
Cabinet Member for Adult Services

13 July 2022

Name of Cabinet Member:

Cabinet Member for Adult Services - Councillor M Mutton

Director Approving Submission of the report:

Director of Adult Services and Housing

Wards Affected:

All

Title: Adult Social Care Quality Assurance and Management of Market Failure

Is this a key decision?

No – Although the matters within the report affect all wards in the City, it is not anticipated that the impact will be significant. The proposals are in relation to discharging responsibilities for overseeing the quality of adults care and support provision commissioned by the City Council.

Executive Summary:

Where people within Coventry are eligible for a care and support service following a needs and wellbeing assessment under the Care Act 2014 the quality of that care service is critical to ensuring that the person with care and support needs has a good experience of social care and that their needs and outcomes are met.

The majority of care and support services in Coventry are provided under contracts by the City Council with independent providers of care and support. Therefore effectively managing and monitoring contracts is a key responsibility for Adult Social Care alongside ensuring that effective mechanisms are in place to respond to issues of provider failure (where a provider is no longer able to continue to deliver their contract).

This report is produced following a review of the processes currently in place. This review was initiated as a result of the learning from the Covid 19 pandemic which has proved a major and persistent challenge to the care market.

The report covers revisions to the two key processes for ensuring quality and business continuity in commissioned care and support services:

1. How contracts and the quality of care and support is monitored, based on a set of indicators and the risks associated with specific services
2. How the City Council responds to issues where a provider, or number of providers, cannot continue to deliver services due to a range of factors including quality issues, cost issues or provider choice to not continue. This is often referred to as 'market failure'

Recommendations:

Cabinet Member is requested to

1. Approve the revised risk-based approach to Quality Assurance.
2. Endorse the revised Market Failure Plan including the approach to managing provider failure in the event of an emergency.
3. Consider comments from Scrutiny Board 5 resulting from their meeting on 6 July 2022 in relation to the above.

List of Appendices included:

Appendix 1. Quality Assurance risk escalation and governance arrangements

Appendix 2. Market Failure Plan

Background papers:

None

Other useful documents

None

Has it been or will it be considered by Scrutiny?

Yes – 7 July 2022 Health and Social Care Scrutiny Board (5)

SB5 is requested to make comments on the proposals and approaches to Quality Assurance and market failure planning to Cabinet Member for Adults for consideration at her meeting on 13th July 2022.

Has it been or will it be considered by any other Council Committee, Advisory Panel, or other body?

No

Will this report go to Council?

No

Report title: Adult Social Care Quality Assurance and Management of Market Failure

1. Context (or background)

- 1.1 Where people within Coventry are eligible for a care and support service following a needs and wellbeing assessment under the Care Act (2014) the quality of that care service is critical to ensuring that the person has a good experience of social care and that their needs and outcomes are met.
- 1.2 The Council remains committed to ensuring best value in its commissioning and procurement and requires on-going assurance that the quality standards for care and support outlined in its service specifications and contracts are met. This includes requirements for individual outcomes to be delivered by providers through working with people with care and support needs and their representatives.
- 1.3 The Covid 19 pandemic has proved a major and persistent challenge to the care market. The challenges have been multiple and have included managing infection prevention and control, supporting providers with outbreak management, managing the capacity in the market to support hospital discharges, ensuring community support is available, keeping abreast and ensuring compliance with changing national, regional and local guidance, supporting the vaccination programme (including Vaccination as a Condition of Deployment which was subsequently withdrawn), restrictions on visiting and striving to maintain a committed and sufficient workforce in the light of concerns regarding contracting Covid and generally working in a low paid and stressful environment that requires a significant level of intelligence and compassion. To respond to this range of factors it has been essential to work closely with partners to protect the care market, and support providers in order to maintain sufficient supply and quality of provision.
- 1.4 During the height of the Covid Pandemic, Quality Assurance visits had to be scaled back from in person to a largely remote function with on-site visits made in exceptional circumstances. This change was due to Infection Prevention and control restrictions. During this period visits were still conducted where absolutely necessary to those services where with the most significant concerns were apparent and were supplemented with other means of understanding the quality of provision and user experience.
- 1.5 A number of providers of care and support also ceased trading during and following the pandemic. This was due to a number of reasons including financial sustainability as a result of high numbers of vacancies and provider choice where owners of care and support organisations decided to no longer operate. Each of these situations, although managed effectively by the City Council, prompted a review of how provider failure of this kind is managed to ensure continuity of service for people affected.
- 1.6 Market Management Responsibilities
 - 1.6.1 The City Council has a number of duties in respect of the social care market under the Care Act (2014) including to facilitate and shape the care market to ensure a sustainable and diverse range of care and support, continuous improvement in quality and choice and the delivery of cost-effective outcomes.
 - 1.6.2 The content of this report is in respect of quality assurance and provider failure, but other key responsibilities are met through:
- 1.7 **Publication of a Market Position Statement (MPS).** This document signals to the Adult Social Care market the type, volume, and quality of services that it wishes to see in the

City. The MPS was last reviewed and issued in November 2018 and will reviewed by winter 2022.

- 1.8 Market Sustainability Plan.** The Government Proposals on social care reform set out in “People at the Heart of Care” introduce a requirement on local authorities to produce a provisional Market Sustainability Plan by October 2022 with a final version by February 2023. The Market Sustainability Plan will also be informed by the Government White Paper on Health and Social Care Integration “Joining up Care for People Places and Populations”.
- 1.9 Fair Cost of Care** A further requirement is the completion of a cost of care exercise for care homes catering for older adults (65+) and adults 18+ receiving home support with results published by October 2022. This will also require the publication of a spend report detailing how funding allocated from Central Government is deployed for 2022/23. Further Government funding will be allocated for 2023/24 and 2024/25. Moving towards a “Fair Cost of Care” is expected to support quality and sustainability.
- 1.10 Managing and monitoring quality within social care and support**
- 1.10.1** As at June 2022, the Council has around 130 services (including some in-house services) that require monitoring including 73 care homes (of which 48 cater for older people, 15 for younger adults with learning disabilities/autism and 10 for younger adults with mental ill health) 17 home support providers (providing both short-term promoting independence support and longer-term care) 18 housing with care schemes for older people and 14 supported living facilities catering for people with learning disabilities/autism or mental ill health. Other services include day opportunities, community meals and a range of voluntary sector preventative support.
- 1.10.2** The work to monitor and oversee the quality of these services is led by the City Council as contractor. In delivering these responsibilities our Adult Commissioning Team works with nurses employed through Coventry and Warwickshire Clinical Commissioning Group (CWCCG) who provide clinical input to the Quality Assurance function. We also work closely with colleagues at the Care Quality Commission (CQC) whose role as regulator is distinct and separate to our role as contractor of services for people with care and support needs. Though working with CWCCG colleagues and the CQC we are better able to identify issues and take remedial steps to improve.
- 1.10.3** Recognising that each provider has a different risk profile in respect of CQC rating, number of people supported, complaints, concerns and safeguarding issues, location, and complexity of service our contract monitoring approach has, and continues to be based on risk, with those providers with the greatest risk profile being the main focus of contract monitoring activity.
- 1.11** The Council has applied a risk-based approach to quality assurance for many years with more focus of our contract management resource being on those services considered to be most at risk due based on a range of quality indicators gathered from local intelligence. Following review, a refreshed approach based on 5 levels of risk is proposed.
- 1.12** Use of a risk-based approach based on a range of factors to ascertain the quality of service and determine the level of risk with the use of key triggers such as manager experience and competency, duration in post, staffing levels, staff competencies and skills, dependency tools, Infection, Prevention and Control (IPC) compliance, medication management, nutrition and hydration compliance, leadership, and governance. Other factors include professional, customer & family feedback, including concerns raised; using feedback from CQC inspectors with regular catch ups with inspector managers on

provider progress including any regulatory action, frequency, substantiated and severity of safeguarding referrals

1.13 The approach is one of unannounced or announced monitoring visits based on risk and provider profile which is guided by type of care setting. Visits could be a full visit covering all aspects of quality, focused visits concentrating on areas of concerns, clinical or non-clinical, enhanced visits for providers on escalation, support/proactive visits (including accreditation schemes such as pressure ulcer prevention) or a visit by a specialist team e.g., Infection, Prevention and Control nurses and Medication management specialists etc.

1.14 The changes from the previous approach are:

- Introduction of an improved risk-based approach with greater clarity on levels of concern and appropriate oversight and action for all provision (reducing the risk of poor quality care not being uncovered)
- Improved processes and management of providers where there are quality concerns with clear escalation process within shorter time-scales (reducing the time taken for improvements to be implemented)

1.15 Prompt action to review poorer quality services and possible termination/decommissioning of services if improvements are not made in an timely manner This revised approach has 4 levels as summarised in table one below.

1.16 Table One – Risk levels

| Level of Risk | Description | Level of oversight | Support Options available | Contractual options |
|---------------|---|---|---|--|
| 0 | No known concerns | Routine monitoring in line with contract provisions | Support with continuous Improvement programmes | Not applicable |
| 1 | Providers with concerns which are defined and / or single or time limited in cause and / or the scope is restricted | Ongoing monitoring by contracts officer/clinical nurse with proactive visit brought forward or frequency reviewed | Monitored Improvement plan Signposting to key partners e.g. Infection Prevention and Control, Medication Optimisation Team etc. Focus and access to Learning & development sessions | Not applicable |
| 2 | Persistent or widespread low risk concerns - concerns continue, need formal action | Ongoing monitoring of data Reactive visit Develop and agree actions with service and agree action plan Scheduled ongoing visits to monitor compliance with action plan | Escalate to Lead officer/Quality Assurance officer/care home lead Monitored action plan Signposting to key partners e.g., IPC support, medication optimization etc. Priority access to learning and development support Regular virtual meeting with Manager and /or owners | Voluntary Placement stop/restriction of hours Notice of concern letter issued |
| 3 | Persistent serious concerns - significant and / or sustained | Ongoing monitoring of data Reactive visits Coordination of intelligence with key | Multi-agency Strategy meeting instigated – escalation to Head of service Escalation / Briefing note | Imposed Placement stop/restriction of hours Decommissioning/end |

| | | | | |
|---|--|---|--|--|
| | concerns that require enforcement action | partners to monitor improvement, Undertake service user reviews Review and monitor ongoing safeguarding's concerns Monitoring action plan Unannounced ongoing visits to monitor compliance in accordance with action plan | to ADASS and cabinet portfolio member Consult with legal Monitored action plan Signposting key partners i.e., IPC support, medication optimization etc. Priority access to learning and development support Quality Performance meetings with strategic directors/owners CCC/CWCCG formal meeting (senior managers) | contract Potential breach of contract letter issued or notice of concern letter |
| 4 | Persistent Serious Concerns - where the provider is at risk of urgent closure or failure or significant risk to service user | Ongoing monitoring of data Reactive visit Coordination of intelligence with key partners to monitor improvement, Undertake service user reviews Review and monitor ongoing safeguarding concerns Conduct unannounced ongoing visits to monitor compliance in accordance with the action plan | Multi-agency Strategy meeting instigated – escalation to Head of service Escalation / Briefing note to ADASS and cabinet portfolio member Consult with legal Monitored action plan Signposting key partners i.e., IPC support, medication optimization etc. Priority access to learning and development support/service Quality Performance meetings with directors/owners/managers CCC/CWCCG formal meeting (senior mgrs.) | Imposed Placement Stop/restriction of hours Termination of contract letter issued Decommissioning/ end contract |

1.17 Where quality issues reach levels 3 and 4 a multi-agency approach is taken. This oversight is through the Provider Escalation Panel (PEP). This is a multi-agency panel led by the City Council that has membership from Adult Social Care (commissioning/contracting, brokerage social work and safeguarding), NHS clinical staff and the Care Quality Commission. PEP considers service provision which is causing the most serious quality concerns and ensures support and/or recommends contractual action to the Head of Commissioning and Quality and Director of Nursing and Clinical Transformation.

1.18 For Level 1 and level 2 the oversight is held at Quality Peer Support Group (QPSG) level. This group comprises a Quality Assurance Officer, contracts and commissioning officers and quality assurance nurses. Its remit is to oversee moderate level concerns putting in the necessary support and challenge. It is supplemented by two-weekly meetings for contract officers to improve consistency of approach and support with monitoring of quality. Level 0 are those that are managed by individual contract officers and clinical nurses with oversight from their line managers. Level 0 is business as usual with no concerns.

1.19 We have refreshed the provider escalation process including a revised terms of reference produced in June 2022. Providers are escalated to the Panel via the Quality Peer Support Group (QPSG).

- 1.20** Our revised processes incorporate the 5-level escalation framework outlined above (level zero being business as usual / no concerns). Recommendations to escalate providers for enhanced quality monitoring and management action to PEP is made by the QPSG alongside other partner agencies. The framework will allow PEP members to consider the level of oversight and frequency of visits required, the support options available to seek assurance on progress, consider any potential contractual actions and review the level of risk (criteria for providers to move up or down the levels) based on progress or the lack of assurance with sustainable improvements.
- 1.21** PEP will apply the escalation framework to manage the risk, monitor progress, track, and coordinate the action/activity undertaken across all agencies with providers and seek assurance that sustainable improvements are being achieved leading to de-escalation (or escalation) from (to) PEP and QPSG. Additional oversight will continue to be via PEP through to Coventry Safeguarding Adults Board and through Health and Care System Quality Assurance mechanisms (see Appendix 1)
- 1.22** Market Failure and Business Continuity
- 1.23** Under the Care Act (2014) local authorities are required to develop their local knowledge in respect of potential provider failure, and focus where appropriate, on supporting providers at risk of failure. Crucially we are required to have plans in place to manage exits from the market to ensure continuity of care. The paper included in Appendix Two outlines the Council's approach to market failure through its updated Market Failure Plan. The plan outlines a number of scenarios and our approach to managing these. Of crucial importance is the Council's response to emergency situations requiring immediate action to ensure continuity of care for vulnerable people. The Council is responsible for ensuring continuation of services, for both funded and non-funded social care recipients in the event of provider failure and has a legal requirement to do so.
- 1.24** The Care Quality Commission (CQC) has parallel duties in relation to larger providers where provision spans several authority areas and there is a requirement for co-operation between CQC and local authorities.
- 1.25** Working effectively with providers is a key element to our approach to identifying and responding to potential and actual market failure. The Council has a strong partnership approach with providers in the City and continues to manage relationships effectively and retain an open dialogue. This enables the Council to liaise with providers at an early stage where concerns around market failure are becoming apparent. The Council acts to support providers wherever practicable and works jointly to manage situations effectively.
- 1.26** There are a number of scenarios which can cause a provider / market failure. Some of these are sudden (although very rare), and some are as part of national / local financial pressures and staffing capacity issues which are well publicised and / or communicated to Council's through regular dialogue with organisational leads. Others can be for reasons where and owner/manager wants to retire and proceeds with closure as a result. Actions vary according to whether provision is building based e.g. care home, Housing With Care, Supported Living, or day centre; or delivered in the service users own home e.g. home support/community meals. These are described in the Market Failure plan (see appendix 2) however there are several actions that are common to all scenarios i.e. a clear communication and engagement strategy; safeguarding (including consideration of Large-Scale safeguarding Investigation) and quality assurance/safe and well checks for service users.
- 1.27** Working with providers to establish their own processes and mechanism for business continuity is an important and critical step in ensuring market stability and preventing

provider failure. Care providers might encounter a number of issues that could cause disruption to their daily operations including unexpected change in staffing levels, ICT issues, temporary unavailability of premises etc. Through producing and revising Business Continuity Plans (BCPs) these potentially disruptive business issues can be managed without having a significant impact on services provided. The production of a BCP is therefore a pre-requisite of every organisation contracted to the City Council across all sectors and also the Council's directly provided services. These plans vary in detail, but all will have a focus on provider assurances to facilitate a range of actions should an incident (small or large) require so. BCPs are checked as part of the regular quality assurance monitoring and the Council facilitates business continuity sessions with the provider market led by the community resilience team to support providers with having robust contingency plans

1.28 In line with provider BCPs, there will be scenarios, as identified within this document, where the Council will need to mobilise actions and support swiftly. The market and provider failure approach will be used, through market engagement and planning, as a mechanism to react to such scenarios.

1.29 The changes proposed with the refreshed Market Failure Plan are as follows:

- Precision around emergency situations of service closure
- Enhancement of the number of transport options available in the plan to ensure appropriate transport is available in an emergency
- An updated and increased number of agencies who may be available to support in an emergency to include recruitment agencies
- Further detail on the approach to emergency provider failure can be found in the Market Failure Plan at appendix 2

2. Options considered and recommended proposal

Recommended Option

Quality Assurance

- 2.1** The adoption of the refreshed risk-based approach to quality assurance which ensures that most focus is on those services where the likelihood and impact of quality and safeguarding issues is greatest, with other services being scrutinised to a degree proportionate to risk.
- 2.2** This is the preferred option as it targets staffing resources to areas that have greatest impact on service user outcomes and safety.

Market Failure

- 2.3** The implementation of an enhanced market failure plan to include greater emphasis on actions in relation to continuation of care and support in emergency situations improves clarity on what needs to be done to support service users in such circumstances.

Other options considered – Not recommended

Quality Assurance

- 2.4 A blanket, non-risk-based approach to quality assurance. This is not recommended because it would be resource intensive and would not focus where the need is greatest.
- 2.5 There is no alternative to developing plans in connection with market failure or meeting requirements of the Care Act for Council's to respond in emergencies to enable continuity of support to vulnerable adults.

Market Failure

- 2.6 Failing to adopt the recommended approach would add risk to the safety and wellbeing of vulnerable adult service users.

3. Results of consultation undertaken

No specific consultation was undertaken in respect of the proposals within this report however, the methodology described in well communicated and developed with partner organisations and providers. The feedback and input from users of services and their carers is part of the mechanism of quality management and as such user involvement is an ongoing part of this work.

4. Timetable for implementing this decision

Should Cabinet Member endorse the approach to Quality Assurance and market failure this will be implemented with immediate effect

Quality assurance and market management requires a constant improvement effort. The proposals within this report identify the outcome of recent reviews and demonstrate an improvement from what had gone before. There is nevertheless the requirement and ambition to continue to improve with such improvements to be further implemented as identified.

5. Comments from the Chief Operating Officer (Section 151 Officer) and the Director of Law and Governance

5.1 Financial implications

There are no direct financial implications arising from this report or approach. All activities described will be completed within existing resources.

5.2 Legal implications

- 5.2.1 The Care Act (2014) statutory guidance states *that 'high quality, personalised care and Support can only be achieved where there is a vibrant, responsive market of service providers'* (para 4.1). The Local Authority role is seen as critical and under section 5 of the Care Act,

"the local authority must promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishing to access services in the market

- (1) has a variety of providers to choose from who (taken together) provide a variety of services.*
- (2) has a variety of high-quality services to choose from.*
- (3) has sufficient information to make an informed decision about how to meet needs in question".*

5.2.2 Section 48 of the Care Act 2014 places a temporary duty on local authorities to, for as long as considered necessary, meet and adult's (and carer's) needs for care and support which were being met by a provider immediately before the provider became unable to carry on the regulated activity. This duty also covers self-funders, who may not be known to the local authority. It is for the local authority to determine when the temporary duty is triggered.

5.2.3 It is anticipated that the proposals for monitoring and quality assurance detailed in this report will enable the Council to meet its statutory obligations set out above.

6. Other implications

6.1 How will this contribute to the Council Plan (www.coventry.gov.uk/councilplan/)?

The approach outlined in this report supports the Council Plan by contributing to the following objectives:

- Improving the quality of life for Coventry people
- Improving health and wellbeing
- Protecting our most vulnerable people
- Reducing health inequalities

6.2 How is risk being managed?

Market Failure risks and contingencies are documented in the Council's Risk Register.

6.3 What is the impact on the organisation?

There are no direct impacts on the Council's human resources, buildings, or infrastructure

6.4 Equality Impact Assessment (EIA)

Not applicable

6.5 Implications for (or impact on) climate change and the environment

None

6.6 Implications for partner organisations?

6.6.1 This is a joint approach with Coventry City Council and Coventry and Warwickshire Clinical Commissioning Group.

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