

Health and Adult Social Care and Communities Overview and Scrutiny Committee

Date of Meeting: 10 October 2019

Report Title: Care4CE: A strategic direction for Care4CE

Portfolio Holder: Cllr Laura Jeuda, (Portfolio Holder for Adult Social Care & Integration)

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1. Report Summary

- 1.1. The Council is committed to providing a range of excellent local care and support services for the residents of Cheshire East. A key principle of the Care Act (2014) legislation is personalisation - meaning that people should be able to take charge of their own care and support system and be in the driving seat of identifying their needs and how and when they will be met and in particular by whom, whether eligible for adult social care or funding the care themselves.
- 1.2. The Care Act (2014) specifically requires Local Authorities to develop greater diversity in the care market to ensure that there is a wide range of high quality services from which residents can choose the care that best meets their needs. The intention is that the care market will be influenced and shaped by the Council and its health partners to have a vibrant and flexible range of services which can deliver such personalised services, meeting increasing demand, responding to a complexity of need and considering alternative models of care and utilising new technology.
- 1.3. Cheshire East Council has a duty under Section 5 of the Care Act to promote the efficient and effective operation and sustainability of a market in services for meeting the care and support needs of individuals. There are increasing financial pressures on the social care market, for example National Living

Wage, recruitment and retention issues which is resulting in a rise in care costs.

- 1.4. In January 2018, a North West Market sustainability and oversight review was undertaken that demonstrated the scale of the challenge facing the social care sector. It described that commissioners cannot continue to support people in the same way as existing models of care are not sustainable. This conclusion was driven by a number of factors including, demographic growth, the level of fees local authorities pay is low and providers are struggling to recruit and retain a skilled workforce.
- 1.5. As a result, Cheshire East Council commissioners procured a consultancy to conduct a strategic review of its internal care provision, 'Care4CE', to determine the available options for the future service which would meet its strategic challenges and address the commitments within the Medium-Term Financial Strategy (MTFS). The review was completed in June 2018.
- 1.6. The review concluded that Care4CE should be commissioned, just like any other social care service, but this would be block contract for a number of services, (including a service development plan).
- 1.7. On review of the market there appears to be an apparent gap in the external market surrounding the care of self funders, individuals with complex needs such as learning disability and mental health and the recruitment of personal assistants to support direct payment users therefore it is proposed that Care4CE also establishes a Separate Legal Entity (SLE) that will allow Care4CE to trade in the market place.
- 1.8. A summary of the 2018 review was presented to the Adult Social Care & Health Overview and Scrutiny Committee in July 2018 where it was agreed that a formal consultation on the recommendation of the review would be undertaken and approval given for continuing work on developing the business case associated with the proposals. The consultation closed in March 2019.
- 1.9. The original review was completed over the summer of 2018 and the supporting business case revisited in June 2019 to ensure all assumptions remain valid.
- 1.10. The consultation demonstrated the preferred option was for Care4CE to be a wholly owned council company.
- 1.11. The outputs of the formal consultation are summarised and reported in more detail within Appendix A.

2. Recommendations

That Health and Adult Social Care and Communities Overview and Scrutiny Committee considers the proposals and scrutinises the consultation and proposed future model.

3. Reasons for Recommendations

- 3.1. The Council currently spend circa £45m on 1985 clients aged 18-64 and £54m on 5233 clients aged over 65. Recent legislative changes through the recent ruling on 'Sleep-Ins' (subject to appeal), National and Local Living Wage and Holiday back-pay place increased pressure on the adult social care budget and this situation is only likely to become more serious over the coming years with the numbers and complexity of adults requiring social care support rising and cost pressures increasing.
- 3.2. During the 10 year lifetime of Cheshire East Council since 2009, in real terms the Care4CE budget has reduced by over 50% from its original level of £32m. This reduction has come from a number of factors, including, closure of Community Support centres, ceasing to provide domiciliary care and through continual efficiencies such as delayering of managerial staffing levels being delivered.
- 3.3. Like all Councils, Cheshire East continues to face intense change, with an increasing demand for social care services, a contraction of funding and a challenging policy environment. Some of the main challenges are shown below.
- 3.4. The review of Care4CE evidenced that remaining as an internal service, unchanged in its current form, was not viable for the medium to long term as the option was unaffordable. Therefore to block contract and protect the existing Care4CE services is crucial but it is essential to allow Care4CE the ability to income generate through trading.
- 3.5. As well as the significant financial pressures on the service, the introduction of personalisation will also continue to have considerable impact. The government requires all councils with Adult Social Care responsibilities to introduce personalisation through self-directed support and personal budgets. In self-directing their care and support, service users can elect to take their personal budget as a Direct Payment.
- 3.6. The Health and Social Care landscape is changing with integrated delivery and commissioning of health and care services to improve population health and wellbeing outcomes. Key drivers for implementing the NHS long term plan and the move towards more integrated service commissioning and delivery through local Health and Care transformation programmes in Cheshire East means shifting care from acute and reactive provision to

home/community-level and proactive joined-up care. This requires the need for community based health and care services that can respond to the changing context.

- 3.7. The review undertaken therefore looked to mitigate these potential impacts in order to protect Care4CE as well as consider the opportunities for the delivery of the Care4CE services in a changing and complex strategic context.

4. Other Options Considered

- 4.1. The review identified and reviewed all options for the future delivery of Care4CE services, including:

- doing nothing (remaining in-house),
- looking to the market (outsourcing),
- community-led delivery (empowerment),
- partnership working (integration),
- establishment of a separate legal model (stimulation),
- improving the current internal delivery (redesign),
- a mixed economy (combination of options).

- 4.2. The review identified that the establishment of an SLE was the preferred way forward as it allowed the Council to proactively shape how it wants services to be delivered in the future, to enable it to meet the challenges identified.

4.3. Commissioning Model

- 4.3.1. The overarching aim of Care4CE services is to enable people to live as independently as possible by preventing or delaying the need for residential care. The service offers personalised care to support service users to achieve their individual agreed outcomes, strengths and aspirations.

- 4.3.2. It is proposed that the following Care4CE services fall within the scope of the proposed SLE:

- Community Reablement
- Dementia Reablement
- Mental Health Reablement
- Mobile Nights
- Service of Last Resort
- Shared Lives
- Supported Living
- Day Services
- Market Failure and Crisis Response service

- 4.3.3. It is proposed that the services in scope are initially transferred to the SLE “as is” with the intention that the following opportunities to reshape and restructure the service are explored in year one of the SLE. Please note that

the names of the service elements below will be reviewed and potentially rebranded to reflect the service aims and objectives.

- **Reablement:** Integrate the current Mental Health and Community Reablement services. These currently operate separately due to the nature of the service user group, however, with the right training and alignment both services could potentially integrate and deliver as one service. This would create an integrated service with a diverse range of staff skills and competencies while offering some financial efficiencies;
- **Shared Lives:** Expand the Shared Lives offer and explore how the service can support short term, intermediate care placements for people leaving hospital, short breaks and daytime support;
- **Supported Living:** Retain the existing Supported Living model but review the community element of service and shift focus towards people with more complex needs;
- **Day Opportunities:** Shift the focus to people who are eligible for social care services and who have complex needs such as dementia, complex Learning Difficulties, Mental Health or autism. Re-focus the existing Day Opportunities as Community Hubs and widen the offer and flexibility of the service to include sessional support and weekend access. Move to a community integrated service that includes outreach opportunities alongside the traditional building base offer.

4.3.4. There are a number of other opportunities that commissioners have identified to develop the Care4CE service further over the lifetime of the initial contract and it is intended that these will be included as Service Developments within the service specification and reflected in a Service Improvement and Development Plan to be co-produced with the SLE.

4.3.5. There will be one overarching service specification. Service specific information will be appended to the overarching service specifications in separate schedules.

4.3.6. Service performance will be monitored against measurable and achievable targets for Key and Critical Performance Indicators which will be set out in a robust Performance Management Framework.

4.3.7. It is anticipated that financial remuneration will be via a combination of a block monthly payment for a guaranteed level of work with tariff-based payments for work exceeding this. The contract will reflect the requirements set out in the service specification and Performance Management Framework including provisions for Incentivised Indicators for achievement of key outcomes, indicators or service developments and financial penalties for critical performance issues

- 4.3.8. The relationship between the Council and the SLE will be supported by a comprehensive, jointly agreed Management Agreement. Interface agreements, process flows and service pathways will be developed between Health and Social Care commissioners and the SLE to ensure that partners are clear about roles and responsibilities and robust systems and processes are in place to effectively deliver the service and ensure a seamless transition for service users.
- 4.3.9. It is anticipated that the Council's Care Brokerage team will generate referrals for the service and that individuals who have a direct payment, a personal budget, or wish to independently purchase the service will be able to do so.
- 4.3.10. The contract management and quality assurance team intend to align Care4CE in the same way as external providers for all contract management and quality assurance functions.

4.4. Strategic and Operational benefits of a Separate Legal Entity (SLE)

- 4.4.1. The creation of a SLE will deliver a significant number of non-financial benefits to the council.
- 4.4.1.1. Service users and carers, through the consultation exercise expressed how much they respected these services and staff. They expressed their desire to keep the same staff and enhance service delivery, not reduce. The creation of an SLE could mean:
- The services remain intact but are able to trade and compete with other market competitors within the world of personal budgets and direct payments.
 - Service users and staff can become more involved in the decision making, and direction of the company.
 - The new model should facilitate a culture where should be conducive to more innovative delivery models.
 - Promotes further choice and competition in the market.
 - Allows services to adopt commercial disciplines to increase productivity and develop a culture of continuous improvement.
 - Enables the council to retain an influence in the market whilst achieving the benefits of a market model.

- Means services can generate additional income through trading. This would mean further economies of scale could be achieved which could lower the cost of production of council delivered services.
- Provides a vehicle and a way of financing (through investment of surplus) interventions which will reduce the need for council funded long term care.
- Increases service user choice through the development of alternative services.

4.4.2. The introduction of a provider of this nature into the market enhances choice for residents and service users. The benefits for the council will include some care which is currently commissioned out of borough can be brought into Care4CE thus saving the authority additional, often expensive out of borough contracts.

4.4.3. Similarly, as the SLE will be contracted on a 'block' basis and capacity is not currently maximised, maximising the numbers of service users who receive care from Care4CE services will reduce other third party spend.

4.5. Consultation

4.5.1. The Consultation phase was conducted following the completion of the business case concluding that the establishment of an SLE was the optimum delivery model for Care4CE services in the future.

4.5.2. The consultation ran from 12th December 2018 to 15th March 2019. The objective of the consultation was to seek the views of residents, service users, carers, staff and anyone else with an interest in Care4CE on the future ways of delivering services.

4.5.3. A single organisation was consulted upon, rather than several smaller ones, so that economies of scale are possible and existing capabilities from provider services are not fragmented or lost from the market. The new organisation would be different to the existing Care4CE service. In line with feedback from customers, communities, carers and staff, it would be an organisation that reviews its structure, processes and culture – embracing new ways of working and technology to improve outcomes, reduce cost and grow services for a more sustainable future.

4.5.4. Choosing the right SLE delivery model will define the way the organisation operates. As with any form of service delivery, having the right structure in place to provide strong foundations for growth and development is essential. Because of this, the council was keen to understand what attributes will motivate its staff, support its business and enable service users to access the services in the way they want.

4.5.5. The following options were consulted upon.

- Option 1: A Trading Company wholly owned and controlled by the council
- Option 2: A Social Enterprise wholly owned by the council
- Option 3: A Public Service Mutual

4.5.6. The approach adopted for the consultation ensured equality of opportunity for all citizens, service users, carers, partners, providers, community organisations, staff and other stakeholders, to take part.

4.5.7. Accessibility of the consultation was a key consideration and therefore easy read paper versions of the report were produced and made available as well as providing additional support to service users who wished to participate e.g. helping with completion of surveys and additional time spent explaining the aspirations of the service and answering concerns.

4.5.8. In total, the consultation and subsequent events saw the following participation levels:

- 666 completed surveys
- 205 staff attended staff briefings
- 32 staff attended staff focus groups
- 45 carers attended focus group sessions
- 11 members of the general public attended public consultation events

4.5.9. Appendix A contains the final report from the consultation exercise.

4.6. **SLE Ownership and Legal Model**

4.6.1. The ownership model and legal structure are fundamental to ensuring that the Council achieves its strategic objectives as well as maintaining the desired level of influence and control over service delivery. Whilst influence and control can be established/mitigated through the supporting governance structure for the SLE; the level to which the Council wishes to maintain these factors can have some bearing on the most appropriate ownership model for the SLE.

4.6.2. There are 3 options for the future ownership of the SLE from the Council's perspective. These are as follows:

- Wholly owned by the Council
- Part-owned by the Council (ranging from minority to majority shareholder)
- No Council ownership

- 4.6.3. The ownership of the SLE has significant bearing on the potential legal model, the future relationship with the Council, as well as the ability for the SLE to deliver the Council's strategic priorities.
- 4.6.4. A wholly owned ownership model mitigates the procurement risk associated with other ownership models, i.e. means Teckal exemption can be applied, but not at the expense of any long term desire to mutualise as the ownership model can be reviewed at a later date. Instead, this option gives the Council flexibility to consider future ownership options over the initial three year period. Future ownership is at the Council's discretion. (* A Teckal company is the common name for a company which benefits from contracts for work, services or supply from its controlling Contracting Authority without having to go through a competitive tender process.)
- 4.6.5. The Care4CE review analysis has started from the perspective that the most appropriate legal structure would be one that delivers most benefits whilst managing risk in the most appropriate manner. The legal structure must be in accordance with a wholly owned SLE and should be capable of:
- Delivering value for money for the council
 - Managing risk to the council
 - Ensuring Teckal compliance
 - Reflect the Directorate's strategic and commissioning intentions of promoting the principles of localism, stakeholder involvement and promoting social good
 - Delivering the Directorates priorities for the SLE in regards to the ability to:
 - enable attraction of external funding,
 - adapt quickly,
 - reinvest surplus/profit for a social purpose,
 - service customers external to CE
 - have shareholders
 - enable staff to influence the company
 - enable service users to influence the company
 - reflect stakeholder feedback of the desire to create a social organisation, evidenced through the formal consultation.
- 4.6.6. The ownership model, i.e. wholly owned by the Council, limits the plethora of options for the legal model for the SLE. The viable options would be considered as being a company wholly owned by shares or a Community Interest Company (CIC). Given the significant preference during consultation for the SLE to be a 'social enterprise' the CIC option would most fulfil this preference.
- 4.6.7. To enable the council to commission services from the SLE, the company should be established as a "Teckal Controlled" company, wholly owned and controlled by the Council.

4.6.8. The Wholly Owned Company will be awarded a contract to deliver the listed services with the contract price yet to be finalised as the final cost structures for the Company are developed. It is recommended that the length of the contract is 5 years, with the option of the council initiating a break clause after the gateway review in year 3.

4.6.9. Throughout the period of ownership, the council will wish to form a view as to how any operating surpluses (that are not locked for public benefit) are to be shared between the council and the Wholly Owned Company. These could be retained by the Company to further develop services which benefit service users, carers and customers and the council or to deliver a return back to the council.

4.7. Financial Case

4.7.1. The financial case has been updated according to the due diligence exercise and modelled based on the assumption that the primary financial benefit to the Council will be through a reduced contract price. The specific price will be determined following further negotiation during implementation. However, the SLE also has the opportunity to create a surplus, the use of which will be determined by its governance. Depending on company structure, such surpluses could be reinvested or paid out as dividends. How any surplus is invested, shared or otherwise will be determined through the governance structures, summarised in the Commercial Case, which will be put in place.

5. Implications of the Recommendations

5.1. Legal Implications

5.1.1. The scope and robustness of the consultation in order to be content that the Cabinet is suitably informed and able to rely on the outcomes of the consultation.

5.1.2. If this project is to be progressed further due diligence needs to be undertaken to assess the correct SLE model which could be a simple Teckal company or a Public sector mutual. A number of factors will need to be considered as part of this due diligence in relation to asset ownership, level of control required, ability and restrictions in relation to income generation. Both the Council and company will also have to be mindful that by meeting the community interest test it is not then precluded from undertaking services for the council. Alternatively, the council may wish to consider establishing a 'simple' Teckal company structure for a period of time to allow the company time to become established and its provision of services to the council to be embedded. Following this initial period consideration could then be given to

developing the company into a Mutual or CIC. This would be in line with the Council's approach to ASDVs

- 5.1.3. If a Teckal company is the preferred model the company will be permitted to trade i.e. make a profit for up to 20% of its turnover in a 3-year period. The council and company will have to keep this under review. If the 20% is exceeded, then the company would either have to establish a non Teckal subsidiary or alternatively shed its Teckal status and tender for any contracts to deliver services for the council.
- 5.1.4. Due diligence will need to be undertaken to obtain certainty as to whether the Better Care Fund allows for the funding to be used to commission services from the company and for this to be kept under review.
- 5.1.5. Further due diligence will also be required to clarify any the state aid implications once the proposals in relation to any assets and support e.g. from corporate services could constitute state aid. Therefore, consideration has to be given in relation to the council's appetite for risk compared against the company paying full cost.

5.2. Finance Implications

- 5.2.1. In 2019/20 the budget for Care4CE is circa £14m (17.8m if Better Care Funded Services are included) which still includes proposed savings of £2.4m per annum allocated from within the Council's MTFS. It was recognised in 2017/18 that the overall level of savings assigned to Care4CE in the existing Medium Term Financial Strategy at the time of £4.2m was unachievable and the last tranche of these savings (£1.5m) was therefore allocated elsewhere in the Adults Services budget. The response to this financial position has been to consider a revised sustainable model for Care4CE, that can maximise the opportunity to reduce the overall cost of the service, without compromising service levels or affecting the wider market of commissioned care in Cheshire East. Of the original savings target £0.3m has been achieved, and an appropriate baseline budget, based on actual expenditure is therefore £13.8m for 2019/20.
- 5.2.2. Of the original savings target £2.4m may need to be written back in to the MTFS as growth, to allow the business case for any revised delivery model to properly reflect the true financial impact against current spending. Savings from the service could be incorporated in the next MTFS for the period commencing 1st April 2020 and for subsequent years through to 2025/26. Unless the unachievable original savings are removed one off alternative remedial measures will still need to be delivered to enable Adults Social Care to deliver a balanced budget.

5.3. Policy Implications

5.3.1 This paper requests the approval of a separate legal entity.

5.4. Equality Implications

5.4.1. A comprehensive Equality Impact Assessment has been completed and will form part of the cabinet report.

5.5. Human Resources Implications

5.5.1. If the decision to proceed with an SLE is made, then essentially all existing employees providing the services immediately before transfer will follow the work and transfer to the SLE under the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE).

5.5.2. Approximately 605 staff (444.46 Full Time Equivalent (FTE)) will be affected. They would transfer on their current terms and conditions and continuity of service would be preserved. Given the scale of the transfer being considered, there may be staff within support services who could be within scope of the TUPE transfer, but further work is required to assess the potential impact. The council will ensure it complies with its information and consultation requirements set out in the regulations and allows sufficient time for this process to be completed.

5.5.3. It is acknowledged that the current Council Terms and Conditions present a challenge to Care4CE becoming a competitive player in the external market, both through higher unit-costs and an inability to attract new staff due to lower than market average wages.

5.5.4. Trade union engagement will continue to be seen as integral to the process. Regular updates have been provided at Trade Union meetings regarding the project and representatives have also been invited to attend staff briefings. Should Cabinet give approval to proceed, a formal consultation will be undertaken as per TUPE regulations.

5.5.5. Local authority staff are entitled to pension protection under the Best Value Authorities Staff Transfer (Pensions) Directions 2007. The protection is such that a new employer must provide all transferring staff who are members of the Local Government Pension Scheme (LGPS) or are entitled to join with continued access to the LGPS or to a broadly comparable pension scheme.

5.6. Risk Management Implications

5.6.1. Risk analysis has been undertaken on a regular basis by the project team and project board and this will continue for the duration of the project.

5.7. Rural Communities Implications

- 5.7.1. There are no direct implications for rural communities; however the implementation of a generic, locality based workforce, as detailed in the business case, will further support the robust provision of adult social care services across all parts of Cheshire East; improving continuity and depth of provision.

5.8. Implications for Children & Young People/Cared for Children

- 5.8.1. Whilst there are no direct implications for children and young people, it is proposed that the move to a SLE will strengthen the organisations financial position, allowing it to embed modern technology enabled services which will be more attractive to young people than at present.

5.9. Public Health Implications

- 5.9.1. There are no direct implications for public health. Work will continue to strengthen relationships between Cheshire East and its public health partners, and the continued delivery of Better Care Funded services will remain a key feature of this.

5.10. Climate Change Implications

- 5.10.1. Development of a locality based workforce aims to reduce the amount of travel staff are required to undertake. Further to this, a key part of the set up of the company will be to develop a technology enabled business hub and it is also envisaged that this hub would look to maximise virtual working. Again, this would seek to reduce the amount of travel for staff but also reduce the services environmental impact through increased paperless working.
- 5.10.2. By its nature, and through continued joint working with public health and the Lifestyle Centres, Care4CE will continue to promote healthy lifestyles with its service users and believe that the creation of an SLE will enable the development of a community hub style approach to service delivery in the future.

6. Ward Members Affected

- 6.1.1. The recommendations of this report are applicable borough-wide. It is anticipated that the localities model will improve service delivery across Cheshire East.

7. Consultation & Engagement

- 7.1.1. Public consultation took place between December 2018 and March 2019. Details of this can be found in Appendix A.

8. **Access to Information**

- 8.1.1. There are no further supporting documents other than those shown in the following appendixes.

9. **Contact Information**

- 9.1. Any questions relating to this report should be directed to the following officer:

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