

**ARRANGEMENTS FOR MAKING CARE HOME PLACEMENTS
FOR OLDER PEOPLE**

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

AGENDA ITEM: 3

Reasons For This Report

1. This report seeks Cabinet agreement to implement a new Dynamic Approved Provider List (DAPL) for residential and nursing home placements for Older People and Older People with Dementia from 1st April 2021. Cabinet is requested to delegate authority to the Corporate Director for People and Communities in consultation with the Cabinet Member for Social Care, Health & Well-being, the Section 151 Officer and the Director of Governance and Legal Services for all future procurement decisions pertaining to the new arrangements.
2. This report also seeks to update Cabinet on progress in relation to the development of a new regional service specification and contract for care home placements for Older People & Older People with Dementia. Cabinet is asked to note the intention to implement the new contracts and specification with effect from 1st April 2021.
3. In order to support the implementation, Cabinet is asked to agree a minor amendment to the Charging Policy (previously approved by Cabinet in January 2020) in order to explicitly clarify the Local Authority's role in relation to facilitation of Third Party Agreements in line with its responsibilities set out in the Social Services and Well-being (Wales) Act 2014. The amendment will be in line with the requirements of the Act and will mirror the arrangements set out in the new specification and contract for Older People and Older People with Dementia.

Background

4. The Social Services & Well-Being (Wales) Act 2014 (the Act) came in to force on 1st April 2016. The Act imposes various duties on local authorities and health boards that require them to work to promote the well-being of those who need care and support, or carers who need support, working on a regional basis wherever possible

5. In response to the Act, in August 2014 Cardiff Council established a Dynamic Approved Provider List to secure Residential & Nursing Care placements for Older People & Older People with Dementia. This DAPL is managed via the Council's e-procurement portal PROACTIS. The move to an electronic sourcing system was identified as a way to;
 - increase choice for service users
 - increase transparency for providers
 - reduce case manager workload
6. The Council currently issues opportunities for placements via the DAPL in relation to the following four categories of care:
 - Residential Care for Older People
 - Residential Care for Older People with Dementia
 - Nursing Care for Older People
 - Nursing Care for Older People with Dementia
7. There are currently 74 providers accredited on the existing DAPL to deliver these services.
8. Each of the providers on the existing DAPL have committed to deliver services as detailed under the terms outlined within the existing current contract for services for Older People and Older People with dementia, often referred to as the 'Heads of Agreement'
9. These are open ended contracts and have no expiry date for the existing arrangements.

Issues

The Dynamic Approved Provider List (DAPL)

10. The existing DAPL is delivered via the Council's e-procurement portal PROACTIS. Whilst Opportunities are issued and secured via that portal, payment made for those placements is now made via *adam* (sproc.net).
11. *adam* is an e-tendering system which has been used by Cardiff Council since 2014 to facilitate an end to end process for the awarding, management and payment for all packages of Domiciliary Care funded by the Council.
12. Whilst the existing arrangements with PROACTIS has succeeded in providing improved transparency to the market and choice for service users, as payments are not made via the system it does not provide the full 'end to end process' that is offered via *adam*.
13. It is proposed that under the new arrangements, PROACTIS will cease to be used for sourcing Residential & Nursing Care placements for Older People and Older People with dementia and that the full end to end process will be delivered via *adam*. Specifically, the system will be used for the following:

- a. Accreditation & Enrolment of Suitably Qualified providers
- b. Management of Providers Contract Documentation including Insurances & Certifications
- c. Issue of packages to Accredited Providers on the DAPL
- d. Receipt of Expressions Of Interest to support individuals from Accredited Providers on the DAPL
- e. Award of placements for individuals
- f. Certification of Delivery of Care to individuals
- g. Provider Service Receipting (invoicing)& Payment

These are some of the main benefits of moving to use *adam* as the end to end process for procuring these services over the current arrangements through PROACTIS.

14. Over recent months, a project group has been established to develop the requirements for the DAPL in consultation with a group of Care Home Provider representatives.
15. In addition to this, a number of supplier engagement events have been held to outline the process & requirements of the new arrangements that will be in place from April 1st 2021.
16. *adam* have a dedicated supplier on boarding team who will support providers through the on boarding process. It is proposed that the New DAPL will be in place with effect from 1st April 2021.
17. All suppliers of Residential & Nursing Care Services in Cardiff (including those on the existing DAPL) will be invited to enrol onto the new DAPL, which is intended to be available for enrolment from 1st February 2021.
18. A Supplier Engagement Session is planned for February 2021 to support providers through the Accreditation & Enrolment process and will be facilitated by Cardiff Council & representatives from *adam*.

Regional Service Specification & Care Contract

19. It has been identified that the current contract for Residential & Nursing Care for Older People and Older People with Dementia has not been updated for a significant amount of time and there is a need to ensure that the contract reflects the requirements of various pieces of legislation and corporate policies that have come in to effect in recent years.
20. In addition to the Act, these include, but are not limited to:
 - the Regulation and Inspection of Social Care (Wales) Act 2016,
 - the Data Protection Act 2018
 - the Welsh Language (Wales) Measure 2011; and
 - the Welsh Language Standards
21. In 2019, a regional working group was established to undertake work on developing a new regional service specification and contract for delivery

of Residential & Nursing Care for Older People and Older People with Dementia.

22. The group consisted of Social Care and Health Board Commissioners with legal representatives from Cardiff Council & the Vale of Glamorgan, Care Home providers from the Vale of Glamorgan and Cardiff, and legal representatives for the Care Home Forum.
23. A set of contract documentation was drafted, including the terms and conditions of contract, service specification and individual service contract. A consultation exercise took place whereby all providers for residential and nursing care provision for older people, commissioned by the Councils and Health Board, and commissioners were asked for their comments on the structure and content of the documentation. This feedback was considered by the working group and final comments were requested in December 2019. No further feedback was received, and the working group agreed the final documentation in January 2020. These are attached as Appendices 1, 2 and 3 of this report.
24. The contract for Care Home Services strengthens the existing requirement for providers and commissioners to work together in order to provide services that meet the care and support needs of individual services users with the ability to provide a choice of care homes for the service user and their family.
25. Although the contract has been designed for use by both the Vale of Glamorgan and Cardiff, each local authority commissions care individually; therefore, each Council will enter in to a separate agreement with residential and nursing home providers. Nursing care provision is jointly commissioned by Social Services and the Health Board. The contract agreement for these services will be signed by the individual local authority, Cardiff and Vale University Health Board, and the nursing care home provider.
26. The documentation allows for a programme of quality assurance inspections to be developed, which will evidence the outcomes being achieved for service users and maintain the integrity of service provision both on a regional footing and incorporating a local perspective in order to align with the corporate performance framework for Cardiff Council.
27. As part of the implementation of the Regional Contract and Specification, work will be undertaken via the Regional Health and Social Care Partnership to ensure an agreed quality framework is in place for these services. The Partnership will consist of Cardiff and the Vale of Glamorgan officers, providers across Cardiff and the Vale of Glamorgan and University Health Board officers. It is anticipated that this work will commence in January 2021.
28. This work will link directly with Cardiff Councils' Corporate Performance Monitoring Framework Commissioned Services which evaluates delivery of services in line with the following 6 Key Performance Themes:

- a. Supplier Performance
 - b. Quality Compliance
 - c. Cost Compliance & Value for money
 - d. User Experience
 - e. Risk Management
 - f. Social Value & Community Benefits
29. The implementation of the new DAPL will offer an opportunity for both Council and Providers to sign up to the new Regional Service Specification & Care Contract at the same time that the accreditation for the new DAPL is undertaken.

The Charging Policy

30. Cardiff Council's Cabinet approved its Social Services Charging Policy for Residential and Nursing care services in January 2020, with implementation from 1st April 2020. This is located at Appendix 4 for information.
31. In its current form, this Charging Policy does not clearly state that the LA will facilitate the third party agreement in line with its responsibilities set out in the Social Services & Well-being (Wales) Act 2014
32. For clarity, the wording in the Charging Policy therefore needs to be aligned with narrative around third party arrangements set out in the new regional contract and service specification and the Local Authority's responsibilities set out in the Social Services & Well-being (Wales) Act 2014.

Reason for Recommendations

33. The existing DAPL arrangements in PROACTIS do not offer a full end to end process from identification of need through to payment for delivery. The implementation of a new DAPL via *adam* will enable this full end to end process, whilst potentially streamlining back office processes for the in house Finance Team. It will also reduce the need for training and development of staff within the Finance Team on two systems. It is intended that the new DAPL will include a quality award criteria through the implementation of the new contracts and quality framework.
34. Under the existing DAPL in PROACTIS, there is still the requirement for some contract documentation to be produced manually, outside the system. Through *adam* it is intended that all documentation in relation to individual placements (namely the individual care contract) will be generated and issued electronically by the system.
35. The current contract documentation used for Residential and Nursing Care provision for Older People and Older People with Dementia is no longer reflective of current legislative and corporate requirements.

36. Furthermore, the new contract documentation requires both providers and commissioners to work towards achieving identified outcomes for individual residents.
37. The amendment to the Charging Policy, previously agreed by Cabinet Jan 2020 will provide clarity that the LA will facilitate the third party agreement in line with its responsibilities set out in the Social Services & Well-being (Wales) Act, 2014 and the regional contract for Older People and Older People with dementia.
38. The delegated authority to the Corporate Director around all matters pertaining to the procurement decisions will allow the details of the new DAPL and procurement exercise to be finalised, agreements to be entered in to and varied in a timely manner, whilst maintaining the requirements of the Council's Contract Standing Orders & Procurement Rules.

Financial Implications

39. The report recommends the agreement of a new DAPL for Residential and Nursing placements, to be effected via an extension of existing licensing arrangements with *adam*. In summary, it is anticipated that one-off implementation costs will be met from the Carefirst Reserve whilst ongoing annual costs associated with the extension will be met from existing budgets. Full financial advice will be provided in respect of the procurement process, all aspects of which have been delegated to the Corporate Director People and Communities, in consultation with the Cabinet Member for Social Care, Health & Well-being, the Section 151 Officer and the Director of Governance and Legal Services. It is anticipated that the end-to-end process via the new DAPL will provide an opportunity to streamline existing back office functions. It will be important to ensure that efficiency savings resulting from the revised arrangements are fully captured.
40. The report also notes progress towards the development of a new regional service specification, and seeks agreement for a minor amendment to the Charging Policy that was approved by Cabinet in January 2020. There are no direct financial implications arising from these recommendations.

Legal Implications

41. The recommendations include proposals for the procurement of new arrangements, DAPL, for Residential and Nursing placements and seeks that delegated authority be granted to the Director to deal with all aspects of the procurement. Legal advice should be sought on the procurement process to ensure it accords with all legal requirements. The body of the report refers to use of an e procurement and contract management system, 'adam'. Legal services are instructed that a separate officer decision report will address the decisions required as regards the acquisition and contractual arrangements for adam and the relevant legal advice will be set out in that separate report .

42. The recommendations further provide for amendment to the Council's Social Services Charging Policy for Residential and Nursing care (the "Charging Policy"), concerning third party payments for care home accommodation.
43. The Charging Policy notes (at page 3) that it needs to be read in conjunction with the relevant legislation. In considering this matter, the decision maker must have regard to the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act") and associated regulations and guidance. The 2014 Act provides the statutory framework for social services in Wales. In brief, the 2014 Act places a responsibility on local authorities, and other public bodies, exercising functions under the 2014 Act to meet any eligible needs of people who need care and support, and carers who need support, and delivering outcomes. Failure to have due regard to such statutory guidance could itself be a ground for a judicial review challenge.
44. The Care and Support (Choice of Accommodation) (Wales) Regulations 2015 ("the Regulations") provide that if a person expresses a preference for a particular care home and the cost to the local authority of providing the preferred accommodation is greater than the cost that the local authority would usually expect to incur in providing care home accommodation to meet the needs of the person concerned, the payer can enter into a written agreement with the local authority in which a third party payer agrees to pay the additional cost.
45. A Code of Practice on charging for social care services (Part 4 and 5 Code of Practice, April 2020), also supports the Regulations. The Code of Practice provides that the Council must have more than one available care home within the cost it would usually expect to pay and must only seek a third party payment when a person chooses another care home that is more expensive. The Code is clear that a person must genuinely choose a more expensive care home for there to be a third party payment and "never as a result of a shortfall in the funding a local authority is providing to a care home to meet a person's assessed care needs". (at paragraph 4.2, page 48)
46. The Local Authority must follow the Charging Regulations when undertaking financial assessments and determining any charges and when exercising its other functions in relation to charging.
47. The relevant Charging Regulations are:
 - The Care and Support (Financial Assessment) (Wales) Regulations 2015;
 - The Care and Support (Charging) (Wales) Regulations 2015;
 - The Care and Support (Choice of Accommodation) (Wales) Regulations 2015;
 - The Care and Support (Deferred Payment) (Wales) Regulations 2015;
 - The Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015.

Legal services should be instructed again should there be any further consideration of areas where the Local Authority has discretion to charge and these matters may be subject to formal, public consultation.

Other factors

48. *Equalities & Welsh Language*

In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. 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.

An equalities impact assessment is attached to this report and the decision maker should have regard to the same in reaching its decision.

The decision maker should be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

49. *Social Services and Well-Being (Wales) Act 2014*

In considering this matter, the decision maker must have regard to the Council's duties pursuant to the Social Services and Well-Being (Wales) Act 2014. In brief, the Act provides the legal framework for improving the well-being of people who need care and support, and carers who need support, and for transforming social services in Wales.

50. *The Well-being of Future Generations (Wales) Act 2015*

The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2018-21: <http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202018-21.pdf>

When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the

decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

51. The decision maker must be satisfied that the proposal is within the Policy and Budget Framework, if it is not then the matter must be referred to Council.

HR Implications

52. There are no HR implications to this report

RECOMMENDATIONS

Cabinet is recommend to:

1. agree the procurement of a new Dynamic Approved Provider List (DAPL) to source residential and nursing home placements for Older People and Older People with Dementia with the intended implementation with effect from 1 April 2021.
2. delegate authority to the Corporate Director People and Communities, in consultation with the Cabinet Member for Social Care, Health & Well-being, the Section 151 Officer and the Director of Governance and Legal Services to deal with all aspects of and make all future procurement decisions relating to the new DAPL arrangements and any necessary details of the model of the new DAPL.

3. note the progress in relation to the development of a new regional service specification and contract for care home placements for older people, and the intention to implement the new contracts and specification with effect from 1 April 2021.
4. agree minor amendments to the Charging Policy, approved by Cabinet in January 2020, (which amendments are shown as tracked changes in appendix 4 to this report) in order that it explicitly sets out the Local Authority's role in relation to the facilitation of Third Party Agreements in line with its responsibilities set out in the Social Services and Well-being (Wales) Act 2014 and as specified in the new contract for Older People and Older People with Dementia.

SENIOR RESPONSIBLE OFFICER	SARAH McGILL Corporate Director People & Communities
	15 January 2021

The following appendices are attached:

- Appendix 1 – Care Home Contract
- Appendix 2 – Service specification
- Appendix 3 – Individual Service Contract
- Appendix 4 – Charging Policy
- Appendix 5 – Equalities Impact Assessment