

Meeting:	Cabinet
Meeting date:	Thursday 28 September 2017
Title of report:	The introduction of an open approved list for the delivery of home care services (Care @ Home) for adults
Report by:	Cabinet member health and wellbeing

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose and summary

To agree revised arrangements for the provision of commissioned home care services for adults within Herefordshire.

Recommendation(s)

That:

- (a) an open approved list for the purchase of home care services be introduced from January 2018;**
- (b) an open approved list for the purchase of supported living be introduced from**

January 2018;

- (c) **the director for adults and wellbeing be authorised to take all operational decisions necessary to implement the above recommendations including the acceptance of providers meeting the qualification criteria onto the open approved list, the setting of the rules relating to the approved list (including amendments from time to time) and the approval of the terms and conditions to be used from time to time for services purchased from the approved list.**

Alternative options

1. The option to not have an approved list or framework. This option is not recommended as contractual arrangements need to be in place for the council to purchase home care services in compliance with the Care Act 2014 and European Procurement rules.
2. The option to extend the current Home and Community Support framework (HACS). This option is not recommended as the extension granted by Cabinet on 3 November 2016 expires on 31 March 2018. Furthermore, this approach to procurement could be subject to challenge.
3. The option to conduct a formal tender for a closed framework. This option is not recommended because a competitive tender was conducted at the end of 2016 following extensive engagement and formal consultation. The response from the market did not provide the required coverage and quality of provision and the council was unable to award the contracts. Subsequent discussions with providers indicate that it is unlikely that the market would respond differently to another closed framework tender at this time. Furthermore, a closed framework lacks long term flexibility to respond to providers entering and leaving the market as it does not permit new providers to join once it is operational.

Key considerations

4. On 3 November 2016, Cabinet accepted recommendations for the introduction of a remodelled home care service to be known as Help to Live at Home. The service design was informed by consultation with service users and co-produced following extensive engagement with strategic partners and service providers.
5. The aim of the Help to Live at Home service was to ensure capacity and consistency of high quality home care. This would be achieved by splitting the county into zones in which one or two providers would take responsibility for ensuring the delivery of all council commissioned care packages. The associated consolidation of the number of providers delivering council commissioned homecare services would improve providers operational and financial viability.
6. A tender exercise was conducted during January 2017, 20 bids were received, but only 10 passed the financial stage of the evaluation. Of these, five did not meet the tender specification, which resulted in insufficient coverage of the zones.
7. Despite initial expressions of interest, the procurement exercise failed to attract bids from regional, national or larger care companies. It should be noted that whilst these providers may not necessarily be more resilient, as evidenced by a recent large scale provider failure in a neighbouring council area, they are, however, an important element of the wider care market.

8. A number of the bids submitted by local providers reflected an ambition to grow their businesses. However, many were not large enough to deliver the minimum number of hours required in the zone structure. The profile of the providers of council commissioned homecare is relatively small, around 60% deliver less than 300 hours per week and only eight of the 29 organisations currently providing services deliver in excess of 700 hours per week.
9. The primary reasons for establishing the Care at Home open approved list is to ensure capacity and consistency of high quality home care services and increased service user choice across the county.
10. Under the proposed arrangement, the supported living service will be commissioned via a separate approved list. This is in recognition that this service is primarily provided to people with a learning disability and is of a different nature and scope to the personal care services required by older people with complex needs. Furthermore, an open approved list for supported living would allow new providers into the market and increased choice for service users.
11. Given the nature of the care market, it is essential that local providers of quality homecare are supported to improve the outcomes for people who use their services and develop their business in a sustainable manner. Work is underway with the market to develop high quality services. These include a workforce project to address staff training and the difficulties of recruitment and retention of care workers, which is a challenge nationally.
12. The proposed open approved list will allow providers access to council business and will increase capacity and client choice. It will also enable alternative approaches and models of service delivery to be trialled. These developments will inform considerations regarding longer term solutions for the provision of home care.
13. It is envisaged that the desirable outcomes of the consolidation in the number of providers associated with the Help to Live at Home service will be achieved over time and in a more strategic manner. This will be without the attendant risks of putting local care providers out of business and the significant disruption to people who rely on them for their home care services.
14. The council commissions home care services for around 1,300 people a year and between 800 to 900 people at any one time. Of those, two-thirds of service users are aged 65 or over and the largest proportion (two-fifths) are aged over 85. It is estimated that the throughput of service users is around 30% per year.
15. The net spend on home care services during 2016/17 was £11,054K. The number of hours of home care directly commissioned is in the order of 710,000 per annum.
16. The HACS framework includes 39 care organisations but of those, only 29 are currently delivering services.
17. The HACS framework is closed and as such does not allow the council to directly commission care services with non-framework providers or new entrants into the local care market. There are occasions when framework providers are unable to deliver a care package in a timely manner. In these circumstances, services from non-framework providers are sought. However, under the current arrangements this generally requires the service user to take a direct payment.

18. The nature and scale of the Care at Home service and the financial value of the contract(s) indicate that it is subject to European Union procurement regulations. However, it is also subject to the 'light touch' procurement regime, which allows for a more flexible procurement procedure as set out in the Public Contracts Regulations 2015.
19. The key features of the flexible, open approved list approach are:
 - The development of an open approved list of preferred home care providers with no time restrictions
 - It enables providers to join, leave or re-join at any time. However, to ensure timely applications in the first round, the approved list is likely to close for a short period until the second round. In time (possibly after the second or third round) the approved list may be kept open permanently. However, this position may need to be reviewed, to take account volumes of applications.
 - The period of the approved list will be unlimited. The council will publish rules relating to the conduct of the approved list, including rules regarding how packages are to be allocated amongst providers. These rules are open to change from time to time to meet changing market conditions, subject to the Council giving providers necessary consultation. Other than adherence to the rules of the approved list, there will be no contractual obligations between the Council and a provider simply from the provider being a member of the approved list. No other contractual relationships apply until individual packages are awarded by the Council to the provider.
 - No minimum volume of work or exclusivity is guaranteed to providers on the approved list
 - At this stage, the council will set the price it pays for home care services in line with its contractual obligations to annual reviews.
 - The rules of the approved list will set out transparently how packages are allocated between providers. These rules are subject to change from time to time as market conditions change. Referrals will be made to providers on the approved list and care packages placed having regard to services users' needs and preferences and other factors, such as their location
 - The approved list will provide the basis for further service development and enable pilots and test schemes in the future
20. The timetable for the introduction of the approved list will see applications invited from providers between October and November and evaluation of the first tranche of applicants in December 2017. Successful providers will be notified early in 2018. Successful future applicants will be allocated places on the relevant approved list as their applications are approved.
21. The approved list will remain open indefinitely but it can be closed with due notice. Given the nature of the homecare market the effectiveness of the approved list will be reviewed at least annually.
22. The Care at Home approved list will allow the provision of home care to be more closely aligned with the council's 'adults wellbeing plan 2017-2020'. The focus of the provision will be the delivery of high quality personal care in response to the increasing demand arising from the growing number of older people with complex care needs. This will enable residents to live independently and safely in their own homes and communities for as long as possible.

23. The approach will also align and support the re-designed pathways for adult social care services, which include the introduction of:
 - A strengths based approach to assessment
 - The home first service with the associated expansion of the reablement and rapid response services
 - Community brokers to facilitate the delivery of ancillary tasks associated with daily living activities from local communities and the voluntary sector
24. The strengths based approach to assessment with the associated focus on what the person, their family and the wider community can do to assist them, will support a shift away from reliance on council funded care services.
25. The increased access to effective reablement will lessen the disabling effect of traditional care services and prevent, reduce or delay the demand for more intensive services.
26. Care providers will gradually discontinue the delivery of ancillary activity as the community brokers identify appropriate and more cost effective solutions. This will enable care providers to respond and focus on the increasing demand for high quality personal care to those with multiple and complex needs.
27. The approved list will offer the flexibility for the council to support providers through this period of change. It will also allow the trial of new approaches and models of service delivery in response to emerging needs and patterns of demand.
28. The HACS framework will run alongside the Care at Home approved list until it expires on 31 March 2018. This, along with a streamlined but robust application process, will facilitate a seamless transfer and minimise the risk of any discontinuity of service provision to service users.
29. The Care at Home approved list will allow access to all providers who meet the eligibility criteria, therefore increasing the choice for both the council and service users. It will also assist in ensuring equitable provision throughout the county and enable the council to support and develop local care providers who deliver quality services. The council will support providers to maintain and enhance the quality of service provision by introducing an annual self-assessment as part of the quality assurance process.
30. Supporting and developing local providers is a pragmatic approach, whilst creating a diverse care market will lessen the impact of provider failure. However, the comparatively small scale of some providers means their financial and operational viability is vulnerable to changes in the market. This will be monitored closely by the council's quality review and contract teams and support will be offered as required.
31. However, given the challenging funding climate it is envisaged that a degree of consolidation in the number of providers will occur over time. Work is ongoing to ensure there is capacity in the market to maintain continuity of provision in the event of provider failure.
32. Ongoing support for the market will include the council working in conjunction with service providers. A workforce development project recently commenced, which will seek to address the challenges of recruitment, retention and training needs of care workers.

33. To ensure that service quality is continually enhanced, the council's Quality Assurance Framework will be implemented from commencement of the service.

Community impact

34. Herefordshire Council's corporate plan has four priorities, one of which is the improvement of the health and wellbeing of people in Herefordshire to 'enable residents to live safe, healthy and independent lives'. The council will be proactive in helping and encouraging people to live healthier lifestyles and developing resources that offer more choice and control in remaining independent, therefore reducing or delaying the need for formal social care. This proposal supports the council's priorities by offering choice of services and support to help residents remain independent at home for longer.
35. The Care Act 2014 articulates the principles of wellbeing and prevention, and the recognition that an individual, their family, and/or carer must be enabled to make decisions regarding their care. These principles inform the council's delivery of social care services of which this proposal forms a key part.
36. The principles that underpin the approved list will ensure that individuals' outcomes are improved through supporting the sustainability of home care services and investing in initiatives that will enhance people's lives. It will align to the council's health and wellbeing strategy, which underlines how Herefordshire aims to be a vibrant county where good health and wellbeing is matched with a strong and growing economy and the vision for the council's adults and wellbeing directorate of 'all adults in Herefordshire live healthy, happy and independent lives within their local communities, for as long as possible with support when they need it.'

Equality duty

37. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:
38. A public authority must, in the exercise of its functions, have due regard to the need to –
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
39. The council is committed to equality and diversity using the Public Sector Equality Duty (Equality Act 2010) to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.
40. The equality duty covers the following nine groups with protected characteristics: age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The decision does not

discontinue any service and has no detrimental impact to eligible service users.

41. For further detail refer to Appendix 1 - Equality Impact Assessment.

Resource implications

42. The council spends approximately £11,054K per annum on directly commissioned care services on a spot purchase basis under the HACS framework.
43. The current home care rates were approved by Cabinet on 2 November 2016 and came into effect on 3 April 2017. There are three set rates; urban, rural and 24 hour packages and sleep-in nights.
44. For this purpose, rural packages are classified broadly as those where the service user lives more than four miles outside the city or market towns. Providers are paid a premium to cover the associated staff and travelling costs.

Urban		Rural		24 Hour / Sleep-ins	
60 minutes	£15.80	60 minutes	£15.80	60 minutes	£12.80
45 minutes	£11.85	45 minutes	£12.21		
30 minutes	£7.90	30 minutes	£8.14		

45. The hourly rates were calculated using a locally developed model, which includes the UK home care association (UKHCA) recommended rate calculation criteria, but adjusted for local factors.
46. Therefore, the introduction of the Care at Home approved list does not have any immediate financial implications, as the rates paid will not alter during the 2017/18 financial year.
47. However, the increase in the national minimum wage from £7.50 to between £8.50 and £8.80 in 2020 and other emerging cost pressures will need to be considered when the annual review of home care rates is undertaken later this year, having regard to the budget available.

Legal implications

48. Council has a statutory duty under Care Act 2014 to provide care and support to meet those needs which meet the eligibility criteria.
49. Given these services are within the 'light touch' regime of the Public Contracts Regulations 2015, these approved lists are permissible.
50. The Council however needs to ensure compliance with EC Treaty requirements (e.g. transparency, equal treatment etc.) in relation to the management of these approved lists, particularly in terms of
- The process by which providers apply for membership of the approved lists.
 - The rules governing the conduct of the lists over time, particularly rules relating to the allocation of packages.

51. Commissioners are expected to liaise with Legal Services regarding the preparation of the following:
- The rules governing the approved lists
 - The terms and conditions applying to packages awarded
 - Work Orders applicable to the packages
 - If there are to be any mini-competitions for the awarding of packages (especially supported living packages), the documentation for those mini-competitions
52. The rules for the award of packages (especially supported living packages) must properly take into account service user choice to ensure compliance with the Care Act 2014.

Risk management

53. If the recommendations described in the report are not approved, it will result in the council not having appropriate arrangements in place to purchase homecare services. This means the council would fail to meet its statutory duties under the Care Act 2014 when the current framework expires on 31 March 2018.
54. The introduction of an open approved list may result in more competition between providers to deliver council funded care packages. This could have a negative impact on a provider's operational and financial viability and may result in some providers exiting the market or realigning their businesses to focus on providing home care services to people that fund their own care. This will be reviewed through regular contract monitoring arrangements and other support as and when appropriate.
55. Providers may choose not join the new approved list. This is unlikely as extensive and ongoing engagement has indicated that the majority will join the approved list. Therefore, it is doubtful that any significant discontinuity of service provision will occur directly as a result of the introduction of the new approved list.
56. There is a risk register underpinning this project which is reviewed regularly.

Consultees

57. The engagement and co-production with the care market undertaken in relation to the Help to Live at Home proposal has continued with the development of Care at Home. The service has been designed in partnership with the Home Care Provider Forum.

Appendices

58. Appendix 1 - Equality Impact Assessment.

Background papers

59. None identified.