

Coventry City Council
Minutes of the Meeting of Cabinet Member for Adult Services held at 9.30 am on
Thursday, 11 October 2018

Present:

Members: Councillor F Abbott (Cabinet Member)
 Councillor T Mayer (Shadow Cabinet Member)

Employees (by Directorate):

People S Caron, S Chun Lam, E Deakin, P Fahy, J Reading,
Place M Rose

Public Business

36. Declarations of Interest

There were no Disclosable Pecuniary Interests.

37. Minutes

The minutes of the meeting held on 4th July, 2018 were agreed and signed as a true record

38. Exclusion of Press and Public

RESOLVED that the Cabinet Member agrees to exclude the press and public under Sections 100(A)(4) of the Local Government Act 1972 for the consideration of the private matter referred to in Minute 45 below relating to “Adult Social Care – Market Cost Pressures and Fee Rates Uplift 2018/2019” on the grounds that that item involves the likely disclosure of exempt information, as defined in Paragraph 3 of Schedule 12 A of that Act. The grounds for privacy are that it refers to the identity, financial and business affairs of organisations. The public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.

39. Adult Social Care Complaints and Representations Annual Report 2017/18

The Cabinet Member considered a report of the Deputy Chief Executive (People) regarding the annual report for Adult Social Care complaints and representations 2017/18.

The report noted that Adult Services had a statutory duty arising from the Local Authority Social Services and National Health Services Complaints Regulations 2009, to provide a system for receiving complaints and representations from people who use its services, or those acting on behalf of users. The system provided a means for resolving issues and listening to the views of those who use or were affected by adult services. Where things had gone wrong it enabled the Council to put things right, learn from the experience and make the necessary

improvements. There was also a duty under the regulations to produce and publish an annual report.

The report set out the details of the complaints and representations across Coventry's Adult Services in 2017/18. It highlighted the service improvements and learning from feedback and included information on future developments in complaint handling and reporting.

The report noted that there were 59 statutory complaints made within the year, compared to 67 in 2016/17 and 54 in 2015/16. 35 (60%) of these complaints were fully or partially upheld, compared to 37 (55%) in 2016/17 and 61% in 2015/16. 10 informal complaints were received in 2017/18, down from 13 in 2016/17. These were complaints resolved/handled at the point of delivery. In line with our complaints policy and in line with best practice, most concerns were dealt with on an informal basis, for example, by social care providers; and may not be reflected in the figures in this report.

In 2017/18, the Local Government and Social Care Ombudsman (LGO) considered 8 complaints or enquiries to adult social care, of which one was investigated and upheld. This was a decrease from 13 complaints or enquiries and eight investigations and seven upheld in 2016/17.

The report also noted that Adult Social Care services were committed to learning from customer feedback. Where complaints highlighted that things had gone wrong, managers must identify any remedial and developmental action required to improve service delivery. Feedback from compliments provided an equally valuable message; clearly affirming when services made a difference and personal qualities had added value to the outcome for users and carers.

While there were no externally prescribed timescales for the resolution of complaints, the Council's internal guideline was to resolve complaints within 20 working days. Performance on this standard was monitored by the Adult Social Care Management Team. It was normal practice to inform complainants should an extension be required. Most often, extensions were sought due to the complexity of particular complaints, including where the complainant supplied additional information/evidence part way through an investigation. In 2017/18, 52.5% of complaints (31 of 59) were resolved within 20 working days, up from 48% a year ago (32 of 67).

Appendix I to the report set out the trends in complaints and representations across Coventry's Adult Services in 2017/18. It highlighted the service improvements and learning from feedback and included information on future developments in complaint handling and reporting. Key issues for 2017/18 included: improving communication between commissioning and providing bodies, responsibilities of providers in relation to service users making "unwise" decisions; and delays / waiting time for assessment decisions. Also appended to the report were the Council's complaints handling guidance.

The Cabinet Member and Shadow Cabinet Member discussed the following areas with the officers present:

- Evidence of learning
- Mechanisms for formally recording compliments

Officers commented on the small number of complaints received in relation to the number of people supported. The learning from themes included timeliness of assessments and the positive effect of the new booking system and additional staff in the adult disability team.

RESOLVED that the Cabinet Member approve publication of the Council's Annual Report in relation to complaints and representations in Adult Social Care in 2017/18.

40. **Market Position Statement - Adult Care Services 2018**

The Cabinet Member considered a report of the Deputy Chief Executive (People) regarding the Adult Care Services 2018 market position statement.

Coventry City Council together with its main commissioning partner, Coventry and Rugby Clinical Commissioning Group, were striving to develop a diverse, vibrant and high-quality health and social care market to meet the needs and aspirations of the people in Coventry who required support now and in the future. The Care Act 2014 placed duties on local authorities to promote the efficient and effective operation of the market for adult care and support as a whole.

Engaging with the local care market was a key part of market development so that all providers (existing and prospective) were aware of the challenges facing Adult Social Care and health services along with some of the key areas where changes in need, demand and supply signal the requirement for services to be shaped and developed. The Market Position Statement (MPS) for adult care services was a tool for enabling this engagement and was cited as central for local authorities in fulfilling legal duties within the Act to shape and develop the social care market.

The MPS focused on both current activity and future opportunities across the whole adult social care market and sought to provide a balance between description and analysis with access to a range of data. The current document improved on the previous version in a number of ways detailed in the report including inclusion of joint health and social care provision particularly short-term enablement and preventative services and clearer commissioning intentions based on more thorough analysis of need/demand information.

The long-term intention was for the MPS to become a live online document that could be updated as and when required using data and information from the Joint Strategic Needs Analysis (JSNA) so that it remained relevant and kept pace with changes within Adult Social Care nationally and locally. The document would be used to underpin ongoing engagement with providers through a number of activities. It would also form the basis of a Market Development Plan to be produced early 2019.

The report noted that it was a legal requirement of the Care Act (2014) to shape and develop the social care market. Section 4.33 of the statutory guidance stated that local authorities must work to develop markets for care and support whilst recognising that individual providers may exit the market from time to time and ensure the overall provision of services remained healthy in terms of sufficiency of provision of high quality care and support needed to meet expected needs.

Section 4.56 of the statutory guidance suggested that its duties in relation to market shaping could best be met through the development of a market position statement. There were not considered to be any alternative options which would meet the legislative requirements of the Care Act (2014).

The Cabinet Member and Shadow Cabinet Member discussed the following areas with the officers present:

- Improvements
- Information from the Joint Strategic Needs Analysis
- The Live online document

RESOLVED that the Cabinet Member:

- 1. Approve the Market Position Statement - Adult Care Services 2018 for engagement with the market around social care provision shaping and commissioning plans**
- 2. Receive a report on the associated Market Development Plan at the January 2019 meeting**

41. Deprivation of Liberty Safeguards - Meeting the Challenges

The Cabinet Member considered a report of the Deputy Chief Executive (People) regarding Deprivation of Liberty Safeguards (DoLS) and meeting the Challenges.

Deprivation of Liberty Safeguarding was a statutory function for the Local Authority and supported the most vulnerable individuals. Deprivation of Liberty Safeguards (DoLS) were introduced in 2009. Initial demand on resources was lower than expected and only rose marginally until a Supreme Court Judgement in 2014 which resulted in a 10 fold increase in activity across all Local Authorities.

DoLS applied from 18 years and outlined the process by which an individual could be deprived of their liberty. It applied to individuals who lacked capacity (as defined by the Mental Capacity Act and following formal assessment) to make decisions relating to their residence, their wellbeing and care and treatment. They aim to make sure that people in care homes and hospitals would be looked after in a way that did not inappropriately restrict their freedom. The safeguards should ensure that a care home or hospital only deprives someone of their liberty in a safe and correct way, and that this was only done when it was in the best interests of the person and there was no other way to look after them. If all alternatives had been explored and a hospital or care home believed it was necessary to deprive a person of their liberty in order to care for them safely, then they must get permission to do this by following strict processes. These processes were the Deprivation of Liberty Safeguards, which had been designed to ensure that a person's loss of liberty was lawful and that they were protected.

Coventry City Council had a statutory responsibility for Deprivation of Liberty Safeguarding (DoLS) assessments. Due to the ongoing increases in the number of requests for DOLS being received it had been necessary to review the way the service was currently meeting demand. This report identified a number of amendments to practice and processes in order to address the increasing pressure on the service and associated budget which would move away from a

best practice approach but would ensure the Council remained compliant with statutory duties and available resources.

The report detailed options that had been considered that sought to address both resourcing and scope of the function based on a minimum legal compliance basis and not best practice. Option 1 was the recommended option to continue to outsource 50 assessments per month and support operational changes detailed in the report. It was recommended that the Council enter into a tendering process to secure agency assessment to a ceiling of 50 per month for a period of 12 months with a 12 month extension possible to account for the potential changes to DoLS currently being consulted on. The existing pathways, authorisations and assurance process would remain in place. Implementing this option and continuing to utilise external agency support for 50 Best Interest Assessments per month would ensure that the authorisation process was more closely aligned to the proposed model currently being consulted on and assessment activity would be reduced significantly achieving proportionality. Implementing this option alongside the operational changes to processes and practice described in the report would reduce costs and also benefit recipients and families by introducing simpler and condensed paperwork. These changes comply with the Mental Capacity Act principles and legal framework set out in the Deprivation of Liberty. However, revised processes were not aligned to the Association of Directors of Adult Services (ADASS) Guidance and was therefore below a best practice standard. In taking the position of not providing a best practice standard the Council would be helping to ensure it was able to meet its statutory obligations to more people within the resources available than would be possible through a best practice approach which required more resource per person.

Option 2 detailed in the report was not recommended but was to increase the current number of assessments carried out by the external agency to 100 per month. The assessments were carried out by an external agency and this would significantly reduce waiting lists and would enable a best practice approach to continue. This option would enable the City Council to maintain governance of the process. An increase in costs would be incurred as a result of this option in order to maintain service delivery, increasing the current overspend. This would be significant and not budgeted so would require a commensurate saving to be delivered elsewhere in order to fund the option.

Option 3 detailed in the report was also not recommended, to outsource all Best Interest Assessments to one agency via a tendering process. The City Council could cease to provide this service in-house and outsource the entire process to an external agency. This would involve a tendering process and would possibly lead to a TUPE transfer of staff who were currently either mainly or wholly engaged on Best Interest Assessment duties. This approach would achieve an ongoing reduction in overheads for the City Council as posts would be deleted and headcount reduced, however, any potential cost reductions would be at least partially offset through increased external contract costs. Through this option the City Council would continue to have oversight of the DoLs process from a commissioning and clinical perspective. There were however, a number of other potential risks associated with this approach:

- Approved Mental Health Practitioners (AMHP) would be included in the group of staff for which TUPE would apply and this would create a significant risk to the delivery of urgent mental health statutory provision.

- Consultation, tendering and TUPE processes would be lengthy and resource intensive and considering the impending legislative changes little benefit may be achieved.

Consultation on the proposal was not required as recommendations did not include option 3. Key partners had been made aware of the changes. University Hospital Coventry and Warwickshire had been engaged and were supportive of the operational changes.

Implementation on the revised review and assessment process would take effect from 1st November 2018 whereas the implementation of the electronic based system was anticipated to be in place by April 2019. Entering into a new contract for the provision of assessments was likely to be complete by April 2019.

The Cabinet Member and Shadow Cabinet Member discussed the following areas with the officers present:

- The impact on service users
- Whether the recommended option with 50 assessments per month would be enough
- The tender process

The officers agreed to provide an informal briefing to the Cabinet Member and Shadow Cabinet Member when the recommendations had been operational for 6 months.

RESOLVED that the Cabinet Member:

- 1. Procure external agency support to the value of 50 assessments per month, subject to the outcome of a tendering process**
- 2. Support the measures being taken to improve our ability to respond to demand associated with Deprivation of Liberty Safeguards**

42. Adult Social Care - Market Cost Pressures and Fee Rates Uplift 2018/19

The Cabinet Member considered a report of the Deputy Chief Executive (People) regarding market cost pressures and fee rates uplifts 2018/19 in Adult Social Care.

A separate report was submitted in private in respect of this item, as it contained details of financial information required to be kept private in accordance with Paragraph 3 of Schedule 12A to the Local Government Act 1972. The grounds for privacy were that it referred to the identity, financial and business affairs of an organisation.

Sustainability of the adult social care market was of major importance in order to ensure the safety, health and wellbeing of vulnerable adults with a range of eligible social care support needs. The Care Act (2014) placed duties on Local Authorities to ensure a sustainable market for adult social care and, amongst other responsibilities, required councils to be assured that fee rates paid to social care providers enabled them to meet legislative requirements including those relating to payment of the National Living Wage (NLW) or National Minimum Wage (NMW).

The Act also placed duties on Councils to ensure a sustainable market for adult social care.

Whereas some increases had been applied as standard to recognise costs associated with NLW the Council currently considered requests from providers for fee increases in excess of this on a case by case basis and in agreeing any increases a range of factors were taken into account including existing fee levels as a market comparison and time elapsed since a previous uplift was agreed. Council Tax precept and improved Better Care Fund (iBCF) resources had been used to fund these increases.

Applying the above principles providers of long term services for people with learning disabilities in the City had generally attracted higher than average fee rates, therefore, no increase was offered for this provision. Some providers had responded by seeking uplifts partly as a consequence of national living wage increases but also as a result of a requirement to pay NLW for sleep ins and had also highlighted other general inflationary pressures. Such requests had been negotiated on a case by case.

All fee increases were agreed on the basis of market sustainability in that to not agree any increases would probably result in a position where providers were unsustainable and would therefore seek to exit contracts where no readily available alternatives exist.

The report described the impact of fee rate increases, outlined options considered and sought endorsement of the approach taken and approval of increases in excess of £100k per annum.

Option 1 was the recommended option to endorse the approach to fee increases currently applied, as described in the report and noting that changes to the approach may be required dependant on changing financial or legal circumstances.

In two instances providers had approached the Council for increases in excess of £100k per annum. Cabinet Member was recommended to approve these increases based on the circumstances detailed in the report.

Option 2 was not recommended and was to decline the increases. This may impact on the provider's ability to meet the needs of service users and could result in the council potentially paying a greater fee level than that sought for alternative provision.

Providers were given a deadline of 30th June to respond to initial fee uplift offers, where increases have yet to be implemented uplifts would be made by 31st October backdated to 1st April 2018.

The cost of initial National Living wage uplifts for older people accommodation based services, generic home support provision and day opportunities stood at approximately £500k for 2018/19. Subsequent negotiation in respect of national living wage with disability providers was estimated to cost an additional £160k. There were a limited number of negotiations yet to be concluded, in respect of

broader inflationary pressures, however, the anticipated impact was an additional funding requirement of approximately £680k.

The Cabinet Member was requested to approve uplifts over £100k. For 2018/19 this was expected to apply to two providers as most increases were below this threshold. Details in relation to the two providers were shown in the table in the report. These increases were expected to exceed £100k for a number of reasons. In the case of Provider A due to the volume of service users and the fact that no increases had been awarded for a number of years with hourly rates being below the average for Supported Living provision. With respect to Provider B, again no uplifts had been granted for a number of years. An established in City provider served notice on their contract which resulted in a business to business transfer to Provider B who had to work to a tight timescale to ensure service continuity which did not allow for a forensic analysis of financial sustainability. Subsequent in depth analysis by the provider elucidated significant financial risks to them at current rates resulting in the request for a significant uplift for 2018/19.

Costs of all uplifts were to be met through a combination of Council Tax precept and improved Better Care Fund (iBCF) resources with reporting on the latter sought through Adult Joint Commissioning Board as per the s75 agreement.

When commissioning services, The Care Act (2014) required local authorities to be assured that contract terms, conditions and fee levels for care and support packages were appropriate to support the delivery of good quality care. This included being satisfied that service providers were able to meet statutory obligations including those relating to payment of the National Living Wage (NLW) or National Minimum Wage (NMW). The Act and associated statutory guidance also conferred duties on Councils to take action to shape social care markets and ensure sustainability of a range and sufficiency of good quality care provision to enable adults with eligible care and support needs to have those needs appropriately met and offer choice where possible.

In July 2018 the Court of Appeal overturned a previous Employment Tribunal Ruling made in April 2016 and re-instated the option to pay a flat rate payment for staff sleeping in for most of the circumstances relevant to this report. Unison have applied to the Supreme Court in a challenge to this judgment but at the time of writing it has yet to be determined if the Supreme Court would allow the appeal to be heard.

The Cabinet Member and Shadow Cabinet Member discussed the following areas with the officers present:

- The pragmatic approach and reviewing as necessary
- The uncertainty of the Better Care Fund

RESOLVED that the Cabinet Member:

- 1. Endorse the approach taken to agreement of fee increases for providers of adult social care**
- 2. Approve increases in excess of £100k as detailed in section 5.1 of the report.**

43. **Outstanding Issues**

The Cabinet Member considered a report of the Deputy Chief Executive (Place) that contained a list of outstanding issue items that would be submitted to future meetings and summarised the current position in respect of each item.

RESOLVED that the Cabinet Member for Policing and Equalities approves the future consideration of matters relating to the outstanding issue items listed in the report.

44. **Any other items of public business which the chair decides to take as a matter of urgency because of the special circumstances involved.**

There were no other items of business.

45. **Adult Social Care - Market Cost Pressures and Fee Rates Uplift 2018/19**

Further to Minute 42 above 'Adult Social Care – Market Cost Pressures and Fee Rates Uplift 2018/19', the Cabinet Member for Policing and Equalities considered a private report of the Deputy Chief Executive (People) that set out the confidential aspects of Adult Social Care and Market Cost Pressures and Fee Rates Uplift 2018/19.

RESOLVED that the Cabinet Member:

1. **Endorse the approach taken to agreement of fee increases for providers of adult social care**
2. **Approve increases in excess of £100k as detailed in section 5.1 of the report.**

46. **Any other items of private business which the Chair decides to take as a matter of urgency because of the special circumstances involved.**

There were no other items of business.

(Meeting closed at 10.35 am)