

**Report of the Head of Adult Services**  
**Safeguarding Policy Development & Delivery Committee**  
**– 19 July 2017**

**ETHICAL CARE CHARTER**

<b>Purpose:</b>	To confirm the officer advice regarding the commitment to implement Unison's Ethical Care Charter.
<b>Corporate Priorities:</b>	Safeguarding Vulnerable People Creating a vibrant and viable city and economy Tackling Poverty Building Sustainable communities - Sustainable Swansea Fit For The Future
<b>Reason for Briefing:</b>	<i>To update the report that was considered by Cabinet Exec Board Away Day on 22<sup>nd</sup> June 2015 in light of the commitment to adopt Unison's Ethical Care Charter made on 26<sup>th</sup> April 2017. This briefing describes the local authority's current position and provides Officer advice to Cabinet.</i>
<b>Consultation:</b>	Existing domiciliary care providers (internal and external provision) Other Local Authorities across the UK
<b>Recommendation(s):</b>	It is recommended that:  1) The City & County of Swansea adopt a Swansea Care Charter, developed and agreed with Unison locally, through the Domiciliary Care Commissioning Review process.
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## 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. See Appendix 1.
- 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.'
- 1.5 To date, Unison's campaign website [www.savecarenow.org.uk](http://www.savecarenow.org.uk) reports that 27 Local Authorities and 2 Local Authority Trading Companies and 2 providers have publicly announced their adoption of the Ethical Care Charter (Appendix 2).
- 1.6 A paper entitled 'Draft Briefing Note for the head of Adult Services on Implications of the City & County of Swansea Adopting Unisons's Ethical Care Charter for the Commissioning of Home Care Services' dated January 2015 went to Executive Board in April 2015. This summarised where the City & County of Swansea was in terms of the 3-stage Charter in respect of its internal and external domiciliary care workforce.
- 1.7 Executive Board agreed that further research was required to inform Officers advice to Cabinet on the Charter. Officers therefore commenced this research work as part of the Commissioning work stream of Sustainable Swansea Fit For the Future (SSF4F).
- 1.8 At Cabinet on 15<sup>th</sup> June 2017, Members agreed to a mixed model of delivery with clearly defined internally delivered and externally commissioned services as recommended by the domiciliary care commissioning review under SSF4.

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 4).

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<sup>1</sup> (£8.45 per hour outside London).
- All homecare workers will be covered by an occupational sick pay scheme.

## **3.0 How we could address areas of non compliance**

3.1 At a domiciliary care provider forum on 15<sup>th</sup> April 2015, existing providers agreed with the principles behind adopting minimum standards to ensure safety, quality and dignity of care, although there was greater appetite for developing a Swansea Charter than for Swansea to adopt the Ethical Care Charter (Appendix 4).

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<sup>1</sup> Living Wage Foundations' Living Wage rate

- 3.2 Providers also agreed that the Terms and Conditions of care workers, the recruitment and retention of care workers, and the quality of care provision were inextricable linked with the commissioning practices of the Local Authority (and other commissioners).
- 3.3 Providers highlighted changes that would be required to our existing commissioning practices in order to guarantee hours for those staff who did not want the flexibility of a zero hours contract (moving away from spot contracts to block contracts with guaranteed hours).
- 3.4 Providers indicated that without re-shaping or re-modelling domiciliary care provision in Swansea, there would be a financial cost to the Local Authority of implementing, in particular, Stage 3 of the Ethical Care Charter, which asks that care workers are paid at least the Living Wage and are covered by an Occupational Sick Pay scheme.
- 3.5 This feedback has informed the commissioning review for domiciliary care (under SSF4) and work has now commenced on preparatory work for a procurement exercise to secure sustainable domiciliary care services to meet the needs of the citizens of the City & County of Swansea with an assessed and eligible need.
- 3.6 In addition, Intermediate Care Funding has been sourced to promote the sustainable recruitment and retention of care staff in the external domiciliary care sector through
- The development and implementation of a recruitment and retention strategy (2017-2020)
  - Raising the profile of the workforce through a targeted marketing campaign
  - Promotion of value based recruitment amongst providers
  - Promotion of career and training opportunities available in the sector.

#### **4.0 A Swansea Care Charter**

- 4.1 Initial research undertaken in 2014/15 on the implications of adopting and implementing the Ethical Care Charter with authorities across the UK revealed that other local authorities had chosen instead to develop their own Care Quality Standards or Care Charter.
- 4.2 The former Cabinet Member for Adults and Vulnerable People and existing provider base indicated a desire to develop a Swansea Care Charter that would address Unison's over-riding objective behind the Ethical Care Charter (as outlined in para. 1.4) *'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.'*

- 4.3 Such a Charter to include minimum standards for training, minimum wage levels, guaranteed hours, geographic rota planning (to map the integrated community hubs) and it was suggested that if a consortia of providers signed up to such a Charter, that it would also reduce the migration of staff from one provider to the next.
- 4.4 Provider representatives have been identified to work with local authority officers and union representatives to work on drafting a Swansea Charter.
- 4.5 Officers are unable to foresee a time when the Local Authority could seek to raise wage levels by the amount necessary to meet the requirements of Stage 3 of the Unison Ethical Care Charter, namely the payment of the Living Wage Foundation's living Wage and ensuring that all domiciliary care workers are covered by an occupational sick pay scheme.

## **5. Implications of adopting a Care Charter**

- 5.1 A SWOT analysis has been undertaken on adopting the Ethical Care Charter, and it would appear that the strengths and opportunities are far outweighed by the weaknesses and threats. See appendix 6. The greatest of these being the cost of implementation (see 6. below).

## **6.0 Financial Implications**

- 6.1 Initial research undertaken into the costs of implementing the Ethical Care Charter with other local authorities across the UK suggests that those authorities that have costed its implementation have set aside contingency funds to do so, some of over £5M.
- 6.2 The Government has committed to increasing the national living wage level annually and it is intended to reach 60% of average wages (approximately £9 per hour) by 2020. Rates are usually updated in April.
- 6.3 The Welsh Government recognises the budgetary challenges when wages are increased, particularly in some publicly-funded sectors such as social care.
- 6.4 The Living Wage Foundation's living wage is currently set at £8.45 per hour. The UK Home Care Association (UKHCA) reported in 2016 that commissioners would need to pay a minimum of £18.59 per hour for domiciliary care to enable providers to pay their employees the voluntary Living Wage when it was set at £7.85.
- 6.5 The City & County of Swansea paid a weighted average rate of £15.19 per hour for domiciliary care in the 2016/17 financial year.
- 6.6 Calculations on the cost of uplifting provider rates by the difference between the national living wage and the Living Wage Foundation's living

wage rate show that the additional financial burden upon the City & County of Swansea would be an estimated cost of £772,896.32 for a full year<sup>2</sup> (Appendix 6).

- 6.7 As the Council has already taken the decision not to adopt the UK Living Wage requirements and set a Swansea Living Wage at £7.61 per hour, consideration could be given, as part of any future specification development, to providers being required to pay at least the Swansea Living Wage. The cost of implementing the Swansea Living Wage would be up to £63,102.07 per annum.
- 6.8 The costs listed above are for implementing the Living Wage component of Stage 3 of the Ethical Care Charter only, and do not include any additional costs to the Local Authority of homecare workers in the external domiciliary care sector being covered by an occupational sick pay scheme.
- 6.9 The costs listed above are those for introducing a Living Wage in domiciliary care only, and could possibly set a precedent for other contracted providers in the care sector (e.g. residential and nursing home providers) and other contracted suppliers, thereby increasing the Council's overall costs.
- 6.10 Furthermore, once signed up to compliance with the living wage, the local authority would be tying itself into increases that are out of its control, often beyond inflation and, likely to be beyond increases in the funding available.

## **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;

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<sup>2</sup> To come up with a calculation, the following assumptions have been made:-

- Additional employee costs incur an on cost rate of 14% (Holiday pay, NI and Pension)
- Where companies are not paying for travel time, they are effectively paying staff £7.50/hour
- Where companies have not provided detail of their pay rates data has been extrapolated presuming they are all 'average'
- There are 52.14 weeks in a year
- Living wage will cover travel time too.

- 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 14<sup>th</sup> 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.

## **9.0 Recommendations**

9.1 Based on the findings to date, Officers advise the following actions:-

- Respond to Welsh Government and Social Care Wales Consultation on domiciliary care workforce issues (July & August 2017)
- Continue to progress the Western Bay Intermediate Care Funded Recruitment & Retention Initiative- ensuring that it recognises links to the Care Charter.
- Develop a Care Charter for care provision in Swansea with providers, commissioners and unions that can be incorporated into a future procurement exercise
- Co-produce a service specification for the procurement exercise
- Include a 'Fair Work Practices' tender question in future procurement exercise to be evaluated alongside other criteria to ensure that an appropriate balance between quality and cost for the contract is achieved.

### **Background Papers:**

Unison's Ethical Care Charter

<https://www.unison.org.uk/content/uploads/2013/11/On-line-Catalogue220152.pdf>

Welsh Government Code of Practice: Ethical Employment in Supply Chains

<http://gov.wales/topics/improvingservices/better/vfm/code-of-practice/?lang=en>



**Appendices:**

Appendix 1	Time To Care Unison Report
Appendix 2	List of organisations that have adopted Unison's Ethical Care Charter
Appendix 3	Current Position of the City & County of Swansea against Unison's Ethical Care Charter
Appendix 4	Domiciliary Care Provider Forum Feedback on what a Swansea Charter may look like
Appendix 5	SWOT Analysis – Adopting Unison's Ethical Care Charter
Appendix 6	Anonymised Cost Calculations

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