

Report of the Chief Social Services Officer

Safeguarding Policy Development & Delivery Committee - 16 August
2017

ETHICAL CARE CHARTER

Purpose:	To provide officer advice regarding the timescale and means by which the commitment to implement Unison's Ethical Care Charter can be delivered.
Corporate Priorities:	Safeguarding Vulnerable People
Reason for Briefing:	This briefing describes the extent to which the local authority already complies with the standards set out within the ethical care charter and a route map for enhancing that level of compliance and embedding the standards within the local authority's future commissioning arrangements for domiciliary care services.
Consultation:	Legal, Finance, Access to Services
Recommendation(s):	It is recommended that: 1) That the actions and timescales proposed in the route map are accepted as the means by which the City and County of Swansea fulfil its commitment to implement the Ethical Care Charter through a staged approach.
Report Author:	Dave Howes
Finance Officer:	Chris Davies
Legal Officer:	Pamela Milford
Access to Services Officer:	Sherrill Hopkins

1.0 Introduction

- 1.1 Unison's Ethical Care Charter was born from a Unison survey of homecare workers entitled 'Time To Care' undertaken between June and July 2012 to gain their views on why there were so many problems in the sector.
- 1.2 Unison reports that the 431 responses received from Home Care Workers 'showed a committed but poorly paid and treated workforce which is doing its best to maintain good levels of quality care in a system that is in crisis. The report highlighted how poor terms and conditions for workers can help contribute towards lower standards of care for people in receipt of homecare services.'
- 1.3 The report goes on 'For the system to work it needs to be underpinned by adequate funding and a workforce whose terms and conditions reflect the respect and value they deserve. Crucially they must be given the time to care.'
- 1.4 Unison states 'the over-riding objective behind the Charter is to establish a minimum baseline for the safety, quality and dignity of care by ensuring employment conditions which a) do not routinely short change clients and b) ensure the recruitment and retention of a more stable workforce through more sustainable pay, conditions and training levels. Rather than councils seeking to achieve savings by driving down the pay and conditions that have been the norm for council – employed staff, they should be using these as a benchmark against which to level up.'
- 1.9 Officers have now commenced preparatory work on reviewing current contracts as per the Procurement Legislation.

2.0 Current compliance with Unison's Ethical Care Charter

- 2.1 In their guidance on adopting the Charter for Councils and other providers, Unison state that by signing up to the Charter, 'there would be an immediate commitment to Stage 1 and a plan to adopt stages 2 and 3.'
- 2.2 Every two years officers undertake a survey of the Terms and Conditions of care workers with our external domiciliary care providers. The latest was conducted in January 2017 and resulted in responses from 17 out of the 19 providers canvassed.
- 2.3 It is pleasing to note that the City & County of Swansea already meets/nearly meets many of the requirements of the Ethical Care Charter (Appendix 1).
- 2.4 Of the 5 criteria in **Stage 1**, the City & County of Swansea already meets or exceeds 4 of them. The only criteria, where there is uncertainty regarding compliance in the external domiciliary care sector is, that

‘Homecare workers will be paid for their travel time, travel costs and other necessary expenses such as mobile phones’ as our survey did not ask about payment for ‘other necessary expenses’.

- 2.5 Of the 5 criteria in **Stage 2**, the City & County of Swansea already meets or exceeds 3 of them
- 1 of our external domiciliary care providers state they only offer zero hours contracts
 - 1 of our external providers expects their care staff to pay for the cost of training
- 2.6 The City & County of Swansea is not compliant with either of the 2 criteria in **Stage 3**, namely that
- All homecare workers be paid at least the Living Wage Foundation’s Living Wage (£8.45 per hour outside London).
 - All homecare workers will be covered by an occupational sick pay scheme.

3.0 Route Map for implementation of the ethical care charter

- 3.1 There are a number of factors to take into account when constructing the route map for implementation:
- 3.2 Unison accept that the implementation of the Ethical care charter should be staged. There is no requirement to meet all the standards with immediate effect.
- 3.4 Cabinet has already agreed to implement the recommendations of the commissioning review into how domiciliary care should be commissioned and delivered in the future. Whilst the process for implementing those recommendations has begun particularly in relation to remodelling the Council’s in house service, full implementation of those recommendations will take approximately 12 to 18 months. There is an obvious opportunity, wherever possible, to include the standards set out in the ethical care charter within the new service specification for externally commissioned domiciliary care.
- 3.5 The Council will need to be mindful that Welsh Government has charged Social Care Wales with developing a 5 year strategy for how care at home should be provided in the future. This will certainly have implications for both service standards and the registration of domiciliary care staff and this may have implications for how the objectives of the ethical care charter can be met in the future. For example there may be recommendations that impact on the terms and conditions of domiciliary care staff going forward.
- 3.6 The local domiciliary care market is currently extremely fragile. Capacity to meet current demand is the most stretched it has ever been. The Council is both directly providing and externally commissioning more domiciliary care than it has ever done previously. We have had a number

of provider failures in the past couple of years which has increased fragility of the market even further. Waiting lists for domiciliary care are the highest they have ever been and new referrals for domiciliary care are at the highest rate the Council has ever experienced. The recommendations from the commissioning review identify the steps required to help address these challenges. In establishing the timescale for implementing the ethical care charter the Council must avoid inadvertently increasing the fragility of current arrangements.

- 3.7 The safest and most appropriate way to avoid any risk of inadvertently increasing fragility of the market is to coproduce the new service specification by involving citizens, staff and providers through the process. This coproduction principle will need to be extended to include how the standards within the ethical care charter can be incorporated into that service specification. The coproduction approach can be further enhanced by involving all the Unions, not just Unison, and nominated members of the PDDC.
- 3.8 The Council also needs to ensure that social services remain financially sustainable going forward. Inflationary pressures in adult services are such that like for like care continues to cost significantly more year on year. Increased demand linked to changing expectations and demographic pressures adds even further to that inflationary pressure and as a result the cost of adult services continues to rise. In a context of a likely reduced revenue support grant, year on year increases in spend will not be sustainable. The costs of domiciliary care have already increased significantly as a result of increases to the national living wage. Some additional grant funding has been provided by Welsh Government but this grant funding will be subsumed into the revenue support grant next year. If the overall revenue support grant is reduced, the financial pressures on the Council will remain a significant challenge. Further increases to the living wage are expected in 2020. At this stage the Council's priority will need to be to work with providers to ensure financial sustainability of their services whilst meeting their legal responsibility to pay the national living wage. By 2020 this is expected to exceed that which is set currently by the Living Wage Foundation but clearly the Living Wage Foundation may stipulate an ever increasing rate in excess of that stipulated by national government.
- 3.9 The Council has previously considered and rejected implementing the Living Wage Foundations living wage. Any intention to revisit that decision for one sector of the workforce would have implications for the rest of the workforce both Council and externally commissioned.
- 3.10 Taking all of the above factors into account, it should be possible through a carefully managed process of coproduction to establish a service specification for the new commissioning framework for domiciliary care that includes all of the standards contained within part 1 and part 2 of the ethical care charter without increasing fragility of the domiciliary care market. In addition to this, it should also be possible to include an

additional question for providers as part of the subsequent procurement exercise that requires them to provide an explanation as to how they intend to ensure that staff are supported to be fit and well whilst in work. A provider will clearly score higher against this question if they have an occupational sick pay scheme and therefore this starts to begin the process by which the Council moves towards compliance with stage 3 of the charter.

3.11 Following the logic of the above and working backwards backward from when we will be ready to undertake the procurement exercise, the route map for implementing the ethical care charter becomes:

- 3.12 April 2019: Completed the transition of all externally commissioned domiciliary care onto the new framework.
- September 2018: Complete procurement exercise to select preferred providers assessed as able to meet the new service specification including scoring against elements of stage 3 of the ethical care charter.
- May 2018: Service specification agreed incorporating the standards set out in stage 1 and 2 of the ethical care charter.
- September 2017: Begin the co-production process for creating a fit for purpose service specification with citizens, staff, providers, unions and members of the PDDC for safeguarding.

3.13 Whilst every effort will be made to shorten the above timescales, the overriding consideration must be a safe transition to a new framework that doesn't jeopardise the safe care of individuals or further increase instability of the domiciliary care market. There have been examples including in Wales where the transition to a new framework has gone disastrously wrong and subsequent reviews highlighted lack of planning and rushed implementation as the key lessons learned.

4.0 Financial Implications

4.1 Providers who don't already meet the standards contained within stage 1 and 2 of the ethical care charter are likely to submit bids against the new tender at a higher rate than might otherwise be the case. This is difficult to quantify at this stage but a properly competitive procurement exercise should mitigate speculative bids. The biggest financial risks are linked to implementation of stage 3 of the ethical care charter and at this stage full implementation of those standards needs to be a longer term consideration.

7.0 Legal Implications

7.1 National Minimum Wage legislation provides for care workers to be paid at least the national minimum wage for travelling in connection with work including travelling from one work assignment to another, training or travelling to training.

7.2 The Welsh Government's 'Code of Practice – Ethical Employment in Supply Chains' has been established to help ensure that workers in public sector supply chains in Wales are employed in a fair and ethical way. The Code covers the following employment issues:

- Modern Slavery;
- Blacklisting;
- False self-employment;
- Unfair use of umbrella schemes and zero hours contracts; and
- Payment of the Living Wage.

7.3 Public sector organisations ("Contracting Authorities" in the Public Contracts Regulations 2015) cannot make payment of the Living Wage a mandatory requirement as part of a procurement process, where the rate of the Living Wage is greater than any minimum wage set by, or in accordance with law (the National Minimum/Living Wage in the UK).

7.4 Welsh Government is currently consulting on the Phase 2 Implementation of the Regulation and Inspection Social Care (Wales) Act 2016.

7.5 The consultation on workforce aspects (which can be found at <https://consultations.gov.wales/consultations/phase-2-implementation-regulation-and-inspection-social-care-wales-act-2016-workforce>) is looking at proposals that support recruitment, retention and working practices in the domiciliary care sector, in order to help it deliver the best possible quality of care; including

- providers of domiciliary support services to distinguish between travel time and care time
- domiciliary care staff to be offered with an alternative to zero-hours contracts
- opening the register of social care workers to those employed in regulated domiciliary support services from 2018 is proposing

This consultation closes on 7th August 2017.

7.6 The Welsh Government consultation on statutory guidance for service providers and responsible individuals (which will replace the National Minimum Standards for Domiciliary Care Agencies in Wales) can be found at <https://consultations.gov.wales/consultations/phase-2-implementation-regulation-and-inspection-social-care-wales-act-2016>

This consultation closes on 25th July 2017.

- 7.7 Additionally, Social Care Wales, has launched a 5 year Care and Support At Home Strategy and is consulting on priorities for its implementation plan which includes:-
- Work with Qualifications Wales to develop revised health and social care qualifications
 - Support the sector to prepare for registration of the domiciliary care workforce
 - Work with the sector to explore priorities for public funds for training and learning

The consultation which closes on 14th July 2017.can be found at:

<https://www.surveymonkey.co.uk/r/casah>

- 7.8 The results of these consultations will result in changes to the legislative/regulatory landscape in which domiciliary care services are to be provided. These changes will need to be reflected in the contracts that the City & County of Swansea has with its providers in the future.
- 7.9 Officers advise that any changes to terms and conditions be addressed as part of the procurement exercise.

8.0 Equality and Engagement Implications

- 8.1 A full Equality Impact Assessment (EIA) has been opened in respect of the domiciliary care commissioning review. This has been informed by multiple stakeholder events and feedback received from a public consultation.
- 8.2 Other than the domiciliary care provider forum in April 2015, there has been no separate consultation or engagement on the adoption of the Ethical Care Charter.

Background Papers: None

Appendices:

Appendix 1 Current Position of the City & County of Swansea against Unison's Ethical Care Charter