A FAIRER DEAL FOR ADULT SOCIAL CARE USERS AND THE CARE WORKFORCE

REPORT OF CHIEF OPERATING OFFICER

AGENDA ITEM: 13

PORTFOLIO: HEALTH, SOCIAL CARE & WELLBEING - ADULT SERVICES

Reason for this Report

1. This report seeks Cabinet approval for the establishment of a Task Force to examine the way in which the Council provides and commissions Adult Social Care and a process to engage the wider stakeholders in the process. The terms of reference for the Task Force will be to make recommendations that:
   - Seek to modernise and reshape the market for Adults Social Care in Cardiff;
   - Seek to improve the pay and conditions of the Adults Care workforce;
   - Enable the Administration to be defined by the way in which Cardiff Council treats its most vulnerable citizens.

2. The Task Force will be established immediately after Cabinet approval and a wider Stakeholder group will also be established to further promote communication and engagement.

3. It is intended that the initial report of the Task Force will be completed by the end of May 2013, and a Cabinet report produced detailing the first steps for change will be taken to the June 2013 Cabinet

Background

4. Adult Social Services in Cardiff, as across the rest of the UK have primarily two statutory responsibilities
   a. To undertake assessments of people’s needs in the context of the NHS and Community Care Act 1990, and define the support that people are entitled to using nationally described eligibility criteria.
   b. Secure the appropriate services to meet those needs, using a mixture of Council and externally provided services.

5. This report will focus on the means by which the Council secures support
services for people who live at home from outside organisations and how it might be significantly improved.

6. These services include domiciliary care, day care and community support provided by the independent sector to older people, people with learning disabilities, people with physical disabilities, people with mental health difficulties and those with substance misuse problems.

7. The cornerstone of the required change is highlighted by the statements in the Welsh Assembly Government Policy Document “Sustainable Social Services for Wales: A Framework For Action Welsh Assembly Government 2011”

“3.11 We recognise that private and independent providers play a crucial role in social care but do not believe that the market should determine priorities. We believe that, collectively, we should drive the market, not allow market choices to drive us. Social care must be delivered within a public service ethos and we will expect those who wish to be service providers to embrace this value base.

“3.18 Service users and carers, including children and young people, need a stronger voice in service design and evaluation. We expect a much greater range of services to be run by citizens themselves, as service users, carers and as people delivering those services. Social care is ripe for the development of social enterprises. We will work with stakeholders to look at how the barriers to their development can be overcome. It will be necessary to consider how new sources of funding can help create new models of service and we will explore how social impact bonds could play an important role in this.”

8. The issues highlighted in the Sustainable Social Services paper indicate some of the challenges of the current care system.

9. There are also wider issues that have been raised in other reports:

“Statistically speaking, if we extrapolate the numbers indicating that good quality care is inconsistent and, for some, non-existent, then nationally, a significant figure of around 4000 is revealed. The emotional and physical impact of poor care and poorly trained workers on people’s experiences is notable and the need for more dementia training highlighted.

Far too many people indicate that they rarely or never have enough time with their care workers and this issue attracts more negative comments than any other. Frustration is also expressed at a lack of service consistency and the frequent changes to care workers. Poor communication in notifying services users of these changes only adds to this frustration and distress.”

Older Persons Commissioner for Wales 2012.

10. Currently the Council spends circa £104m a year on Adults Social Care. of
this approximately £70m per year or 67.3% is commissioned externally.

11. To give some idea of the volumes, Cardiff Council arranged over 1.2 million hours of homecare in 2012/13 through the independent sector to approximately 2500 people. This service alone had a value of £12 million in 2011/12 through contractual arrangements which are due for retender in 2014.

Issues

12. A significant proportion of the commissioned services are purchased through large contracts let after a process of Competitive Tendering.

13. There are four major issues with these arrangements, viz:-

(a) Many users tell us that the services they receive are inflexible and frequently do not best or completely meet their needs. We need to reform the Council's approach to arranging care to create an environment where service users can have trust and confidence in their control over services.

(b) For people who wish to use them, direct payments (the doubling year-on-year of which are one of the ‘Y1 Priorities’) are a proven way of improving the flexibility of services to users, increasing choice, better meeting needs, promoting independence. They can also be cheaper to deliver directly.

(c) Competitive Tendering has the effect of pushing down prices and as a consequence, of depressing pay and conditions (‘the Race to the Bottom’ on pay and conditions). The process of Tendering is itself complex, time-consuming and expensive all round.

(d) For those people who choose to continue to have their services arranged by the Council we need to reform the way we work with providers to achieve more flexible arrangements with agreed operating principles geared to deliver the best services possible for the service user.

14. Adult Care is expensive and a growing cost, yet there is resistance to paying for it either through taxation, direct contribution or insurance. The care provider workforce is thus, despite the value of and demands for adult care, amongst the lowest paid.

15. The proposed approach is based on the philosophy that by meeting peoples needs in a more flexible way which maximises their control, we can make current resources go further, and by creating a more sophisticated and flexible relationship, we can do more with less.

16. The Council therefore needs to optimise the use of resources owing, inter alia, to the unremitting demographic pressure on adults care expenditure.

Proposals

17. The proposals which the Cabinet are asked to approve are as follows.
To establish a Task Force to examine and recommend radical, innovative and workable solutions to redress the problems outlined earlier.

It will be established in January 2013 and will issue a preliminary report in late May 2013, which should result in the recommendations being brought to Cabinet in July 2013.

The Task Force will consider the need to reshape and modernise the market for Adult Social Care by reducing significantly or abandoning the Council’s reliance upon Competitive Tendering, in its current form.

- Adult Services will continue to promote, develop and refine Direct Payments, because they are a provenly superior way to meet the care needs for many adults.

- Inter alia, the Task Force will be asked to explore the creation of a Community Interest Company to engage in the provision of adult care, The principal objectives are to improve the quality of adult care and to counteract the ‘Race to the Bottom’ on pay and conditions. For those people who want the Council to continue to arrange their services, the formation of a Community Interest Company to act as the overarching body to manage the range of service provision which the Council currently commissions - “Cardiff Cares”. The principal objectives are to improve the quality of adult care and to counteract the ‘Race to the Bottom’ on pay and conditions.

- The Task Force will also consider how Council expenditure on commissioned services which is currently swallowed up by ‘shareholder value’, in future can be directed to improving service quality, improving pay and conditions and optimisation of the Council’s resources -‘Gainshare’

- The Task force will have as its primary objective establishing a set of proposals that enable this Administration to be defined by the way it treats the city’s most vulnerable citizens.

- The Task Force will select its membership from Elected Members Trade Unions, Academia, the Third Sector, Trade Unions, Business, Service Users, Carers and Staff. It will have the capacity to call on information from a wide range of services. The engagement of the Community and Adult Services Scrutiny Committee in the process of development will also be key.

- A Stakeholder Engagement Group will represent user views to the Task Force, ensuring that the solutions are co-designed.

The context in which the Task Force will operate will be of market reform and modernisation.

18. Areas under consideration will include:-
Making Direct Payments (DPs) available to many

19. Through a programme of improving support and publicising the benefits, we will maximise the use of DPs in all appropriate cases.

20. We already have a DPs ‘Champion’ on board, but the organisation will need to prepare and adjust to absorb these changes, which means that:-

- In future adult social work in this context will increasingly be focused upon Assessment, Review and Adult protection with a focus on working with people to define the outcomes they want from care.
- The Council’s payment, monitoring and contract management functions will need to be reorganised, retrained and rationalised to manage a far larger volume of DPs for Domiciliary Care and to ensure that quality and safeguarding is of the highest quality.
- We will need to publicise the benefits of DPs and rebut negative assertions, e.g. ‘this is a hidden cut to services’ (it is not).
- Social work will also need to refocus on the concept of ‘Account Management,’ which will require workforce training.
- There will need to be a campaign, rapidly to ensure that where people which to access DPs, they are able to in a timely and convenient way.

Making it easier to access high quality Direct Payments

21. A pre-requisite of successful DPs strategy is Brokerage. We need to make sure that there is a range of high quality, quality-assured personal assistant suppliers and services for service users to employ, if they choose to.

22. The existence of a large number of DP service users will itself create a larger group of potential purchasers. DPs may well be less commercially attractive to existing providers for two reasons:

- DP service users can be more personally engaged in the quality and responsiveness of what they themselves purchase and can exert more control.
- Service providers would need to ‘knock on a thousand doors’ as opposed to one (the Council as contract-letter)

23. We need to recognise that DPs and Competitive Tendering become mutually-exclusive. This is because, a high proportion of cash is in DPs, it cannot by definition also be in large, long contracts where business volumes can be guaranteed.

24. To form a DP Brokerage we have three options. These are:

   (i) Run an In-house Brokerage, possibly converting our current Payments/Contract management capacity and supplementing it with training and complementary expertise.
(ii) Go out to contract for an organisation to run a Brokerage upon the Council’s behalf.
(iii) Expand and reshape our current contract with Diverse Cymru, which runs a Managed Banking Service and Direct Payments support service for us.

Reform the arrangements for providing the services arranged by the Council – the “Cardiff Cares” model.

25. As the major part of the reform of the provision of services, the option to have high quality services arranged by the Council will be strengthened. This will require a fundamental change in the way that the Council secures these services.

26. In order to achieve this reform, it is proposed to establish an arms length Community Interest Company. The company would take overall responsibility for managing the provision of services which the Council currently commissions. This will be either through direct services or arrangements with other providers.

27. Cardiff Cares will ensure that the services provided are created in the conditions of ethical and transparent partnership working.

28. Key to being engaged in the process will be a commitment to
   - Work with the service user to create a flexible package which best meets the service user’s needs.
   - Work flexibly across providers and beyond to achieve the best outcomes for service users.
   - Employ staff on good terms and conditions, and to recognise the Living wage.
   - Provide comprehensive and regular reports that indicate the delivery of quality and value for money.
   - Where the organisation is for profit, to adopt an open book approach which specifies any profit and its disposal.
   - To support Cardiff and its communities, through investment of capital and revenue.
   - Ensure Care Standards and appropriate Safeguarding.
   - To work alongside community and neighbourhood groups to develop shared approaches to care and supporting the most vulnerable
   - To work in a way which seeks to value the contribution of staff and maximises their opportunity to influence services through co-operatives and other measures.
   - In this way we will achieve a fundamental shift in the way that citizens access services, which in tandem with making Direct Payments a more attractive and accessible option will ensure that all services users can get the consistency and flexibility of services that they and we should expect.
Community Interest Company (CIC)

29. A CIC is an idea which already enjoys support and enthusiasm from a variety of sectors including Trade Unions.

30. A CIC is a necessary concomitant of market reform, counteracting the ‘Race to the Bottom’ on pay and conditions, optimisation of increasingly stretched Council resources and crucially, rapidly improving outcomes for some of the City’s most vulnerable citizens.

31. Cabinet will be asked to authorise a sub group of the Task Force with the requisite expertise to examine and resolve the critical cost, finance, operational and commercial issues.

32. The Task Force itself will critically examine and resolve the financial and operational issues connected with DPs, Brokerage, the “Cardiff Cares” model and Market Reform and Modernisation. An additional briefing note providing further information on CICs is attached as Appendix 1 to this report.

Resources

33. The establishment of the team to support this process will require additional resources to support the transfer of 4 members of staff to this project for a period of 2 years from 1st February 2013. The period of 2 years covers the work required to support the task force and the initial period of implementation of the initial findings. It is anticipated that the staff transferred will require backfill and this is estimated at £150 000 per annum. Given the fundamental and critical contribution that this process can make to advance the development of Social Care Services across Wales, funding will be sought from relevant external sources. However in recognition of the Council’s fundamental commitment to realising the aspirations of the report the funding will be guaranteed from the Corporate Intiatives budget in order to protect against any shortfall in external funding achieved.

34. There will also be a funding requirement for the creation of a Community Interest Company, should that be an accepted recommendation from the Task Force. This funding will be required to pump prime the Company for the first few months of its life. It is anticipated that this funding would be returnable to the Council once the company has achieved full operation.

Reasons for Recommendations

35. Cabinet approval is sought to establish the Task Force to examine the way that the Council externally secures Adult Social Care. The Task force’s objectives will to recommend the most appropriate way that the Council can modernise and reshape the provision of Adult Social Care. This work will allow the Administration to improve pay and conditions for the Adult Social Care Workforce and be defined by the way that Cardiff Council treats its most vulnerable Citizens.
Legal Implications

36. The recommendation in this report is to establish a Task Force to examine the way in which the Council provides and commissions Adult Social Care. Legal Services understand that this Task Force will be established internally and the terms of reference for the Task Force will be to make recommendations as to the proposed way forward for Adult Social Care. It is understood that the proposals will be reported back to Cabinet for consideration mid-2013. The report also recommends the appointment of additional resources to support the process and HR advice should be sought in this respect.

37. Further detailed legal advice will need to be sought in respect of any models considered and any proposed way forward arising from the Task Force, including in relation to the governance arrangements that would apply, any potential employment law implications and the implications of any relevant legislation governing this area of activity. In addition, any proposals are likely, by their nature, to be caught by the Council’s Contract Standing Orders and Procurement Rules and, depending on the estimated value, procurement legislation.

38. In considering any future changes to service provision in this area, any models considered to make Adult Social Care available will need to be appropriate having regard to the needs and the care plans for the individual person involved.

39. The requirement to carry out an Equalities Impact Assessment should also be noted, along with the need for the decision maker to be satisfied that the proposals represent value for money to the Council and fits within the budgetary and policy framework.

Financial Implications

40. The issues to be considered by the Taskforce will have significant financial, legal and procurement implications for the Council and these will need to be addressed as part of the review and in any subsequent reports to Cabinet.

41. Although the report is clear in respect of the apparent shortcomings of competitive tendering, in many cases this is a consequence of national and European legislation requirements that cannot be disregarded. Undoubtedly the Council will also continue to be conscious of the risk of legal challenge and the need to evidence value for money in this regard. The Council has previously used a variety of methods to arrange service provision and continues to use a combination of spot contracts, framework arrangements and large contracts.

42. Any new arrangements must be capable of being funded within the approved budget set by Council both for 2013/14 and in future years. The report identifies the need to backfill four posts in Adult Services for a period of two years commencing 1st February 2013 with an estimated cost of £150,000 per annum. Although the Council will seek funding from external sources in respect of this expenditure it is proposed that the sum be
guaranteed from the Corporate Initiatives budget in order that there is no delay and to fund any shortfall not achieved from external sources.

43. The report also identifies the potential requirement to pump prime the setting up of a Community Interest Company if this were to be approved by Cabinet following consideration of the recommendations made by the Taskforce. Consideration will need to be given to the funding source for this liability as part of any future report on the setting up of such a company.

**Human Resources Implications.**

44. The recommendation in this report is to establish a Task Force to examine the way in which the Council provides and commissions Adult Social Care. It also includes the establishment internally of a 4 person team and relevant HR processes will need to be followed to establish the project posts and to fill them. Further detailed HR advice will need to be sought regarding any proposals put forward by the Task Force.

**Communications**

45. The work of the Taskforce will need to communicate with all stakeholders effectively. As has been described earlier there will also be a wider stakeholder network and this body will be the primary body for communication. A communication strategy will be developed to cover the work of the Taskforce and the Stakeholder Group.

**Conclusions**

46. The Administration wants to take this approach as it believes:

- This Council should define itself by how it treats the most vulnerable people it serves.
- That services will be improved significantly by bringing back the control of these arrangements much closer to the Council and to Cardiff's citizens.
- We need to end the race to the bottom in terms of pay and conditions, quality and choice.
- We must reform the current arrangements for arranging care, where the emphasis on markets and contracted services is clearly not fit for purpose.
- We can drive up standards of care and increase choice and control while reinvesting surpluses and Gainshare back into service delivery.
- We have an opportunity to drive up terms and conditions for some of the most poorly paid staff in the City and County, with payment of the Living Wage a clearly identified goal.

**RECOMMENDATIONS**

Cabinet is recommended to

1. approve the creation of a Social Care Modernisation Taskforce to
commence with immediate effect, to work along the lines of enquiry described above and to provide an initial report by May 2013.

2. approve the development of a Stakeholder engagement mechanism to work with the Social Care Modernisation taskforce.

3. approve the creation of a 4 person team to support the task force for 2 years and provide resources from the Corporate Initiative budget to a maximum of £150,000 per annum.

4. note that a Capital investment towards the creation of a potential new entity to take forward the initiative may be required in the future

ANDREW KERR
Chief Operating Officer
18 January 2013

The following Appendix is attached:

Appendix 1. A Community Interest Company (CIC)
A Community Interest Company (CIC)

The power to create CICs has existed since 2005. As the name suggests, they must address a ‘community interest’ which can be pointed to, in order to qualify.

CICs are Companies Limited By Guarantee, that is to say owned by and for the benefit of their members and in this case the ‘community interest(s)’ they are set up to serve. In this case the ‘community interest’ would be to provide care services, which fall squarely within this definition.

A distinction must be drawn with Companies Limited By Shares, which are normally run for profit, that is to say for the benefit of the Shareholders.

Rationale

Approximately 70% of the Adults Services Care Budget, which is to say circa £70m a year is purchased, of which a significant proportion is via services on longer term, large contracts (Competitive Tendering). In this context, profits generated from such contracts are directed to Shareholder Return.

It is validly arguable in the current climate of hugely increasing demand for Care Services and static or diminishing resources, that shareholder return upon Council expenditure which is competitively tendered is not the most efficient use of resources.

Competitive tendering is also an expensive, lengthy and time-consuming process.

For some time, competitive tendering has been used to reduce the price and cost of providing care services.

It is a mistake to conclude that there is an ‘either/or’ option, ie. to provide directly, generally perceived to be more expensive and less competitive or to tender competitively. The CIC option is a third way solution.

A return to direct provision is not an option on grounds of cost, efficiency of delivery and responsiveness; and the pension costs are simply now unaffordable; a reality recognised by Trade Unions.

Globalisation in developed economies has led to a ‘race to the bottom’ on pay and conditions. For example:

(a) Despite relentless growth in demand for adult social care, the public are generally unwilling to meet the costs from increased taxation or direct contribution and care workers are amongst the lowest paid in society.
(b) The process of Competitive Tendering, which is based largely on price, contributes to the ‘race to the bottom’ – because cost and return to shareholders are the key drivers for provider organisations.
A significant proportion of Council Services address the consequences of poverty, low pay and social disadvantage. It is arguable that it does not make sense on the one hand for the Council to provide services to alleviate disadvantage; and on the other to contribute to it, via competitive tendering.

The common flaw in competitive tendering and direct provision is that they both place the interests of service producers (Producer Interest) above the needs of service users, many of them vulnerable.

We therefore need to examine a more imaginative solution which reconciles the tensions between:

- Low pay/poverty
- Unresponsive, monopolistic services; and
- Equalisation of rights of consumers and providers.
- Promotes competitive working practices; and
- Enables co-design of business models and service solutions between consumer and provider, alike.

**Modus Operandi**

Improvement of pay and conditions and provision of high quality, responsive services need not be mutually exclusive. Synthesis can be achieved by:

- Putting every appropriate care package onto Direct Payments
- Setting up a Local Authority Trading Company (proposed model a CIC), which can compete for DPs in the open market.
- Competing on quality and responsiveness, not price
- Giving the workforce the morale, motivation and moral purpose of providing the best most responsively, by competing for success.
- The antithesis: a race to the top on quality and responsiveness with fair pay and conditions.
- Operating a social model in a business-like manner.
- Enshrining the principle of “Gainshare” – which means that surpluses will be recycled to support fair pay and conditions and the Local Authority Trading Company (CIC) members and stakeholders.

Making the generation of surpluses, through competitive trading, would be an explicit objective of the CIC.

Direct payments are a pre-requisite of success, because they create better user satisfaction by placing control in the hands of the user; and because they create a market in which the CIC can compete. Competitive Tendering and direct provision do not offer these benefits. Direct Payments are also on average 23% cheaper when Personal Assistants are employed.

**Precedents**

Some Councils have already established LATCs. Essex and Glasgow are good current examples.
Many Councils have established Arm’s Length Business Units which have been extremely successful.

The Yorkshire Purchasing Organisation (established 1974) is a good example of a long established local authority trading collective.

Many Councils have established ALMOs (Arm’s Length Management Organisations) to provide Housing Services.

**Market Dynamics**

Where the Council is unable for whatever reason to offer Direct Payments, it will need to be able to provide services directly.

For this reason it will be necessary to select a number of suppliers, preferably local, via call-off contracts who are able to provide flexibility, where the Council needs to make direct provision.

A pre-condition of qualification to become such an ‘Approved Supplier’ would be that providers agreed to replicate the pay and conditions of the CIC.

Any provider would of course be at liberty to compete for DP business in the open market.

The Council is not only the largest purchaser of social care, it is also the largest single provider and stimulus for economic activity in the City.

The CIC proposal enables the Council to exert its influence in ways which are both socially and economically beneficial.

A pre-requisite of Direct Payments is Brokerage. We have already examined how two other Councils (LBs of Barnet and Southwark), have developed this successfully.

What this means is that the Council must ensure that there is a vibrant market and a range of high quality service options, which service users can buy, if they choose to. This is known as market stimulation.

It is important to make a distinction between market stimulation and interference in and distortion of markets.

Brokerage will achieve this and ensure that there is a minimum of quality-assured purchase options for DP users to choose.

DPs alone will not raise the standard of care. This would be tantamount to saying: “here’s the cash, here are the Yellow Pages.” Brokerage is the equivalent to the Which Guide not the Yellow Pages (ie. services are compared, evaluated and quality assured.)

The options available for creating or procuring a Brokerage are set out in the main report.
Next Steps

The Task Force, if approved, will need as one of its key terms of Reference to assess the feasibility of a CIC in the context of DPs. In effect it will need to 'stress test' this proposal in terms of:

- Viability
- Working Capital and solvency requirements
- Governance issues
- The optimum Business Model and Operating Vehicle
- The provisions around Local Authority Companies which are Controlled, Influenced or Arms Length.
- Ownership and stakeholdership.
- Ensuring that any model proffered is commercially managed appropriately to ensure success, growth and sustainability.