Cheshire East Council

Cabinet

Date of Meeting: 5th December 2017

Report of: Mark Palethorpe (Acting Executive Director of People)

Subject/Title: Commissioning of Care at Home (Domiciliary Care)

Portfolio Holder: Cllr Janet Clowes, Adult Social Care and Integration
Cllr Jos Saunders, Children and Families

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1. Report Summary

1.1 The purpose of this report is to set out the rationale for re-commissioning care at home provision for adults and older people with low level, non-complex care and support needs residing in Cheshire East. It is proposed that the service is commissioned in conjunction with Eastern and South Clinical Commissioning Groups (CCGs) and that Children's Care at Home services are commissioned simultaneously.

The commissioning question we have posed is:

"*How do we ensure that Cheshire East Council consistently commissions high quality personalised care at home that is flexible, delivers the agreed outcomes, is enabling in its approach, value for money and which engages providers in a meaningful way?"*

1.2 Effective and responsive care at home provision, delivered by externally commissioned, independent, Care Quality Commission registered care at home providers, can assist people in remaining in their own homes for longer and maintaining their independence. This is done by providing care staff who encourage and support people to maintain and regain their confidence to do tasks for themselves, rather than having tasks done for them, which creates a reliance on carers and can result in people needing to access permanent residential care sooner than might otherwise be the case.

1.3 A revised approach to both the commissioning and the delivery of care at home provision, linking in with services delivered by the local community, community hubs and connected communities will enable commissioned providers to work with individuals to deliver their care in a more personalised and flexible way which puts the individual at the centre of the package and allows them to direct how their care is delivered on a daily basis.

1.4 It is proposed that the Cheshire East service is commissioned jointly with South

and East CCGs with Cheshire East Council as the lead Commissioner. It is anticipated that this would be facilitated via a Memorandum of Understanding between the parties which would set out funding and contract monitoring arrangements.

1.5 It is further proposed that Children's Care at Home services are commissioned alongside the Adults service as part of a holistic approach.

2. Recommendations

2.1 Cabinet approves Cheshire East undertaking the re-commissioning of care at home services which are procured in partnership with both Eastern and South Cheshire Clinical Commissioning Groups, with Cheshire East Council as the lead Commissioner.

2.2 Cabinet approves the procurement of Children's Care at Home services as part of this process.

2.3 Authority be delegated to the Executive Director of People in consultation with the Portfolio Holder for Adults and Children & Families to;

2.3.1 following the prescribed procurement process to award contracts to suppliers; and

2.3.2 in consultation with the Director of Legal Services to enter into contracts with the successful suppliers

3. Reasons for Recommendations

3.1 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. Key tensions alongside this 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.

3.2 There is a need to transform the care and support offer to ensure Cheshire East has greater capacity and an improved range of services that are outcomes based and value for money.

3.3 Care at Home fees were last reviewed in 2015/16 and uplifted in April 2016. The direct payment rate for care at home is lower than the commissioned rate; therefore not enabling individuals to purchase care at home directly from providers. This is an anomaly that will be addressed by the new Care at Home fees review.

3.4 East and South Clinical Commissioning Groups currently commission

Continuing Health Care from our care at home market. The re-commissioning presents an opportunity to jointly commission integrated care and support services with both CCGs which could include discharge to assess beds, step

up/step down beds and more specialist provision for complex needs. The commission will build on the findings of the CCG commissioned report into the transformation of Older People's services undertaken by independent consultants Fusion 48.

3.5 The joining up of commissioning and contracting will provide partners with an opportunity to promote and champion a single and shared view of high-quality care and support. With our partners we need to ensure that health and social care services provide people with safe, effective, compassionate, high quality care and that as partners we encourage care services to improve, this may include quality payment premiums to providers.

3.6 The key risk to Social Care is maintaining the quality, capacity and sustainability of the care market. Any market failure or disruption will have a huge impact not only on delayed transfers of care but the critical care provided in the community to thousands of vulnerable individuals.

4. Other Options Considered

4.1 Options to Jointly Commission with Cheshire West and Chester were explored, they initially agreed, however subsequently changed their decision.

4.2 The demand for care services will be significant over the next few years and we need to sustain and stabilise both the care at home markets and care home markets, alongside managing the budget, therefore doing nothing is not an option.

4.3 Do nothing and continue to spot purchase.

5. Background

5.1 For the past two decades the focus of government policy has been to widen choice and increase autonomy for people who receive support services. The Care Act 2014 places responsibility on local authorities to ensure that people's wellbeing and the outcomes which matter most to them will be at the heart of every decision made about the care and support they receive. Every person using health and social care should receive quality services that promote their independence and lead to an improved quality of life.

5.2 Independent consultants are undertaking a review of care at home fee rates, with a view to making recommendations for the future fee structure of the new contractual arrangements.

5.3 Officers are considering a range of options for commissioning a new model of care at home which delivers a range of services such as rapid response, on-going reablement and rehabilitation services and flexible packages of care including incentives such as payment by results to ensure people receive the right care, at the right time, at the right place and at the right price.

5.4 Officers are considering the options of moving to a geographic patch based model of care at home, with a smaller number of preferred providers for each geographical area and a select list of pre-approved and specialist providers sitting behind the preferred provider model.

5.5 It is paramount that the new model is co-produced with providers and customers.

5.6 As part of the commission a review of all internal processes from point of access be undertaken to ensure care at home services are only used when really needed.

6. Demography and Population level data

6.1 The key findings from the Joint Strategic Needs Assessment are as follows:-

6.1.1 In Cheshire East the proportion of the population who are aged 65 years and over is around 22% (n≈82,240) in 2015.

6.1.2 The number of residents aged 65 years and over varies across the Borough, with over 4 times more pensioners living in some wards compared to others; 3,104 people aged 65 and over live in Poynton West and Adlington compared to 675 in Crewe South.

6.1.3 The trend in people living alone is likely to see the largest increase in women aged 75 and over.

6.2 In summary, the population of Cheshire East is ageing and the Borough needs to Increase the capacity and capability of care at home services to enable people to remain living at home longer, reduce the need for a move to a care home and provide timely and appropriate care.

7. Current Commissioning position

7.1 Care at Home is one of the largest contracted services that the Council commissions in the external care market with approximately 1,300 adults and older people in Cheshire East supported to live at home.

7.2 The Council currently spends approximately £13.5 million per annum on Care at Home services and a further £13.7 million per annum on Supported Living services. Supported living is used to describe the arrangement whereby someone who already has, or who wants their own tenancy or own home, also has support from a “Care and Support” provider to help them live as independently and safely as possible.

Night Support provision across both services currently costs the Council £2.6 million per annum.

7.3 The Council currently contracts with 97 Care Quality Commission registered

Care at Home providers via “spot purchasing” arrangements. 73 providers deliver services in “blocks” of 30 minutes, 45 minutes and 1 hour calls and 44 deliver Supported Living provision, i.e. blocks of hours of support or 24/7 support to younger adults with a range of complex learning disabilities, physical disabilities and mental health needs. A number of providers deliver both services within Cheshire East.

7.4 The care at home market in Cheshire East is composed primarily of small and medium sized providers (SMEs). New providers who wish to provide care at home services undergo a rigorous assessment before they can provide services under the spot purchasing arrangements.

7.5 The majority of care at home providers operate in the main towns within the Borough, such as Crewe and Macclesfield, with fewer providers operating in the more rural areas. This can often create delays in providing care and support to customers living in rural settings.

7.6 While there are a large number of care at home providers, the majority of care, approximately 80%, is carried out by 20 providers. There are a further 4 providers which are considered to be ‘strategic’, i.e. they provide very specialist support or are the only provider operating in a geographical area.

7.7 While such a high number of contracted providers offers a level of customer choice, it can result in care staff moving between care at home providers, with little or no notice, resulting in providers having to hand back work as they do not have the staff to cover the calls. Often the provider who has recruited these staff from the rival provider will then ‘pick up’ the handed back packages. The care workers can move from one provider to another but due to recruitment processes they are not necessarily going to be the same carers going into to the customers immediately, the customer may also not want to move with the carer to the new provider. This can result in disruption for customers in terms of continuity of their care and support.

7.8 The high number of providers also makes it difficult for the Council to develop effective working relationships with providers and lead to a more reactive rather than proactive approach to contract management.

7.9 The Council’s approach to care at home is very traditional; packages are commissioned based on time and task. Care at home providers are still commissioned to deliver activities such as shopping, cleaning, household support, social activities / engagement and medication only calls which could be provided by services already available in the community rather than via a more costly care at home package. In addition little has been done to develop the market in terms of delivering specialist provisions, such as support for families & children and intrusive interventions such as peg feeding and stoma care.

8. Disadvantages of the current commissioning model

8.1 The current contractual arrangements have been in place since 2011. All current provision is commissioned on a 'spot contract' basis i.e. on an individual customer basis. While there are some advantages to this model in terms of providing greater choice to customers who opt to self-direct their care and support, it is not conducive to market stability or consistent high quality practice.

8.2 The lack of guarantee that is offered to providers can be detrimental to service consistency and continuity, and monitoring is difficult in openly competitive situations where there are a large number of providers. This approach also fails to offer commissioners any potential economies of scale and is deficient as a planning tool.

8.3 This model of commissioning can impact on provider's abilities to recruit and retain care staff, provide continuity of care and impacts on the Councils ability to source care in hard to serve areas,

8.4 The current commissioning model does not support providers to develop viable rounds or to take ownership of a geographic area. Rather than encouraging competition the large number of providers operating in certain geographic areas has led to providers actively choosing not to pick up complex packages, resulting in delays in care being sourced.

8.5 The current arrangements do not give the Council's commissioner the opportunity to arrange for fast and responsive services, as well as services with a consistent level of quality. Nor does it give providers sufficient assurance of on-going business to encourage them to attract more people into social care by employing staff on guaranteed contracts.

8.6 The current commissioning arrangements only include Cheshire East Council. As our associated clinical commissioning groups utilise a number of the same care at home providers, as well as facing the same challenges in delivering high quality, cost effective care. Therefore we will look to joint commissioning arrangement with the two Clinical Commissioning Groups.

9. Care Quality Commission and Cheshire East Council Quality Ratings of Care at Home Providers

9.1 The Council is responsible for ensuring that all commissioned services are delivering high quality care and support services which meet the needs of our residents.

9.2 Care at Home Providers are subject to regular inspections by the Care Quality Commission as well as at least annual quality assurance visits from the Council.

9.3 The following data shows the Care Quality Commission and Council ratings for all 97 registered and commissioned care at home providers (including

Supported Living) delivering services on behalf of the Council as at the 31 July 2017. Of the 97 Care Quality Commission registered, care at home, the ratings are broadly comparable to that of the neighbouring authority (Cheshire West and Chester), the regional and national picture.

Care Quality Commission ratings	Number of providers	%
Outstanding	0	0
Good	67	69
Requires improvement	18	19
Inadequate	0	0
Not yet rated	12	12
Totals	97	100%

10. Care Fees

10.1 The Council last reviewed the care fees paid to Care at Home Providers during 2015/16. The fee review was undertaken by independent consultants and recommendations were presented to Cabinet in February 2016. Cabinet agreed the recommendations and fees were uplifted to the current levels.

10.2 There is an urgent need to undertake a review of care fees to ensure that the Council is meeting its responsibilities under the Care Act to provide an affordable, viable and sustainable care market and to address anomalies within the current fee structure which are described below. An independent organisation which is a subsidiary to CIPFA has been appointed to undertake the review. They will work with providers to develop the approach to ensure maximum engagement in the process.

10.3 The fees currently paid by the Council to care at home providers are:

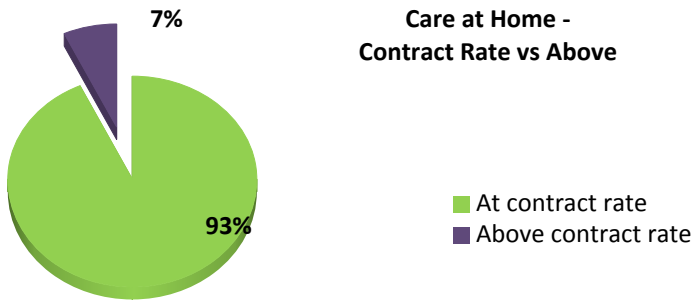
Call length	Rate
30 mins	£8.20
45 mins	£10.65
60 mins	£14.20

10.4 As the Council currently pays a blended rate for 30 minute calls, (this is where the payment for a 30minute call is not exactly half of the hourly rate, it is a specific rate only for 30min) there is a need to carefully consider the impact on the market of moving to flat hourly rate. There is a high risk of providers handing back work or becoming financially unviable if, as part of a move to a flat hourly rate, the new hourly rate paid to providers equates to less than two 30 minute calls at the current rates. From discussions with providers around the rates, they advised that it would not be financially viable

for them to support customers with 30minute calls should a flat hourly rate be implemented.

10.5 As part of the fee review in 2015/16 the Direct Payment rate was increased and moved to a flat hourly rate, previously the Direct Payment rate had been the same as the commissioned rate. As a result care at home providers received £7.20 for a 30 minute call paid for via a direct payment arrangement or £8.20 via a commissioned service. The impact was a number of providers either handed back, requested an increase or refused to pick up any new direct payment packages.

10.6 The majority of care at home providers currently accept the current contract rate. However, under the current system it is sometimes necessary to pay above the contract rate in certain situations where individuals live in particularly hard to serve areas and or very rural parts of the Borough. The higher rate would also include a certain amount of travel time for the staff member to travel to such calls. As at June 2017 the number of Care at Home Packages at Contract Rate = 1,213 out of 1,307 = 92.8% as shown in the diagram below.



11. Provider Relationships and Engagement

11.1 The Council's relationships with its care at home providers in the past has been limited. Despite this there is a willingness from the key providers in the market to engage with and work with the Council to re-design services. This has been agreed and taken forward via a Provider Steering Group and following on from that some Task and Finish groups which providers regularly attend as detailed below.

11.2 A series of meetings have been held with care at home providers and senior Council Officers since April 2017 to start building relationships and exploring how both parties can work together to co-produce the new model of care at home provision. Council Officers have also engaged with Children's, East and South Clinical Commissioning Groups to ensure they are also fully involved in co-producing the new model of care at home provision.

11.3 A provider steering group is now in place and meeting on a monthly basis the meeting is chaired by the Director of Commissioning to offer assurances to Providers of the Council's commitment to working in partnership.

11.4 One of the key messages to have come out of these meetings, is an urgent need to review the Council's internal processes to ensure that care at home providers receive appropriate information about customers as part of the referral process, that correct contractual agreements are issued in a timely manner, that systems are updated immediately when packages are commissioned or amended to ensure correct payment is made and that reviews take place when requested and involve the care at home provider. A group has been set up to review and refine our internal processes.

11.5 In addition a series of groups have been set up to work with providers to explore the following areas as part of the recommissioning work:

- Care Fees
- Internal processes
- Recruitment and Retention
- New service model
- Contract Monitoring / Quality Assurance

11.6 Alongside the re-commissioning work, a separate pilot is being run in the Crewe Adult Social Care Team area to look at how local community based services can support care at home providers to reduce existing care packages or deliver them differently. This pilot is being worked on jointly by Adults Commissioning, Adults Operations, Communities and Partnerships and four Care at Home providers.

11.7 As a result of the above, there is already an improvement in communication and relationships between commissioners and providers, which needs to be built on and maintained moving forwards.

12. Timeline and practical considerations

The proposed timeline is as follows

Action	**Milestone**
Cabinet Decision	5th December 2017
Tenders published	January 2018
Tender awarded	June 2018
New services begin	June 2018

12.1 The transition to new contracts and providers will need to be carefully and sensitively managed. Commissioners are currently working on a Transition Plan to ensure that the process runs smoothly with minimal disruption to customers' care and support.

12.2 Commissioners are working with colleagues in Media and Communications to develop a Communications Plan and with Business Intelligence to ensure that there is an appropriate approach to consultation.

12.3 There are a large number of staff currently delivering Care at Home services. Legal advice will be sought on whether there are TUPE implications associated with the commissioning and procurement.

12.4 An Equality Impact Assessment has been undertaken for the process and this will be updated throughout as feedback is received via the consultation process. Mitigating actions will be considered and implemented where practical and cost effective.

13. Wards Affected and Local Ward Members

13.1 All Ward members

14. Implications of Recommendation

14.1 Policy Implications

14.1.1 The proposal links with the Councils commitment to providing client choice in social care provision and ensuring best value for service delivery

14.2 Legal Implications

14.2.1 There are numerous pertinent statutory duties which the Local Authority must consider when undertaking this exercise. These duties are contained within the Care Act 2014, the Children and Families Act 2014 and Children Act 1989 and statutory guidance. In summary these are as follows: -

14.2.1.1 Section 5(1) Care Act 2014 places a duty upon the Council to promote 'an efficient and effective local market with a view to ensuring that there is a variety of providers and high quality services to choose from'.

14.2.1.2 Local Authorities are under a general duty to implement preventative services that reduce the need in adults for care and support and the need for support to carers (Section 2 Care Act 2014). Whilst there is no statutory duty within the Care Act, 'supporting people to live as independently as possible for as long as possible is a guiding principle of the Care Act' (paragraph 1.19, Revised Statutory Guidance).

14.2.1.3 Statutory guidance accompanying the Care Act 2014 is clear that the way services are commissioned has a direct impact upon 'shaping the market' (Paragraph 4.4) and requires that Local Authorities must 'consider how to ensure that there is still a reasonable choice for people who need care and support' (Paragraph 4.39) and to ensure that their fee levels

do not compromise the service providers' ability to employ people on at least minimum wage with sufficient training (Paragraph 4.31).

14.2.1.4 Further to this, Section 6 and 7 create general statutory duties for public bodies to work together more closely and where a Local Authority requests assistance, other bodies have a specific duty to assist. This applies to CCGs, for example.

14.2.1.5 Section 8 of the Care Act 2014 mostly focusses on the ways in which services can be delivered for eligible adults and confirms that these services may be delivered by itself, delegated or by making direct payments.

14.2.1.6 Section 79 of the Care Act 2014 enables Local Authorities to delegate all of their functions under the Act with the exception of charging and safeguarding. It is important to note however that the Local Authority retains ultimate responsibility for the acts or omissions of delegated bodies.

14.2.1.7 Section 9 of the Care Act places a duty on the Council to assess adults triggered by the appearance of need. It then places a duty to meet the needs of adults meeting the eligibility criteria (Sections 18-20). Detailed Assessment regulations, statutory regulations and case law underpin this duty. It is essential if the function of assessing adults is delegated that we are assured those assessing have suitable experience and training. The eligibility criteria underpinning this duty is also very prescriptive.

14.2.1.8 Section 10 of the Care Act places a duty on the Council to assess adult carers triggered by the appearance of need. It then places a duty to meet the needs of adults meeting the eligibility criteria (Sections 18-20). Detailed Assessment regulations, statutory regulations and case law underpin this duty. It is essential if the function of assessing adults is delegated that we are assured those assessing have suitable experience and training. The eligibility criteria underpinning this duty is also very prescriptive.

14.2.1.9 Section 14 Care Act 2014 gives Local Authorities a power (as opposed to a duty) to charge for residential and domiciliary care. There is again substantial detail in Statutory Guidance and Regulations around charging methods and assessment.

14.2.1.10 There are additional duties within the Care Act and Children and Families Act 2014 towards young carers, transition to adulthood for Children with Disabilities that will need to be taken into account to make sure we have addressed all areas.

14.2.2 In terms of this commissioning exercise what is clear is that there is a need for ongoing legal advice regarding the specific proposals made. The above summary will not alone provide the necessary level of detail.

14.2.1 It is proposed that the Council will provide care at home services in conjunction with Eastern and South Cheshire CCGs. The Council will lead on the commission but the CCGs will remain in control of their own budgets and call off their own provision.

14.2.2 If during the course of the procurement process it is decided that there will be a closer collaboration (whereby the Council controls the collective budget and commissions services on behalf of the CCGs) then this a more formal partnership arrangement. The parties would need to enter into a Memorandum of Understanding to set out the obligations of the parties in relation to the provision of services and confirm the funding contributions and the responsibilities of each party in delivery of this service. Appropriate authority to enter into such a partnership would need to be sought in accordance with the Council's Finance Procedure Rules.

14.2.3 This proposed new way of commissioning services is entirely in keeping with the statutory duty to work together, as set out at point 14.2.1.4.

14.2.4 The aggregate value of the care at home provision is such that these services must be procured in accordance with the Public Contracts Regulations 2015 and in compliance with the Council's Finance and Contract Procedure Rules. This will require a fully OJEU complaint procurement exercise. The Service is engaging with Legal Services and the Council's Corporate Procurement Team in this process.

14.2.5 Commissioning care at home in collaboration with partners and following a period of review and engagement with service users and stakeholders will assist the Council in meeting its duties under Section 5 of the Care Act to ensure sustainability of the market for services meeting the care and support needs of individuals**.** This approach to commissioning is a change to the way services are currently provided and the Service have engaged with stakeholders including service users to co-produce the service specification. Under the Equality Act 2010, the Council is required to identify the impacts of any decisions, policies etc. on certain protected groups to ensure equality is promoted, and inequality minimised. For example, there must be an assessment made of the impacts on groups or individuals who are disabled, who belong to ethnic or racial groups, on the grounds of age or sex discrimination etc. An Equality Impact Assessment has been completed and can both assist in evidencing that these equality duties are being met and can inform decision taking. A review of this Equality Impact Assessment will be needed taking into account the responses of all stakeholders at consultation stage.

14.2.6 Undertaking an open and transparent review of fees paid to care at home providers is a means to ensure that the Council meets its duties under the Care Act 2014 to formally consider the cost of care locally when setting care fees.

14.3 **Financial Implications**

14.3.1 There are currently 73 providers with a weekly spend of £259,000 which equates to £13,468,000 per year.

14.3 Equality Implications

14.4.1 In making the decision to re-commission care at home and move to a system of more local and personalised care at home services Cheshire East Council has had due regard to the Public Sector Equality Duty as set out at S149 of the Equality Act 2010. Equality Impact Assessment has been carried out and will be updated as part of the commissioning process.

14.5 **Rural Community Implications**

14.5.1 The proposal will support those in rural communities to continue to access care services in a range of locations across Cheshire East.

14.6 **Human Resources Implications**

14.6.1 Whilst the proposals do not envisage any HR implications for the Council, TUPE may apply to existing care at home providers.

14.7 **Health and Wellbeing Implications**

14.7.1 The One You Cheshire East campaign encourages people to look after their health. The availability of local and personalised care at home services for people in Cheshire East will support this work by encouraging people to look after their health and referring people into the One You Cheshire East services.

14.8 **Implications for Children and Young People**

14.8.1 The proposal will ensure that Adult Social Care is meeting it duties under the Care Act 2014 and Children and Families Act 2014.

14.8.2 The proposal will offer an improved pathway for young people transitioning from Children's Services to Adults Social Care.

14.9 **Overview and Scrutiny Implications**

14.9.1 The paper has been to Overview and Scrutiny and any notes actioned.

14.10 **Other Implications (Please Specify)**

14.10.1 None.

15 **Risk Management**

8.1.1 Ensuring adequate services in the independent sector market to meet current and future needs of local residents is critical.

8.1.2 By taking account of the local fee structure when making recommendations the Council is mitigating this risk, both for the Council and residents.

16 **Access to Information**

9.1 The background papers relating to this report can be inspected by contacting the report writer.

9.2 Some of the key documents are Care Act 2014, Joint Strategic Needs Assessment, and Cheshire East Commissioning Plan 2017.

17 **Contact Information**

Contact details for this report are as follows:

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