

Health and Wellbeing Overview and Scrutiny Committee

DATE: 11 JULY 2023

CONTINGENCY PLANS AND MANAGEMENT ARRANGEMENTS FOR COMMISSIONED ADULT SOCIAL CARE SERVICES

Report of: Councillor Wendy Pattison, Portfolio Holder for Caring for Adults

Responsible Officer: Neil Bradley, Executive Director of Adults, Ageing and Wellbeing

1. Purpose of report

- 1.1 This report describes contingency and management arrangements that Northumberland County Council would enact in the event of a social care provider ceasing to operate.

2. Recommendations

- 2.1 Overview and Scrutiny Committee is recommended to receive this report for information.

3. Link to Corporate Plan

Tackling inequalities

- 3.1 The contingency plans and management arrangements will ensure residents with a disability continue to receive the care services they are assessed as requiring.

4. Key issues

- 4.1 Social care offers a vital service to people who are assessed as needing additional assistance and providers offer care and support in regulated care home settings and through regular visits to the homes of older people and others who are ill or disabled. Services are facing challenges, often linked to workforce shortages and OSC asked for a short report setting out some of the

steps officers have taken and would take in the future in the event of a provider ceasing to operate.

- 4.2 Northumberland County Council has implemented some initiatives over the past 18 months to try to resolve workforce shortages, including funding incentives to increase carer pay rates and work with providers on upskilling their management teams and improving their recruitment programmes.
- 4.3 The Council will be using additional funds from the latest Market Sustainability and Improvement Fund (MSIF) 2023/24 to help social care providers meet the challenges they face. These have been described in separate reports to Cabinet and Overview and Scrutiny Committee.

5. Background

- 5.1 This report outlines the steps which could be taken to ensure the needs of service users would continue to be met if a social care provider ceased operating. It concentrates on traditional visit based domiciliary care services and older persons residential care which are judged to be the most likely services to cease operating based on current known risks and previous experiences.

6. Homecare

- 6.1 Home care providers can face challenges in delivering services due to a number of factors but the recruitment and retention of staff, particularly in the more rural areas of Northumberland creates particular risks which are considered in more detail in the separate report "Update on pressures in adult homecare services" also being considered by OSC. These challenges could impact on the viability of homecare services and there have been some recent examples where providers have made the decision to cease operating due to current conditions including the challenge caused by having insufficient staff to deliver the service and provide the level of care and support that service users required.
- 6.2 This has happened with seven providers between January 2021 and April 2023 and in each case, officers have worked with the outgoing provider and other providers continuing to operate in the area to transfer the packages of care to an alternative provider. It has impacted on 69 service users across the seven providers. This has happened in all areas of Northumberland including the more rural West and North of Northumberland which have traditionally been more difficult areas to deliver homecare in due to workforce shortages.
- 6.3 The most recent example was in April 2023 when one provider made the decision to stop delivering homecare and concentrate on their other social care businesses. It resulted in officers needing to find a provider to deliver the 47 hours of homecare per week previously delivered. Officers worked with other providers in the area to support the transfer of staff and the care packages.

- 6.4 In all of the cases referred to above a business transfer has gone ahead with minimal levels of disruption. The situation was different in 2017 when officers made the decision to terminate the contract of a much larger provider in south east Northumberland which was performing poorly, not meeting the required quality standard and risking the wellbeing of service users. This impacted on approximately 330 service users and 120 care staff. The decision to terminate the contract was made after extensive efforts were made to support the provider to manage service improvements which failed to eliminate the risks in service delivery. The decision was made to transfer the service to an alternative provider which meant that those areas of service delivery where the incumbent provider was failing to deliver effectively were transferred to the new provider who inherited a large contract with insufficient trained and skilled staff and managers, and poor operational practices.
- 6.5 Northumberland County Council supported with additional officer time dedicated to the new provider but there were significant operational difficulties for a six month period that drew on considerable staff resources from care management, safeguarding and contract teams. This reinforced to officers the difficulties in such a large-scale transfer of packages and wherever possible to the benefits of supporting a poorly performing provider to make the required improvements whilst retaining its staff and service users.
- 6.6 Ideally this would be prevented from reaching that situation again and adult services has strengthened its contract team in order to identify problems earlier and support providers to rectify these whilst they are having minimal operational impact. It must be stressed that despite the difficult climate, homecare providers are performing well at the moment in terms of their Care Quality Commission (CQC) ratings with 31 of the 32 domiciliary care services registered in Northumberland rated good or outstanding.
- 6.7 If the situation was to arise again where a large homecare provider was leaving the market the preferred option would still be to transfer the package to an existing provider that is part of the council's current contract arrangements. However, moving the packages of care and staff to a new provider can result in transferring a significant operational risk to the new provider that may not be able to manage their existing work whilst managing the work that is transferred to them. The situation would need to be assessed on its merits and all risks assessed although the council is in a stronger position than in 2017 as it has employed an experienced operational manager who could be brought in to help manage the business transfer. The Council would be subject to contractual obligations regarding how it allocated those packages to replacement providers. It must offer them first to the preferred provider for the lot, .If the preferred provider does not take them (or if it is the provider that is leaving the market), then the Council must offer them to Tier 2 providers, and then (if no Tier 2 provider accepts them), on to the Tier 3 providers.
- 6.8 If the risks were deemed too high to be able to do this, an alternative option would be to bring the failing service "in house" for a period of time. Again, this

risks transferring the operational failings to the council and the potential for reputational damage to its existing highly rated services. It would however give the council the opportunity to invest resources in a turnaround team before putting the service out to tender. In this scenario operational staff and managers from the provider service would transfer to the council for a period of time and become council employees under Transfer of Undertakings (Protection of Employment) regulations (TUPE). The council has recent experience of a large-scale TUPE transfer having gone through an exercise in 2021 where social care staff employed by Northumbria Healthcare were transferred back to Northumberland County Council.

- 6.9 The transfer of a service “in house” would also create a financial risk to the council whose employment terms and conditions (including salary and pension scheme membership) are likely to be better than most independent sector services. Staff transferring under TUPE keep their current terms and conditions and there is no requirement to put them on to NCC terms and conditions. It would be advisable not to move staff onto NCC terms, particularly if they are only with NCC for a short period of time, however, if staff stay with NCC for any length of time, matching the salary levels will assist with retention of staff. The bigger issue is that the transferring staff will have the option to join the LGPS and any rights that they acquire whilst with NCC will remain with them when they transfer on to a new provider. This may make the service less attractive if it was later offered via a competitive tender to a new provider would be required to employ staff on the same terms and contribute to the LGPS. In this situation, the council may consider underwriting these additional costs to providers.
- 6.10 In summary the preferred contingency plan for managing the situation where a home care provider leaves the market is to transfer service users and staff to an alternative provider who could incorporate the service into their business. This has been enacted successfully on seven occasions over the last two years although does become more difficult as the size of the service, number of staff and service users increases, and would require more input from adult services officers. If the risks of transferring a service from one external provider to another were considered too high then the council could bring a service in house, although for the reasons outlined above this is not the preferred option. There are 50 homecare operators on the council’s contract and officers are confident that they will be able to identify taking on another providers business if required.

7. Older persons care homes

- 7.1 NCC has experience in managing the closure of older persons care homes and in the last four years, three homes have closed necessitating a need to move residents to an alternative service. All have closed as the result of a “business decision” although there can be a number of interconnected factors that impact on this including the personal circumstances of the owners and quality concerns.

- 7.2 The approach taken by officers is to try to resolve problems, ensure where possible that homes can remain operational and avoid the need for people to move to an alternative home. Where homes are at risk of closure because of quality concerns it is likely that council officers will have been aware of the circumstances for some time through quality monitoring, safeguarding concerns being raised, or the findings from a CQC inspection. If a home is performing particularly poorly in terms of quality ratings, CQC may issue regulatory action including a proposal to remove the registration (which would prevent a service from delivering social care), although in all cases where these have been issued so far, the council has worked with the provider to ensure quality improvements are made and the proposal to end the registration is removed. There is currently one older person's care home in Northumberland with a proposal to remove the registration although it is making quality improvements and officers expect the home to resolve the regulators concerns.
- 7.3 In the case of two homes that were previously nursing homes, the owners have made the decision to de register the nursing element of the service and register it solely as a residential care service which has required a small number of people to move to an alternative nursing home which the council's teams have facilitated. This type of situation may become more prevalent due to the national shortage of nurses which can generate operational difficulties for providers to continue to deliver nursing services.
- 7.4 In all of the situations where there have been home closures, council officers have been able to find alternative places for residents who are required to move. As at 24 May 2023 there were 236 vacancies in older persons care homes as shown in the table below. Of these, 130 vacancies are in nursing homes, and it is expected that any residents displaced by the closure of a home could be accommodated in an existing bed.

Locality	Number of care home beds
South	66
Central	53
West	43
North	74
Total	236

8. Conclusion

8.1 Throughout the United Kingdom there are operational difficulties in the social care sector which have led to some operators deciding to cease trading. Overall, the situations have been managed by Council officers who have helped to transfer service users to an alternative provider. If a large provider ceased operating, it is expected that the transfer would be more complex and necessitate additional officer capacity and the potential transfer of a service “in house” to manage the immediate risks.

Implications

Policy	The Market Sustainability and Improvement Fund (MSIF) consists of funding which was originally announced as support for the Government’s charging reform policy; its revised purpose is a more basic one of ensuring that care services are sustainably funded and have sufficient capacity to meet assess needs.
Finance and value for money	All commitments described in this report can be met within the Council’s allocation of MSIF funding for 2023/24. Provider failure may bring additional costs which would need to be identified and approved as required. If an independent provider service was temporarily brought “in house” the financial implications would be more significant with staff potentially inheriting council terms and conditions.
Legal	<p>Transfer of Undertakings (Protection of Employment) regulations (TUPE) would need to be adhered to in the event of any service being brought “in house”.</p> <p>This report indicates the contractual arrangements if a provider leaves the market and the affected packages are to be reallocated to other providers. The Council must offer them first to the preferred provider for the lot, .If the preferred provider does not take them (or if it is the provider that is leaving the market), then the Council must offer them to Tier 2 providers, and then (if no Tier 2 provider accepts them), on to the Tier 3 providers.</p>

	There is a general obligation in clause 75.1 of the individual placement terms and conditions which requires the outgoing provider to work cooperatively with the Council and a replacement provider for the smooth handover of packages. This would bind for example an administrator or liquidator if the outgoing provider has insolvency issues.
Procurement	The proposals in this report (e.g., transfer of staff or service users) would be implemented through the Council's existing contract for home care.
Human Resources	Some staffing capacity may be required to be allocated to a provider facing sustainability issues.
Property	No implications have been identified
Equalities (Impact Assessment attached) N/A	The proposals are designed to maintain the capacity of care services to meet the assessed needs of people with a disability or illness. They are expected to have positive consequences for disabled people.
Risk Assessment	A full risk assessment is not required.
Crime & Disorder	No implications have been identified
Customer Considerations	Current capacity issues in home care are leading to a situation in which a substantial number of people with care and support needs, and their families, partners or other carers, are having to put up with unsatisfactory support arrangements which they would not have chosen.
Carbon reduction	No implications have been identified
Health and wellbeing	Ensuring that care services have sufficient capacity to meet needs is important both for the health and well-being of service users and the efficient use of hospitals.
Wards	All

Background papers:

There are no background documents for this report within the meaning of the Local Government (Access to Information) Act 1985.

Report sign off.

Authors must ensure that officers and members have agreed the content of the report:

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