

Title of report: Approve the option to deliver the residential and respite service for adults with a learning disability and complex needs

Decision maker: Cabinet member health and adult wellbeing

Decision date: Monday, 17 May 2021

Report by: Head of care commissioning

Classification

Part exempt Commercially sensitive information

This report is open but an appendix is exempt by virtue of the paragraph(s) of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A of the Local Government Act 1972, as amended.

Information relating to the financial or business affairs of any particular person (including the authority holding that information).

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.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

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);

1. Purpose

This report seeks approval to insource the learning disabilities residential and respite service to the Council from the current provider through an exit plan. The intention is to transfer the service in its current operating state on 1 August 2021 or as soon after as practicable. Both parties will ensure a smooth transition of the services. This will be managed through the use of an appropriate Project Management process and detailed mobilisation plan.

2. Recommendation(s)

- a) That the **Cabinet Member for Health and Adult Wellbeing** agrees the proposed insourcing of the learning disabilities residential and respite service from the current provider to the council and to effect the smooth transition of staff and other relevant assets by no later than 31 July 2021.
- b) Staff currently employed by the current provider and under the Transfer of Undertakings (Protection of Employment) regulations (TUPE) are entitled to transfer to Hoople's employment terms and conditions.

3. Alternative options

3.1 An options appraisal was undertaken to consider the following options, as well as the option to in-source the service:

- a) **Maintain the current service provision**, this option is not recommended due to:
 - The existing contract has already been extended and there is no further option to extend the contract with the current provider.
 - If the council continue the service as it is, there is the potential of a reputational risk with services users and their families/carers, as the quality of the service may not improve.
 - No guarantee the quality concerns will be resolved.
 - This does not fit with the council's vision to modernise learning disabilities and complex needs services.
- b) **Decommission the service and move to alternative provisions within the County that meet the needs of the service users**. This option is not recommended due to:
 - the average cost of a residential package for learning disabilities is £1.5k per week, rising to over £3k per week for clients with higher needs. Purchasing individual care packages for each current resident would likely be much more expensive than the current cost.
- c) **Retender the service provision**, this option is not recommended due to:
 - soft market testing had demonstrated low interest from the market, low levels of innovation and this presents the council with high levels of risk in terms of market shaping.
 - significant risk, this option would not give the council confidence that they will be able to secure a good provider to meet and services users' outcomes for a learning disabilities residential and respite service.
- d) **Change to a Supported Living Accommodation Provision**, this option is not recommended due to:
 - the de-registration process can be quite complex and works better when delivered as a partnership between the care provider, the housing provider and the council.
 - the current cohort's assessed needs and the additional cost of a supported living model this option has not been recommended.
 - a comparison exercise had been undertaken between the residential care and supported living models. The exercise identified the individual care and support hours with data drawn from Mosaic; input from operational colleagues, the provider's staff

rotas and contracted supported living hourly rates. This provided an indicative annual additional cost of £539k.

4. Key considerations

- 4.1 The Council is undertaking a number of transformation and service change activities, within the Learning Disabilities and Complex Needs Redesign Project, there are opportunities including reviewing service user pathways, modernisation of accommodation and better utilisation of technology which will affect this service transfer.
- 4.2 By means of insourcing the service, it will ensure; service user's desired outcomes are met, there are value for money services and service users receive quality services. The current contract has shown limited flexibility to implement the council's direction to deliver quality services to the residents of Herefordshire.
- 4.3 The council has a responsibility to ensure that our residents receive the best possible services, failure to deliver good quality services reduces public confidence and can also lead to serious consequences for individuals. By bringing the service in-house, it will allow the council to closely manage the delivery and ensures a good quality service that meets the expectations and needs of the users of the service.
- 4.4 The council has a legal duty to ensure it obtains value for money when spending public money and so it is essential that the service provider has the capability to deliver an effective service that meets the objectives of the service and delivers the service to the expected performance levels and has the capacity of the council workforce to manage a successful transition.
- 4.5 The insourcing will give the council more control, flexibility and accountability in managing the service, enabling the service to be fully integrated and work more closely with other key services and partners, such as health professionals. This will help to ensure the service is delivered in a way which fully supports the council's objectives and enables the council to adapt services to meet future needs and requirements.
- 4.6 The transfer of the service to the council will give service users and their families/carers confidence and reassurance that the service will continue to operate in its current state, with the same groups of staff and ensure a high standards of care is provided to service user's accessing the learning disabilities residential and respite provision.
- 4.7 The options appraisal and recommendation to insource the learning disabilities residential and respite service were approved by the Adult Social Care Commissioning Programme Board, Core DLT (Performance) and the Cabinet Member for Health and Adult Wellbeing in February 2021. A business case (see attached appendix) has been developed to confirm the delivery, planning and preparations that will be required when the contract with the current provider comes to an end and the management of the services and the relevant staff and resources transfer to the council. The business case includes the mobilisation plan, milestones and timescales to transfer the service and staff by 31 July 2021.
- 4.8 The business case was approved at Core DLT – Performance and by the Cabinet Member for Health and Adult Wellbeing in March 2021.

4.9 The learning disabilities residential and respite service is currently delivered over two sites:

4.9.1 Accommodation one is a learning disabilities residential care home in Leominster and has eight care home beds (four beds per house) over two bungalows on the same site. The two houses were leased to the current provider by the council for a period of five years which expire on 31 July 2021.

4.9.2 Accommodation two is a learning disabilities residential home, it has eight residential care home beds in Hereford (four beds per house) over two bungalows on the same site.

4.9.3 Residential respite is based at accommodation two and has five respite beds in one bungalow on the same site as the residential beds

4.10 The current CQC ratings for both settings are 'Requires Improvements' and there have been quality related issues with both services, significant resources have been invested to assist and support the settings which have resulted in some improvements. The poor CQC ratings will have had a negative impact and resulted in a lack of confidence to make referrals into the settings. In addition, the residential respite unit is not fully utilised with the Provider directly managing bookings. The respite service will require a reconfiguration of the residential care beds, and consultation with current residents and families.

4.11 The transfer of the service to the council will ensure:

4.11.1 higher standards and better quality of service;

4.11.2 the desire for better and more attractive offer;

4.11.3 the desire for a more flexible, responsive and productive workforce and model of support;

4.11.4 improved performance management;

4.11.5 efficiency savings and economies of scale;

4.11.6 improved service effectiveness and satisfaction.

4.12 Adult Social Care Commissioning and Operations are reviewing and developing the support and accommodation services that are commissioned to provide support that meets the outcomes. The option to in-source the service will achieve the following outcomes:

4.12.1 Cost effective efficient service through economies of scale;

4.12.2 Improve the quality of service delivery;

4.12.3 Improve the operation of the service; Increase activity within the budget;

4.12.4 Meet the needs of the service user cohort;

4.12.5 Mitigate any quality and compliance concerns.

4.13 As of March 2021, there were a total of 36.62 Full Time Equivalent (FTE), 49 headcount staff with the current provider of which, fifteen are based at accommodation one and thirty-

four are based at accommodation two. All staff are in scope for the TUPE transfer to the council, all staff will be made aware of the changes to the service provider and consulted on the changes required to transfer the service to the council.

4.14 The number of service users that will be affected by the change in service provider are:

4.14.1 Accommodation one - six permanent residents and one person currently on temporary placement;

4.14.2 Accommodation two - eight permanent residents;

4.14.3 Accommodation two - nineteen people are open to respite currently with twelve people regularly using respite during the pandemic.

All residents and their families/carers will be notified and engagement will commence once the decision to insource the service has been made.

4.15 To implement the insourcing mobilisation plan the project:

4.15.1 has established a 'Task and Finish' working group to oversee delivery of the project against the Business Case and Delivery Plan.

4.15.2 will report to the Learning Disabilities and Complex Needs Project Board, Commissioning Programme Board and to DLT Programme Board (Adults and Communities). DLT reporting will be included in the project dashboard and on an exceptional basis and for sign-off of key stages of the project.

4.15.3 will consult with staff and their representatives subject to TUPE

4.15.4 will identify any risks and mitigations as part of the project plan

4.15.5 will liaise with the council's Property Services to obtain the relevant due diligence

4.15.6 will undertake an equality impact assessment for the staff and service users

4.15.7 will develop a Stakeholder Engagement and Communications Plan jointly with the council's communications team. The engagement will be carried out with staff, residents and their family/carers.

4.15.8 will collate information under the TUPE Regulations and under the existing contract

5 Community Impact

5.1 The modernisation of the accommodation model for people with Learning Disability and/or complex needs will ensure the council continues to meet its statutory duties and strategic objectives contained within the County Plan 2020 - 2024, the requirements of the Care Act (2014) and the outcomes in the Joint Commissioning Strategy for Learning Disabilities 2019 - 2024.

5.2 The insourcing contributes to the following County Plan Themes:

- 5.2.1 Build understanding and support for sustainable living
- 5.2.2 Seek strong stewardship of the county's natural resources
- 5.2.3 Protect and improve the lives of vulnerable people
- 5.2.4 Use technology to support home care and extend independent living
- 5.2.5 Support communities to help each other through a network of community hubs
- 5.2.6 Invest in education and the skills needed by employers
- 5.2.7 Enhance digital connectivity for communities and business
- 5.2.8 Spend public money in the local economy wherever possible

6 Environmental Impact

6.1 Insourcing the learning disabilities residential and respite service will support the council's environmental policy commitments. In operating the service internally the council will endeavour to align to the following success measures in the County Plan.

- 6.1.1 Reduce the council's carbon emissions.
- 6.1.2 Work in partnership with others to reduce county carbon emissions.
- 6.1.3 Improve the air quality within Herefordshire.
- 6.1.4 Improve residents' access to green space in Herefordshire.
- 6.1.5 Improve energy efficiency of homes and build standards for new housing.
- 6.1.6 Increase the number of short distance trips being done by sustainable modes of travel, walking, cycling, and public transport.

6.2 The development of the business case, to consider insourcing the service has sought to minimise any adverse environmental impact and will actively seek opportunities to improve and enhance environmental performance through the opportunity to manage the two properties.

7 Equality Duty

7.1 Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

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.

- 7.2 The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.
- 7.3 There will be very limited changes made to the way the service is delivered as the functions are to be in-sourced largely as they are. Following the insourcing the Council will continue to treat staff and customers equitably. If there are future changes to be made to the service, the roles and the processes, it will be the council's responsibility to assess the impact at that time.
- 7.4 An Equality Impact Assessment will be carried out to identify the impact of the proposed changes. The Equality Impact Assessment will identify a set of actions aimed at mitigating risks to service users and employees in the protected characteristic groups.

8 Resource Implications

- 8.1 The funding to support the decision is included in the medium term financial strategy as part of base budget. The funding allocated for the contract for the facilities will be transferred to the operational budget to run the two accommodations.
- 8.2 The staff employed at both sites are eligible to transfer to the council under TUPE legislation. The likely financial impact of staff transferring compared to employing staff on council or Hoople pay scales is negligible. The transfer will have to be completed within the timescales and terms of TUPE legislation.
- 8.3 The freeholds of the two buildings are owned by the council and as the lease costs to the current provider for accommodation one and two are included in the base budget, there should be no significant financial implications.
- 8.4 Savings included in the council's savings plan related to this decision are:
 - 8.4.1 Day Activities - £90k
 - 8.4.2 Respite beds - £74.7k

9 Legal Implications

- 9.1 The council under the Care Act 2014 has a legal duty and responsibility to meet the eligibility needs of individuals who, following the completion of the relevant assessment, meet the relevant criteria and threshold. How these care needs are delivered, are not set and therefore the council is able to consider how best these services are commissioned/provided.
- 9.2 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply if the service is bought in house as there would be a change in service provider. As TUPE applies those employed in delivering the services in accommodation one and two will automatically become employees of Herefordshire Council on all their existing terms of

employment. All rights, powers, duties and liabilities would pass to the council and the council must consult with representatives of the affected employees in relation to the transfer.

- 9.3 The Council has the power to bring these power to bring these services in-house under s1 - 3 of the Localism Act 2011 which allows the council to do anything that an individual can do unless expressly prohibited under other legislation and this would include providing residential and respite care for adults with learning difficulties. In delivering these services the council must secure value for money.
- 9.4 Any transfer of the services to the council will be facilitated through the exit management plan which has been agreed under the terms of the existing contract with the current provider.

10 Risk Management

- 10.1 The project overseeing the transfer will have the full range of formal project controls in place including regular progress and risk reporting along with regularly updated action, risk and issue logs. The risk reporting will also have a positive impact on some of the councils existing risks and will endeavour to work towards meeting the aspirations of the County Plan.
- 10.2 Below are the high-level risks identified that will be managed throughout the mobilisation of the service:

Title	Mitigating Action
Resistance from providers, residents and their families /carers could result in slippage.	An engagement plan will be completed to strategically approach provider engagement. Senior leadership and elected members to be briefed on project aims, activities and expected benefits.
Staff morale could suffer during the transition which could affect service delivery and staff may decide to leave the service.	An engagement plan will be completed to strategically approach provider engagement. Senior leadership and elected members to be briefed on project aims, activities and expected benefits.
TUPE staff may not have required competencies; may cause challenges to service change if not happy with the changes.	The council's Human Resource team will lead on the TUPE requirements with the advice of Legal Services. A transition and implementation plan will be finalised to support with the transfer of staff. The staff will undertake an induction to Hoople Care and will be required to complete a development profile to identify their training needs, this will ensure they are competent, confident and skilled in delivering safe care to the people using the service.
There is a reputational risk to the council if when insourced the quality of service does not improve.	The quality of the service will be managed by ASC Commissioning and the Quality and Compliance Team.

The two properties may not be transferred back to the council within the specified timescales.	A detailed report will be produced by ASC Commissioning and Asset Management & Property Services to outline the plan to transfer the two sites back to the council, this will include confirming the lease arrangements are terminated and establishing any ongoing maintenance costs to the council.
The council could incur additional building maintenance and repair costs.	A detailed report will be produced by ASC Commissioning and Asset Management & Property Services to outline the plan to transfer the two sites back to the council, this will include confirming the lease arrangements are terminated and establishing any ongoing maintenance costs to the council.
Covid-19 disruption to Council workforce.	Any capacity issues and slippage will be identified as part of project management. Close ties have been formed with ASC Operations and any issues identified will be mitigated or re-planned where possible.
Covid-19 potential disruption to care providers and needs of individuals	This will be monitored and issues reported as part of stakeholder engagement.

11 Consultees

- 11.1 The Cabinet Member for Heath and Adult Wellbeing has been consulted and their comments have been reflected in the business case.
- 11.2 The Political Group Consultation was signed off by the Cabinet Member for Heath and Adult Wellbeing on 1 April 2021, and was sent to all Members, comments and feedback was requested back by 16 April 2021.
- 11.3 Councillor Stark requested for further clarity on the best option and benefits for the individuals with learning disabilities under the council's care. Officers responses noted that the benefits of the transfer for the individual's has been made clearer in this report and the business case, this includes safer, efficient and quality care and service delivery for all individuals under the council's care.
- 11.4 The following Key Stakeholders will be informed and consulted about the changes in service provider:

External

- Individuals affected, their families and carers
- Externally commissioned service providers and staff
- One Herefordshire Health Partners – H&W CCG, WVT, Taurus Healthcare and Healthwatch Herefordshire
- Herefordshire Learning Disabilities Partnership Board
- Key stakeholders including employers and carer groups

Internal

- Herefordshire Council Elected Members
- Herefordshire Council Senior Management Team
- Herefordshire Council Adults & Communities Directorate
- Herefordshire Council Adult Social Care operations staff (incl. social workers)
- Service Manager Registered Services
- Legal Services
- Human Resources and Hoople Care
- Strategic Finance
- Pensions Team
- Payroll Services
- Economy and Place - Estates

11.5 There will be a formal consultation with the affected staff and customers and their families and carers, once the key decision to transfer the residential and respite service for adults with learning disability to the council has been made.

Appendices

Exempt: Appendix 1 Approve the option to deliver the residential and respite service for adults with a learning disability and complex needs

Background papers

None