now Care Inspectorate Wales (CIW)) report into domiciliary care commissioning in Cardiff published in November 2016. The contribution that a well-developed domiciliary care market has made to performance improvement in adult social care is also clear; most notably historically low levels of delayed transfers of care.
4. The January 2018 report to Cabinet recommended that on the basis of these strengths, and the desire to support continuity of service for the people with care and support needs, the Council should enter into new arrangements that largely continue the current overarching approach. This would include the creation of a new APL, and the undertaking of any procurement process required to ensure the appropriate technology is in place to support the APL.
5. In July 2018, Welsh Government published 'A Healthier Wales: our Plan for Health and Social Care'. This is the first national plan for health and social care in Wales. It sets out an ambition for seamless well-being, health and social care services that are designed and delivered around the needs and preferences of individuals. The plan describes a holistic approach to keeping people as independent as possible in their own homes and communities, with providers working together to enable people to achieve their wellbeing outcomes and preventing escalation of needs. Locality approaches which bring together primary and community well-being, social care and health services in clusters provide the foundation for seamless services. Domiciliary care is a fundamental component of care and support for people at risk of losing their independence. To enable the 'Healthier Wales' policy to be achieved in Cardiff it is important that domiciliary care commissioning reflects the holistic, locality approaches set out in the national plan.

6. In proposing to revise the procurement timescales approved in January 2018, this paper recognises the significance and clarity of 'Health Wales'. It also recognises the scale of change the domiciliary care sector is experiencing through the Regulation and Inspection of Social Care (Wales) Act (2016) which required all domiciliary care providers to re-register with CIW by 31st August 2018. In addition, there is further detailed work to be undertaken with people with care and support needs, their carers, and the domiciliary care sector to ensure future commissioning arrangements reflects what matters to them. Co-producing the future will build on the strengths of the current commissioning arrangements, but also to develop more flexible, outcome focussed care and support within Cardiff's localities which complements the development of strength based social work practice in adult services and achieves the commitments of Capital Ambitions. These factors mean an adjustment to the timeline of a major procurement exercise to set contractual arrangements for the long term is recommended.

Outcome focussed, locality based domiciliary care

7. The direction for domiciliary care commissioning proposed in this paper will deliver the Capital Ambitions commitments for commissioning and delivery of care and support. In order to deliver Capital Ambition's commitment to support people to live fulfilled independent lives within their communities, domiciliary care commissioning needs to:
 - a) be more flexible to support achievement of a range of personal outcomes
 - b) be based on meaningful relationships which understand what matters to people with care and support needs, their carers and providers
 - c) support the personal outcomes identified through strength based social work practice
 - d) support people's resilience including their connection with their communities.
8. To achieve this, commissioning arrangements need to reflect how providers will support achievement of people's personal outcomes, and place domiciliary care at the heart of locality based integrated community services. Outcome focussed, locality based domiciliary care commissioning will:
 - a) **Break down barriers and join-up services at the community level by placing social care at the heart of the Council's 'localities' approach** – Domiciliary care is the cornerstone of community services which enable people to remain as independent as possible for as long as possible in their own homes. Domiciliary care can be commissioned in a way that recognises how it fits alongside other types of care and support to enable people to achieve their well-being outcomes, and overcome barriers to living a good life as a consequence of age or disability. Capital Ambition sets out the commitment to focus service provision in localities. Currently, many individual care providers operate across large parts

of the city. To address this situation, and ensure care is provided in a way that is efficient and sustainable, the direction in this paper will support providers to form strong links with: third sector organisations, community health teams, social work teams and other providers of care and support, in a particular area. Community services will work together in an integrated way to improve population health and wellbeing and meet individual needs. These connections and relationships are pivotal to any locality based approach and deliver real benefits in terms of accessibility and joining up service provision. As an example, domiciliary care visits could be put in place alongside support from a relative, support from a volunteer to attend local community-run activities such as reading groups and local churches, input from an occupational therapist to provide aids and adaptations and Meals on Wheels.

- b) **Complement strength based social work practice and targeted prevention to increase people's resilience and reduce the need for formally commissioned care and support for individuals, enabling the needs of an ageing population to be met effectively**– Alongside the review of domiciliary care, the Council is implementing a strength-based approach to all aspects of its social work practice and decision making. This model of practice operates from the basis of considering what a person *can* do and what support they need to do more for themselves to live the life they want to live. The outcome of this approach is one that supports and promotes resilience and avoids creating dependency. Domiciliary care can support people to maintain or increase their independence, if it is part of an outcome focussed care plan which understands people's strengths and specifies the care and support they need to overcome barriers to living their lives. The Council currently employs home care staff who deliver reablement focussed care and support for people. This is typically provided to people that have recently been discharged from hospital to support them to regain their mobility, skills and independence. This service is certainly effective but does not have the capacity to support everyone that needs it, and it provides this service for a short period of time, typically 6 weeks. A new model of home and community based care and support will consider the role of reablement provision, and seek ways to help people continue their journey towards maximising their independence over the longer term. This support could also be provided alongside input from an Independent Living Officer who will help a person access a wide range of practical help and support, such as equipment, adaptations to their home, support to apply for a disabled blue badge or additional benefits. On their own, the individual components of a care and support plan may not have a significant impact, but when combined they provide a range of short, medium and long term support to help the person maximise resilience.
- c) **Be flexible to the needs of people, moving from commissioning task and times** - the current commissioning requirement is for a care worker to arrive at a specific time and

undertake specific tasks. We know that for some people this is exactly what they require and under any new arrangements this approach will, to some extent, continue. However, some people need far more flexibility in their care packages – recognising that the nature of disability and informal support is such that there are times when more support is required, and others when very little is needed. An approach that enables care providers to take a wider view of the person's needs and circumstances, and adopt a flexible approach to meeting these, has been shown to deliver significant benefits to people and providers.

- d) **Support the development of specialist services to meet the needs of people with dementia and their carers** – the increasing prevalence of dementia in the population requires a highly skilled and supported care workforce to provide person centred care and support to people and their families as their illness progresses. The vast majority of people with dementia live in their own homes so developing high quality domiciliary provision, integrated with other health and care support, is a commissioning priority.
- e) **Be co-produced with people with care and support needs, carers and providers** - Capital Ambition includes a commitment to *'Get people and communities more involved in the decisions we take by having an open conversation with citizens...'* Understanding what is important to people who receive domiciliary care and designing our commissioning together with people and providers is really important in shaping the future commissioning model. Meaningful co-production means building relationships and seeking to fully understand experiences and aspirations. Equally, working with providers to understand what good commissioning looks like from their point of view requires open and mature relationships. Listening to provider's feedback on the proposed procurement exercise has helped inform the recommendations in this report. Undertaking an accreditation and enrolment process during 2018 would be likely to have a negative impact on care provision, due to the level of work and disruption this could cause care providers at the time of significant new legislation and regulatory arrangements.
- f) **Promote long term stability of the domiciliary care market** – There are currently over 70 care providers on the APL and many of these providers regularly offer to take on new care packages. This gives the scale and diversity of provision that is required to provide high quality and cost effective care to the citizens of Cardiff. However, up until 18 months ago, the situation was very different and there were far fewer providers and with much less capacity to take on new people than is currently the case. This made it more difficult to access provision, restricted choice, led to higher costs, and in some cases meant that people had to remain in hospital longer than necessary whilst care was arranged. Many other Local Authorities across the UK are still in this situation, and with additional registration requirements the need to be vigilant and

understand the issues impacting the market in Cardiff will also be a priority. Critical to the health of the domiciliary care sector is workforce planning and development. The promotion of care as a career of choice needs to be supported through commissioning which supports the sustainability of care providers, from both a quality and financial perspective.

Proposal for a new procurement timetable to be fully implemented by November 2020

9. To give sufficient time to co-produce the commissioning arrangements to deliver the direction for domiciliary care commissioning set out above, this report recommends that the current commissioning arrangements, due to end in November 2018, should be extended to November 2020. Despite many Councils across the UK aspiring to commission outcome focussed domiciliary care, there are few examples where outcome focussed commissioning has been successfully implemented. The Directorate will undertake a thorough and detailed review of all available best practice and evidence and analyse application in the Cardiff context of evaluations from other areas and our local good practice. The Directorate must also consider and meet the legal and statutory requirements that relate to the process of designing the new model and what the new model must include. This work will begin immediately.
10. This review and design of the new model will be concluded by early 2020. A report will then be brought to Cabinet that sets out the key features of the new commissioning arrangements. If approved, this model will be implemented by November 2020, with a smooth and safe transition from the current arrangements.
11. This report is also proposing that Cabinet delegate authority to the Director of Social Services, in consultation with the Cabinet Member, to put in place appropriate interim arrangements from the period when the current contracts end (November 2018) to when the new model and all related arrangements will be in place (November 2020 or sooner). Current individual service contracts for domiciliary care packages state that when a provider makes an offer to take on a new care package, they must submit a rate that will be valid up until the end of this contract, which is 3rd November 2018. The proposal to extend these arrangements presents a service and financial risk. To address this risk, the Directorate will engage in open and transparent discussions with providers to understand any evidence they wish to provide around continuing to provide services under the current arrangements, including financial pressures. Evidence shared by providers and other sources of information and evidence, will be analysed to reach a conclusion on any interim implications to costing structures. Risks will also be mitigated by the APL remaining open to new providers who meet accreditation requirements. Continuity of care and safeguarding people with care and support needs will be the core of decision making. As with all aspects of the interim arrangements, the Director of Social Services, in consultation with the Cabinet Member, will use the authority proposed to be delegated to her through this report to

ensure effective safeguarding arrangements, manage and oversee provider engagement and make any necessary decisions.

Proposal for new arrangements to support payments to residential and nursing care providers

12. In 2014, the Council entered into a contract with *adam* to support the functioning of an APL for adults domiciliary care services. Since then, the two organisations have worked together successfully to deliver transparent, efficient and cost effective processes that manage how domiciliary care is commissioned, but also the administrative process through which the Council pays providers. These payment process are different to, and more efficient and cost effective, than the process currently used by the Council to pay residential and nursing providers.
13. It is proposed to change the back office process used to pay providers for the residential and nursing care services they deliver. It is proposed that in the future this process will be the same as that used for domiciliary care and with the same IT system, which will be provided by *adam*.
14. *Adam* has agreed to implement the IT system required to support these payment processes and to support the Council in its transition to the new approach. Adam has offered to provide this support within the cost of the domiciliary care contract extension, and at no additional cost to the Council.
15. The anticipated benefits from this proposed approach are:
 - a) **Simpler payment processes for providers** – At present, the amount the Council pays to a residential or nursing care provider includes any contribution from the Health Board (through Funded Nursing Care), but does not include any third party contribution (i.e. from the relatives of the resident). Each care home must collect any third party contributions themselves, and they report that this is often an onerous and complex task, particularly for smaller providers that do not have the infrastructure to do this efficiently. Under the new approach, the Council will pay providers the gross cost of the placement (i.e. the Council's contribution + plus any Health Board contribution + any third party contribution). This will remove the need for providers to collect any third party contribution as they will receive the full cost directly from the Council in a single payment. Providers will welcome this change. The Council will use its existing processes to collect funds from citizens (in this case, third parties) and the benefits to this change to providers is expected to outweigh the cost to the Council.
 - b) **Greater internal consistency and resilience** – The same team within the Council manage the processes to pay providers for domiciliary care and for residential and nursing care. As these two processes are currently very different, staff within the team have to specialise in one area with little cross-over in terms of skills or capacity. By using the same process, this team will provide a more

resilient service as they share resources to support and cover each other. There will be further organisational benefits as we have the same processes, data, requirements and contractual arrangements for each service.

Scrutiny Consideration

16. This issue was considered by the Community and Adult Services Scrutiny Committee on 5th September 2018. The Chair's letter is attached as Appendix 2 to this report. This report has been provided to the Scrutiny Committee and any further comments will be circulated at the Cabinet meeting.

Reason for Recommendations

17. The reasons for these recommendations are:
- 1) To extend the current domiciliary care commissioning arrangements to:
 - a) Ensure they remain fully transparent and compliant
 - b) Ensure the IT system continues to be in place to support the delivery of the APL
 - c) Ensure continuity of care for service users
 - d) Create the time and conditions to design and implement an outcome focused, locality approach to domiciliary care commissioning in Cardiff.
 - 2) To implement improved internal processes for the payment of residential and nursing care providers and the IT system to support the delivery of these processes.

Financial Implications

18. The report recommends that delegated authority be given to the Director of Social Services, in consultation with the Cabinet Member for Social Care, Health & Well-being, to deal with interim arrangements for the commissioning of domiciliary care for adults until November 2020. Specifically, this implies the extension of the existing commissioning arrangements, which are based on a dynamic purchasing model incorporating an Approved Provider List (APL). As indicated in the report, the current system is supported by an IT system that underpins the processes of procuring and managing domiciliary care packages. The system itself currently costs c.£190,000 per annum. The actual cost of the domiciliary care provision is based on the requirements of the individual care packages, and the prices offered by the care market through the APL. The overall cost of domiciliary care for Adults is currently £23.5 million per annum, the materiality of the spend emphasising the need to ensure cost effectiveness within this process.
19. The current system was implemented in November 2014. At first, the increasing level of demand and limited supply within the APL meant that prices rose reflecting the market conditions. More recently, however, in the

past 18 months prices have stabilised and begun to reduce as measures have been taken to increase the market supply, improve processes and control demand. The report also identifies a number of other positive outcomes from the APL including: stability and sustainability of provision, and transparency of the commissioning arrangements.

20. Although, the extension of the existing arrangements should mean that any financial implications will be limited in the short term, the medium term impact of the proposed extension cannot be assessed with any accuracy as it will be dependent on a range of factors. These include the rate of turnover of care packages, and the ongoing supply and demand conditions within the care market. In that regard, both the availability of services and the level of demand will need to continue to be managed if costs are to be controlled and cost effective services procured on behalf of the Council.
21. The report does, however, note that rates currently submitted are valid up to the end of the existing arrangements on 3rd November 2018, and that the Directorate will be engaging with providers to understand the costs of provision. Importantly, any proposals arising from this process must be contained within the allocated budgets.
22. The report refers to a proposed new approach to the payment of residential and nursing home care providers. Currently, the Council pays care providers net of any assessed contributions due from residents, with the home then being responsible for the collection of the sums due. Under the new approach, it is proposed that the Council will pay the homes the gross amount, and then take on the responsibility of recovering the relevant contributions itself. If this process is adopted, the Directorate must ensure that it has adequate systems in place to ensure that it recovers all income due, within a short timescale. Any additional administrative costs would have to be contained within existing resources.
23. Consideration of new models of commissioning of domiciliary care for implementation in November 2020, should have due regard to best value and the financial position of the Council.

Legal Implications

24. The way forward recommended in this report is not without a degree of legal and reputational risk. The report relates to high value contractual arrangements (understood to be circa £23m a year) and involves a large number of interested parties (including the individuals in receipt of the services and providers of the service). Further, a number of areas of law touch on this matter (contract, procurement, social services and general administrative law principles), which make for a complex situation.
25. **1 'Reasonableness'**. The first recommendation seeks approval not to implement the decision made by Cabinet in January 2018. It is open to the authority to determine not to implement a decision it has made and revoke the same. The decision maker, however, must be satisfied, amongst other things, that having regard to all the material factors this is a 'reasonable' decision to take. The obvious question raised by the present report, is what

material factors have changed since the decision of 18.1.18 to render that determined approach no longer appropriate? It is noted that the body of the report of 18.1.18 presented many material factors in support of the then recommended approach. For example, (paragraph 33) *'this report recommends that Cardiff Council continue to use a Dynamic Purchasing System type of arrangement beyond November 2018. This conclusion was reached following a detailed analysis of the current arrangements, which is set out throughout this report. It is also based on an analysis of the alternative approaches to commissioning domiciliary care and consideration of how well these would work in Cardiff.'*

26. The 'reasonableness' point is raised because the actions of local authorities are susceptible to control by the courts, through means of judicial review. Put simply, a decision of an authority can be successfully challenged if the reasoning or decision is *Wednesbury* unreasonable (or irrational). That is, if it is so unreasonable that no reasonable person acting reasonably could have made it (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223*). It should be noted that the test is a different (and stricter) test than merely showing that the decision was unreasonable. For a challenge to be successful under this head, the decision must be outside the limits, which any reasonable local authority would operate. This is a high hurdle for those seeking to challenge a decision on the grounds of *Wednesbury* reasonableness. Accordingly and considering this point in isolation, this is not perceived as a significant legal risk.
27. In terms of potential challenge by means of judicial review, then :-
- (i) Legal Services have not been instructed that any third parties have taken any actions/ incurred any costs in reliance on the expectations created by the decision of 18.1.18. If such were the case, further consideration would be required on this point (estoppel).
 - (ii) In considering this matter generally, the decision maker must have regard to the statutory guidance issued in this area. In this case, the Commissioning Guidance referred to below and the standards set out are particularly relevant. Failure to have due regard to such statutory guidance could itself be a ground for challenge.

Contract and procurement law

28. It is noted that delegated authority is sought for the Director to put in place appropriate interim arrangements for commissioning domiciliary care following expiry of the existing arrangements in November 2018 until circa November 2020. Detailed legal advice should be sought on the proposed interim arrangements, which cover substantive spend, circa £23m a year. Given the report outlines, the interim arrangements envisaged these legal implications address the proposals. The proposed interim arrangements give rise to two procurement law issues. Namely, (1) can the term of the existing APL arrangement be extended (that is the overarching arrangement) and (2) can the individual contracts let under the APL be extended, within legal constraints?

29. As regards point 1, it is viewed that strong arguments could be put forward to the effect that the Council is entitled to extend the term of the APL, though we cannot give categorical assurance in this regard. A degree of comfort here is that provided the APL arrangement is 'kept open/OJEU kept live', it is difficult to see which providers may be adversely affected by the proposed extension of the current APL term, as they can always seek to apply to join the APL.

Extending existing domiciliary care contracts.

30. The interim arrangements envisage that where required and for reasons of continuity of care, existing individual contracts under the APL, due to expire in November 2018, will be extended. Further detailed consideration of this point is required as this proposal may give rise to potential legal risk. Put simply, the potential risk is that an extension of an individual care contract, depending upon its value, could be seen as a direct award of a services contract to the provider, which may breach procurement law requirements and/or be in breach of the requirements set out in the existing APL. As stated further detailed consideration of this point is required when considering the most appropriate interim arrangements. Much will depend upon the facts of each individual contract (of which we are instructed there are some 2200 individual contracts), including the value of the proposed extension. To remove this potential legal risk the individual care packages could be re - advertised but this may result in a different provider being appointed. Careful consideration will be required between balancing the desire of continuity of care as against re advertising these care packages to all providers on the APL to bid for.
31. It must be appreciated that the provider's agreement will also be required to extend any existing care packages, who may well seek an increase in payments ('price uplift'). Please see below
32. The delegated authority sought also extends to putting in place IT contractual arrangements for supporting technologies and software that (i) underpin the APL process and (ii) are proposed to be used to underpin the payment process for residential and nursing care services . Detailed legal advice should be sought to ensure the procurement of such proposed IT arrangements meet, amongst other things, procurement law requirements. It is further noted (paragraph 15.1) that it is proposed the Authority will pay the nursing and care home providers the gross cost of the placement and the Authority will take on responsibility for recovering third party contributions. This raises a potential risk in that if the authority fails to recover the third party contribution, it will be 'out of pocket'. There could also be sensitivities and costs associated with taking enforcement action to recover any such third party contribution. Appropriate arrangements should be put in place with such third parties to ensure they are content with the proposal as regards payment and commit to paying the authority their respective contributions.

Social Services Law

33. Whilst this report proposes various arrangements relating to the commissioning of domiciliary care there have been legal challenges made against decisions by local authorities to set fees in the context of nursing and residential care. In the case of *R (Bevan & Clarke LLP) & Others v Neath Port Talbot County Borough Council* [2012] EWHC 236 (Admin) it was held that care home fee setting decisions were, on balance, public law decisions because “A Council does not have the freedom that a private individual would have to use its bargaining power to drive down the price as far as possible” (paragraph 48).
34. When a local authority is making strategic or individual decisions, it must have proper regard to the consequences, which such decisions will have on both providers and recipients of the service.
35. The material guidance published by the Welsh Assembly Government August 2010 “Fulfilled Lives, Supportive Communities: Commissioning Framework, Guidance and Good Practice”: “the Commissioning Guidance” is relevant (in particular Standard 10) where the Council is considering the commissioning of domiciliary care for adults and payments to residential and nursing care providers. Standards 4 and 10 of the Commissioning Guidance are set out at the end of this advice for reference.
36. The Directorate will need to ensure that its decision making complies with its legal obligations and that it gives due consideration to all material factors which may affect both the potential interim arrangements and the longer term (from 2020) proposals. Information provided by providers about their actual costs must be taken into account to comply with Standard 10.
37. The report provides that if the Cabinet decision of January 2018 is not implemented there will be a consultation with providers to determine the model of commissioning for home and community based care and support services (para. 9).

Equality Duties

38. In considering this matter, the decision maker must have regard to the Council’s duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to the legal duties Councils must, in making decisions, have due regard to the need to:
 - a) Eliminate unlawful discrimination
 - b) Advance equality of opportunity; and
 - c) Foster good relations on the basis of protected characteristics.
39. Protected characteristics are (a) Age, (b) Gender reassignment (c) Sex (d) Race – including ethnic or national origin, colour or nationality (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation (i) Religion or belief – including lack of belief.

40. The report identifies that an Equality Impact Assessment has been carried out and is appended as an Appendix to this report. The purpose of the Equality Impact Assessment is to ensure that the Council has understood the potential impacts of the proposal in terms of equality so that it can ensure that it is making proportionate and rational decisions having due regard to its public sector equality duty. The decision maker must have due regard to the Equality Impact Assessment in making its decision.
41. The decision maker should also have regard when making its decision to the Council's wider obligations under the Wellbeing of Future Generations (Wales) Act and be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards
42. Fulfilled Lives, Supportive Communities: Commissioning Framework, Guidance and Good Practice

Standard 4

Commissioning plans have been developed with partners and have involved all key stakeholders including users, carers, citizens and service providers in the statutory, private and third sector

Standard 10

Commissioners have understood the costs of directly provided and contracted social care services and have acted in a way to promote service sustainability.

Commissioners will have to take into account the full range of demands on them and their strategic priorities, as well as the resources they have at their disposal in developing their commissioning strategies. As stated earlier the financial outlook is going to be very challenging for some time to come. This makes the commissioning framework more important.

In seeking long term value for money and determining the budget available for specific social care services it is necessary for commissioners to take into consideration a whole range of factors, for example:

- *The national or local economic environment may be making it difficult for some provider organisations to remain financially viable.*
- *A requirement to improve the quality of services may put a short-term strain on resources.*
- *The move to an outcomes-based approach may pose serious cultural as well as financial challenges.*
- *Recognition of the need for service providers to be able to recruit employees with the skills and aptitudes necessary to deliver good quality care, to provide them with the training they require to obtain qualifications relevant to their duties and to facilitate continuing professional development to extend their abilities.*
- *The need to re-train the workforce to respond to more up-to-date practices may have transition cost and service implications.*

Thus, it will be important for commissioners, in contract, fee and service level negotiations, to recognise the financial and service challenges that are having an effect on providers, and consider both short and longer term scenarios.

Local authorities need to have mechanisms in place to discuss costs and performance with providers. Fee setting must take into account the

legitimate current and future costs faced by providers as well as the factors that affect those costs, and the potential for improved performance and more cost-effective ways of working. The fees need to be adequate to enable providers to meet the specifications set by the Commissioners together with regulatory requirements.

Registered providers also have an obligation to ensure that the income which they receive for providing the service is sufficient to meet the cost of delivering a service which complies with all statutory requirements, contractual conditions and specified service standards.

Commissioners should have a rationale to explain their approach to fee setting. The primary concern is that services operate safely and effectively to promote the welfare of service users and carer and meet regulatory requirements."

HR Implications

43. There are no HR implications

RECOMMENDATIONS

The Cabinet is recommended to:

- 1) Authorise officers not to implement the content of the Cabinet Report approved in January 2018;
- 2) Delegate authority to the Director of Social Services, in consultation with the Cabinet Member for Social Care, Health and Well-being, the Section 151 Officer and the Director of Law and Governance, to deal with the interim arrangements for the commissioning of domiciliary care for adults until November 2020 and all associated matters including the supporting technologies required to underpin the APL, if extended, and the processes required to pay residential, nursing and domiciliary care providers for the services they delivered;
- 1) note that a further report will be submitted to Cabinet seeking approval of the proposed model for domiciliary care commissioning that is proposed to come in to effect from November 2020.

SENIOR RESPONSIBLE OFFICER	Claire Marchant Director of Social Services
	14 September 2018

The following Appendices are attached:

- Appendix 1 – Equality Impact Assessment
- Appendix 2 – CASSC Chair’s letter