

Cabinet Meeting on Wednesday 19 July 2023

Supported Living Future Commissioning Arrangements Update



Councillor Julia Jessel, Cabinet Member for Health and Care said,

“Supported Living care services provide individuals with disabilities and mental health conditions the support they need to be as independent as they wish.

“After talking with individuals who benefit from Supported Living care services, care providers and other stakeholders, we have developed a commissioning plan to ensure that we get the best possible quality of care, the outcomes that individuals want and value for money.”

Report Summary:

This report is to seek approval for the commissioning plan for Supported Living care services in Staffordshire and to delegate authority for the award of contracts.

Recommendations

I recommend that Cabinet:

- a. Approve the commissioning plan for procurement of a Flexible Framework for Supported Living care services in Staffordshire.
- b. Delegate authority to the Director of Health and Care to appoint successful care providers to the Flexible Framework for Supported Living care services and to award call-off contracts under the Flexible Framework for Supported Living care services as detailed in the report.
- c. Delegate authority to the Director of Health and Care to extend the current Dynamic Purchasing System for contracting Supported Living care services up to 01 July 2025 to cover the period of transition to the new contracts.

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Recommendations of the Cabinet Member for Health and Care

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Local Member Interest:

N/A

Report of the Director for Health and Care

Reasons for Recommendations:

Introduction

1. Supported Living schemes support individuals with learning disabilities, physical disabilities, autism and/or mental health conditions to live independently in the community. Schemes are clusters of flats or shared houses, typically for 4 to 6 individuals, with on-site care staff.
2. Each resident should have a tenancy agreement with a housing provider, which may be a housing association, housing authority or private landlord, and housing costs are the responsibility of residents and their landlords. Residents with assessed eligible needs for adult social services have Supported Living care services funded by the Council and provided by care companies, which are required to be registered with the Care Quality Commission if they deliver personal care.

3. Note that Supported Living care services covered by this report are limited to those services required to meet individual's assessed eligible needs under the Care Act 2014 where these are funded by the Council: they do not extend to housing or other services that individuals may receive.
4. On 19 January 2022 Cabinet considered current arrangements and endorsed the outcomes of an options appraisal for future commissioning arrangements for Supported Living care services in Staffordshire, subject to engagement with stakeholders. The Council engaged with a range of current residents and their families as well as care and support providers.
5. On 19 October 2022 Cabinet considered feedback from stakeholders and approved future commissioning arrangements for Supported Living care services based on a number of block contracts of 5–10-year duration supplemented by flexible framework contracts, and with prices informed by a cost of care exercise. These commissioning arrangements have been further developed as set out in this report.

Supported Living Care Services in Staffordshire

6. There are 121 Supported Living schemes in Staffordshire and the Council also funds care for residents in 57 schemes out of county. The Council currently funds Supported Living care services for 559 residents, 474 in county and 85 out of county, at a gross annual cost of £34.1 million. This includes:
 - a. 475 individuals for whom the Council purchases or directly provides care: 398 in County and 77 out of county. Contractual arrangements include a Dynamic Purchasing System (DPS) (244 individuals), a Community Support Framework contract (139 individuals), in house care services (16 individuals), and off contract arrangements (76 individuals).
 - b. 84 individuals who purchase their own care from 27 care providers using Direct Payments: 76 in county and 8 out of county.
7. A range of issues have become apparent with current commissioning arrangements, many of which have been identified in the previous Cabinet reports:
 - a. Some individuals in Supported Living schemes have increasingly complex needs, sometimes with challenging behaviours, leading to an increased use of restrictive practices with limited innovation to explore how they could be managed with less intensive supervision.

- b. There is insufficient capacity within county for individuals with very high levels of need, leading to some individuals living out of county.
- c. For some Supported Living schemes there may be a link between the housing and care providers. This does not meet national good practice standards and could adversely affect security of tenure of residents. In some circumstances it could lead to a risk that the Care Quality Commission (CQC) requires registration as residential homes.
- d. With multiple small providers there are limited opportunities for economies of scale – for example sharing of staff to increase productivity and ensure business continuity, or exchange and develop skills.
- e. There are limited opportunities for the Council to develop strategic relationships with care providers to explore how to make the model of care and support more strengths based, harness opportunities from new technologies or plan for future demand.
- f. Transactions between the Council and providers are bureaucratic, both initially and also because the Council is frequently asked to review individuals, even though they do not always appear to have had a significant and long-term change in their level of need.
- g. Whilst in principle the DPS offers individuals a choice of Supported Living schemes, in practice this is limited due to small numbers of credible bids.
- h. In addition, whilst in principle the DPS offers competition between providers, again in practice this is limited by small numbers of credible bids.
- i. There are very wide variations in the price of Supported Living care services for individuals with relatively similar needs, with a consequent risk that some are not financially sustainable whilst others offer poor value for money.
- j. There are multiple contractual arrangements, leading to inconsistent standards.

Commissioning Objectives

- 8. The commissioning objectives for Supported Living care services remain similar to those set out in previous Cabinet reports, and are:

- a. Good quality, strengths-based care that promotes independence, has a positive approach to supported risk-taking, minimises restrictive practices and continually innovates.
- b. A market within Staffordshire with sufficient capacity to meet predicted and actual demand.
- c. Security of tenancy for individuals.
- d. Economies of scale with some larger providers and/or providers collaborating where this can achieve a benefit in either quality and/or value for money.
- e. Strategic relationships with care providers to explore how to make the model of care more strengths based, harness opportunities from new technologies and plan for future demand.
- f. Individuals can maintain and develop local connections within supportive communities.
- g. Commissioning focused on outcomes and a reduction in transaction costs with providers managing changes in individuals' needs, unless a significant and long term change is confirmed through a social work led review.
- h. Greater choice and control.
- i. A procurement process which offers competition to drive continual improvement while also supporting collaboration.
- j. Standardised prices that are financially sustainable whilst also being cost effective.
- k. Strengthened quality assurance and contract management.

Commissioning Plan

9. To achieve these a commissioning plan for procurement of a Flexible Framework has been developed including the following – further details are included in Appendix 1:
 - a. Service specification.
 - b. Pricing.
 - c. Procurement.

10. The commissioning plan has been developed using feedback from individuals receiving Supported Living care services, their families, and care providers.
11. Individuals receiving Supported Living care services and their families told us that their main priorities were as the points outlined below (their feedback is summarised in more detail in Appendix 2). The commissioning plan also reflects these in the service specification:
 - a. Privacy
 - b. Good communication
 - c. The opportunity for social activities
 - d. A tranquil environment
12. Local care providers were keen that future commissioning arrangements did not disadvantage small and medium sized companies. The commissioning plan reflects this in the lotting and procurement approach.
13. The commissioning plan is consistent with the future commissioning arrangements approved by Cabinet on 19 October 2022, except the proposal is that around 40% (rather than 85%) of Supported Living care services will be procured using call-off contracts that could be aggregated into blocks across multiple schemes with around 60% (rather than 15%) procured using call-off contracts for single schemes or individuals. This is to ensure sufficient opportunities for small and medium sized companies.

Procurement

14. The Council currently funds Supported Living care services for three groups of individuals living in Staffordshire, summarised below and in Appendix 1:
 - a. **Group 1.** Residents who predominantly have mental health conditions and where Supported Living care services offer specialist mental health support. There is confidence that housing and care providers operate separately, and care providers are mostly purchased by the Council.
 - b. **Group 2.** Residents living in schemes that were commissioned by the Council and/or NHS. Supported Living care services are typically provided by larger and/or national organisations. Residents' needs are predominantly medium to very high complexity. There is confidence that housing and care providers operate separately, and care provision is mostly purchased by the Council.

- c. **Group 3.** Residents living in schemes that have been established by local housing and care providers. Supported Living care services are typically provided by small and medium sized, often local, companies. It includes:
- i. **Group 3A.** Residents' needs are predominantly medium to very high complexity. There is confidence that housing and care providers operate separately, and care providers are mostly purchased by the Council.
 - ii. **Group 3B.** Residents' needs are predominantly medium to very high complexity. For some schemes further assurance is required that there is appropriate separation of housing and care provision. Care providers may be purchased by the Council or by individuals using Direct Payments.
 - iii. **Group 3C.** Residents' needs are predominantly low complexity. For some schemes further assurance is required that there is appropriate separation of housing and care provision. Care providers may be purchased by the Council or by individuals using Direct Payments.
15. The Council also funds Supported Living care services for a Group 4 of individuals living outside the Council's administrative boundary.
16. Procurement for Supported Living care services to schemes in **Groups 1, 2 and 3** would proceed as below:
- a. The Council would procure a Flexible Framework.
 - b. The Flexible Framework would be divided into Lots: a single Lot for Group 1 and three geographical Lots for Groups 2 and 3.
 - c. Care providers could apply to be appointed to Lots provided they met the Council's required selection criteria.
 - d. Once appointed to the Flexible Framework care providers could bid competitively to be awarded a call-off contract to provide Supported Living care services for a specific scheme or individual.
 - e. The Flexible Framework would be of 5 years duration with an ability, wholly at the Council's discretion, for it to be extended for a further 3 years, a potential maximum duration of 8 years.
 - f. The Council would reserve the right to re-open the Flexible Framework during its duration based on the Council's assessment of demand.
 - g. The Council would have the discretion to specify the duration of call-off contracts.

17. Supported Living care services for **Group 4** individuals would fall outside the scope of the procurement for the Flexible Framework. We would undertake a separate analysis to determine the most appropriate future contractual arrangements with the aim of aligning terms and conditions with Supported Living care services within Staffordshire where possible.

Alternative Options Considered

18. The alternative considered was a Prime Provider arrangement whereby a few large companies would be contracted to provide all Supported Living care services, providing care directly at some schemes and subcontracting care to small and medium sized companies at others. This was discounted due to a lack of confidence in the model and a lack of enthusiasm from the market.

Timescale

19. Publication of the Flexible Framework would be from August 2023 with applications closing in October. Evaluation would be in November and December with appointment expected by the end of March 2024.
20. For **Groups 1 and 2** call-off contracts would begin to be tendered from April 2024. Where the successful care providers are the incumbents, care providers may be able to mobilise from July 2024. Where the successful care providers are new there would be a mobilisation period to allow for TUPE of staff and CQC registration where necessary.
21. For **Group 3** call-off contracts would begin to be tendered from April 2024 in phases with mobilisation over a period of up to 2 years. Where necessary there would be due diligence, prior to call-off, to ensure the appropriate separation of housing and care provision, and for Group 3C we would also explore prior to call-off whether they might be able to achieve greater independence in alternative housing.
22. This would allow early mobilisation of call-off contracts for around 40% of current residents, with a more gradual mobilisation for the remaining 60%, which would help to manage risks during transition. The timescale will require an extension of the current DPS to cover the transition period onto new contracts.

Quality Assurance and Contract Management

23. All care providers would be required to demonstrate that they meet the quality standards set out in the service specification prior to appointment to the Flexible Framework, including compliance with CQC standards,

that they are committed to strengths-based care and willing work with the Council's Quality Assurance Team.

24. All care providers would be required to comply with the contractual management obligations as set out in the call-off contract and work with the Council's Commercial Team.
25. All care providers would be required to work with the Council to develop staff skills and consider environmental adaptations, especially to support management of challenging behaviour without use of intensive supervision.
26. Care providers would be expected to participate in a Provider Forum to share experiences and learning, exchange and develop skills, and consider opportunities from new technologies.

Choice and Control

27. Potential residents would have choice and control over the following four aspects of their lives:
 - a. **Where I live:** A new online booking application would give new residents information about Supported Living schemes and current vacancies so that they can make choices about where they live. This would include information about location, accommodation, other tenants and care provider. They would also have the option to choose self-directed support if they wished to live in Supported Living scheme other than those with Council contracted care.
 - b. **Who I live with:** The online booking application would enable new residents to view properties and virtually meet other tenants before making a decision to move in.
 - c. **Who supports me:** The new online booking application would include details about the care provider.
 - d. **How I am supported:** The call-off contract would require care providers to work with individuals to understand their health and well-being aspirations and outcomes, co-produce support plans that enable these to be achieved, and take a person-centred approach which places the individual at the centre of decisions about their care. Commissioning by outcomes would give individuals greater control over their lives, with the ability to vary their day and weekly routine in line with changing needs.

Integration

28. The commissioning plan would enable the Council to continue to commission Supported Living care services on behalf of the NHS where there are joint funded arrangements and the Council is the lead commissioner.

Future Demand and Capacity

29. Demand for Supported Living care services for individuals with medium to very high complexity of needs in Staffordshire is expected to rise due to our ambitions to offer a greater range of services within the county, facilitate moves into Staffordshire in line with the principles of choice and controls/best interests, and reduce use of residential care where appropriate. Demand for Supported Living care services for individuals with low complexity of need may fall if we can identify alternatives that offer a greater degree of independence.

30. Housing and care providers are likely to continue to develop new Supported Living schemes and care providers would be offered opportunities periodically to join the Flexible Framework.

Risks

31. There are a number of risks that would be managed during implementation of the commissioning plan:

a. Procurement of the Flexible Framework

- i. There is a risk of insufficient interest from care providers. This would be mitigated by ongoing market engagement. In the event of an insufficient response to procurement, provision of Supported Living care services in-house or by Nexxus Care would be considered.
- ii. There is a risk of challenge from care providers who are unsuccessful in their applications to be appointed to the Flexible Framework. This has been mitigated by giving substantial opportunities for care providers to comment on the commissioning plan and would be mitigated by compliance with the Public Contracts Regulations 2015. The fact that the Council intends to re-open the Flexible Framework periodically will also offer care providers that have been unsuccessful on a first attempt an opportunity to re-apply to join the Flexible Framework.

b. Call-off contracts. There would be similar risks at the award of the various call-off contracts – both of insufficient interest from care providers and challenge from care providers who are unsuccessful in being awarded a call-off contract. The risks would be mitigated by

open and transparent competition in line with the Public Contract Regulations 2015 and ensuring the Council has detailed when it would direct award a call-off contract.

- c. **Impact on individuals** receiving Supported Living care services. For some of the schemes if existing care providers are not appointed to the Flexible Framework or are not successful in the award of a call-off contract, then new care providers would be awarded the call-off contract to provide Supported Living care services. For some individuals this could mean building a relationship with a new care company. Individuals may choose self-directed support to receive care and support from a particular provider, although this could create complexity, with more than one care provider operating in a scheme. These risks would be mitigated by good communication and support for any individuals affected to help them adjust to new arrangements.
- d. **Staffing.** Where a new care provider is awarded the call-off contract to provide Supported Living care services at an existing scheme, TUPE may apply, and where it does so this would minimise disruption to individuals receiving care. It will be important that existing care providers share sufficient employee liability information at the tender of call-off contracts to enable interested care providers to submit their bids. There is a risk that sufficient employee liability information is not provided at the tender of call-off contracts and that care providers do not submit bids or withdraw from the process. There is also a risk that staff are lost during transfer. This would be mitigated by phased tendering and gradual mobilisation of call off contracts in Group 3 to avoid large numbers of schemes being affected simultaneously. The risks around staffing and pricing are inextricably linked.
- e. **Pricing.** If prices are set too low there is a risk that care providers do not bid for call-off contracts, potentially resulting in a failed tender. There would also be a risk of compromising the quality and/or financial viability of services. If prices are set too high there is a risk we would not achieve value for money for taxpayers. This would be mitigated by calculation of a sustainable rate for the four bandings using a range of methodologies. At the point of mobilisation some care providers might have liabilities for costs that exceed their income under the pricing structure - this could apply either to incumbent or new care providers. We are required to balance our responsibilities under the Care Act 2014 for market shaping against our responsibilities to ensure a legally compliant procurement process. Some mitigation would be through due diligence of contracts with existing care providers to understand their costs. We are taking external legal advice on how to further mitigate these risks although it

may not be possible to eliminate them entirely. The risks around staffing and pricing are inextricably linked.

- f. **Housing.** There is a risk that housing providers are reluctant to work with new care providers. This would be mitigated by up to two-year procurement and mobilisation period for Group 3B, which will allow due diligence.

32. If any of these risks prove material, there would be a further update to Cabinet.

Link to Strategic Plan

33. The recommended commissioning plan for Supported Living care services would contribute to the following Strategic Plan priorities:

- a. Support Staffordshire's economy to grow, generating more and better-paid jobs.
- b. Encourage good health and wellbeing, resilience and independence.

Staffing Implications

34. The Council provides 16 individuals with Supported Living care services at Horninglow Bungalows in Burton-on-Trent. Inclusion of these in this procurement has been considered but discounted at this stage due to the need to maintain a contingency in the event of an incomplete response to procurement. The role in-house care services and/or Nexxus Care or another Local Authority Trading Company will be explored if necessary.

Legal Implications

35. The Council has appointed external legal advisors, Sharpe Pritchard LLP, to support the development of the Flexible Framework. They will draft the Flexible Framework terms and conditions and provide advice on any requirements and risks, including those relating to the Care Act 2014, the Public Contract Regulations 2015, due diligence and advice around existing contractual arrangements and transition arrangements and any legal and contractual implications arising and TUPE.

Resource and Value for Money Implications

36. Supported Living care services will continue to operate overall within budget. A small saving may be necessary to contribute to the Medium-Term Financial Strategy Savings requirement of £1.2 million across all learning disability and autism social care services. A small non-recurrent budget will be identified to invest in technology to enable less intensive

supervision. Over time further savings may be possible through economies of scale, greater freedom for care providers to use staff flexibly to achieve individual's outcomes and cessation of Council funding of costs other than those related to care.

37. During transition a change from net to gross payments will be implemented, similar to the approach already taken with care homes, so that in future the Council will collect individual's contribution to the cost of their care rather than expecting care and support providers to charge the individual. This will reduce bureaucracy for care and support providers.

Climate Change Implications

38. Environmental impact would be included in the evaluation of care providers on appointment to the Flexible Framework. This would score care providers on use of electric vehicles, disposables/consumables, working with housing providers on energy efficient homes, recycling/reuse, and adverse weather planning to support wellbeing on continuity of care.

List of Background Documents/Appendices:

Appendix 1 – Commissioning Plan

Appendix 2 – Summary of Individual and parent/carer feedback

Community Impact Assessment

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