



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**REPORT TO CABINET MEMBER FOR ASCH**

**11 January 2022**

**Report of the Executive Director ASCH**

**To seek approval to implement the urgent actions required to mitigate the acute staffing shortages currently being experienced across Adult Home Care services sector (both Direct Care and Private Voluntary and Independent (“PVI”) arising from the new Covid 19 variant**

**1. Divisions Affected**

1.1 County wide

**2. Key Decision**

2.1 Yes, as it is likely to be significant in terms of its effect on communities living or working in an area comprising two or more electoral areas in the County.

**3. Purpose**

3.1 To seek approval to address the lack of provider capacity across the in-house Direct Care and Private Voluntary and Independent (‘PVI’) home care sector created by the impact of the Omicron variant of Covid by seeking to temporarily reduce or suspend **non-essential** homecare support for a period of up to 8 weeks (circumstances permitting).

**4. Information and Analysis**

4.1 Background:

For the last 2 years Adult Social Care has been subject to the ongoing effects of the Covid pandemic. This has both directly and indirectly impacted on all aspects of our operational activity, the impact of which has been felt not only across the adult social care workforce but also on our partners in health and in the Private , Voluntary and Independent (PVI) Sectors. Since November 2021 with the emergence of the Omicron variant of Covid 19 there has been an exponential increase in the level of infection in the general population which has driven the demand for social care particularly to support patient flow through the acute hospitals. The current infection rates in the county and nearly 3 time the level that they were at the previous peak in January 2021. This has had a significant impact on an already weakened Health and Social Care system in a number of ways:

- Care providers in both residential and homecare sector are struggling to have sufficient staff to cover the services they have been commissioned to deliver. This is not only due to staff being off sick but also the impact of isolation on those who have been exposed but may have no symptoms. Please note that while the national guidance has relaxed it has been necessary to adopt a more cautious approach (endorsed by health and public health colleagues) due to the vulnerability of the people being supported by our services. This can flex where necessary to balance the risk of infection against the risk of service breakdown
- Data shared by The Local Resilience Forum (“LRF”) anticipates that the situation will continue to deteriorate with infection rates likely to peak in the next couple of weeks.
- We have already had instances of care agencies having to put contingency plans into effect as they are struggling to deliver the commissioned care.
- The impact of Covid outbreaks on residential providers has meant that there are now 50% of PVI providers who are unable to accept new placements, temporary or otherwise, due to being under infection control measures.
- Those that are not subject to outbreaks are struggling due to significant numbers staff self-isolating.
- All DCC Homes for Older people (HOPS) currently are not able to take new referrals due to either outbreaks or staffing issues.
- All DCC residential units for people with Learning Disabilities are subject to outbreak control measures and cannot accept new referrals.
- The lack of residential placements across the in-house and PVI homes has removed the safety net that we would have otherwise used whilst people wait for care packages to be provided in their own home.

#### 4.2 Steps we have taken to try to mitigate the situation include:

- Providing information, advice, and signposting to prevent, delay or reduce the need for ongoing funded care.
- Promoting the use of mainstream and universal available services.
- Promoting the use of equipment including assistive technology.
- Promoting strength-based approaches to meet assessed eligible needs to ensure that we are supporting people to deploy their personal and community resources to wherever possible.
- Promoting the use of direct payments to those who are able and willing take up these.
- Reinforcing the need for people to be flexible with times and frequency when offered care calls via brokerage
- Supporting people and their carers to make informed choices regarding the practicality of returning home with the package of care available which may be lower than they have been assessed for, rather than remaining in hospital or moving into a residential care home (where available; see above).
- Supporting existing recipients of homecare to look at alternative means of meeting their assessed needs (mainstream and universal available services, shopping services, voluntary support etc.)
- Continuing to fund providers at the contracted rate to maintain the viability of service.
- Paying out the workforce retention grant to PVI providers.
- Making an urgent appeal to all DCC staff, seeking volunteers who may be able to provide support to DCC's residential care homes. This includes staff who may not necessarily have the experience or training to act as care workers, but may be able to assist with emotional support, social activities, assisting with meals/drinks (where no specialist requirements), catering, domestic duties and laundry. This would enable the trained staff to focus on delivering personal care and medication.
- Seeking to redeploy trained staff from DCC day services into DCC residential homes, where possible.
- LRF are aware of the staffing difficulties and other Responders have been asked to assist with additional resources to help address the shortfall of 5000

care hours per week, which to date we have not had a response

- seeking support from agency staffing
- maximising the use of additional hours for current staff
- exhausting all opportunities to use relief staff
- reviewing dependency assessments to ensure their clarity on minimum essential care needs for each resident and adjusting down staffing deployment to meet minimum needs

#### 4.3

The decision-making process supporting the proposed temporary arrangements:

We have worked with our homecare provider services (both DCC Direct Care and PVI) to RAG rate all recipients of homecare support whose care packages are commissioned by DCC. This is in line with the approach undertaken in February 2020 in accordance with the Care Act Easements, which were operational at that time. The RAG rating will identify three categories of homecare clients in order to identify any care packages, or elements of a care package, which are non-essential:

- Red: people with no elements of their formal care that could be safely reduced or removed for a period up to 8 weeks
- Amber: people with some elements of their formal care which could be safely reduced or removed for a period up to 8 weeks
- Green: people with most or all of their formal care which could be safely removed for a period up to 8 weeks

Initial RAG ratings have been identified by the providers on the basis that they have the most contact with the people they support and have a sound awareness of whether there are elements of a person's package of care that are **essential** and **non-essential**. The providers are also best placed to react promptly to a change in circumstances.

These RAG ratings and any additional information from providers have then been reviewed by the local social work team to ensure that any additional risk or vulnerabilities are also taken account of. The RAG ratings will enable the P&P teams to prioritise individual reviews of a person's circumstances This includes consideration of mental capacity, advocacy and representation where needed. This review will then enable us to determine whether there are elements of the person's care package that can be reduced or either temporarily suspended or permanently cancelled

In this context '**essential**' refers to support required to sustain life and limb and recognises that within the Care Act 2014 there is no hierarchy of need and all assessed eligible needs should be treated in the same way.

Given the progress of the pandemic ASCH and its partners, including commissioned services, are having to consider the proportionality of our collective response i.e. how we assist people with care and support needs to the extent possible.

This approach will enable us and our providers to target limited resources to support the most vulnerable. It will also enable us to flex the support to better respond to those people who may have informal elements of their care and support disrupted by the pandemic. This could include the person themselves requiring more support than usual for due to illness or where an informal carer is hospitalised or must self-isolate thereby creating a gap in the persons support.

- 4.4 This will be a three-stage process depending on the evolving staffing situation and will be a proportionate response which can be stepped up or down according to the overall demand and resources within the system.

#### Stage 1

Providers are already experiencing difficulties in covering all their care calls. This means that as part of their business continuity plans some people who receive homecare services (either directly provided or delivered via commissioned support) and who have been identified as having a RAG rating of Green may, depending on their individual circumstances, may have their calls disrupted in order to sustain support to the most vulnerable (e.g. those rated Red). Providers are to notify ASCH of any disruption to the service

Whilst the initial contact with the individual in receipt of the care package will be from the provider, as and when the need to flex support arises, support will be provided to the PVI sector to manage the impact through exploring possible contingency/alternatives via ASCH Prevention and Personalisation ('P&P') teams.

#### Stage 2:

ASCH will undertake a review the care packages of people who have been RAG rated as Green. People affected will be informed that a review of their care provision will take place due to the pressures on the system with the intention of freeing up limited staff capacity to ensure the calls of those most vulnerable can be protected, including those people currently awaiting a care package.

The review will determine what elements of their care and support can be

- i) safely ended permanently following an updated Needs Assessment; or
- ii) revised to support care being delivered in an alternative manner

ASCH have identified a team of staff to undertake these reviews which will be coordinated centrally to ensure that any care hours released will be able to be utilised in the best possible way.

A reduction or suspension of their care package in Stage 2 will be subject to the usual reviewing procedures and frequencies under the Care Act

### Stage 3

If the release of care hours from people who have been RAG rated as Green is insufficient to cover calls to the most vulnerable, those people RAG rated as Amber would come into consideration and the same review process applied.

In addition, circumstances may mean that it may be necessary at this stage to temporarily cease the non-essential elements of care within a person's package of support without the agreement of that person/and or their carer in order to free up short term capacity to support those most vulnerable

Any individual who experiences a temporary reduction or suspension in their care package in Stage 3 will be subject to a fortnightly review whereby they will be contacted to discuss the impact the reduced service has had upon them, to enable P&P teams to assess the risk arising and whether the RAG rating applied to their care package should be changed. They will also be advised they should contact their provider and/or ASCH to report any major difficulties/impact they are experiencing resulting from any temporary changes implemented or any change in their circumstances arising in between the review periods.

Full-service provision for anyone experiencing a temporary reduction or suspension in their care calls will be reinstated as the earliest possible opportunity as soon as staffing levels return to facilitate this.

Future forecasting is difficult to predict with any certainty as to how long the current difficulties will last. Data shared at the LRF suggests that that the situation will continue to deteriorate in the short term with infection rates likely to peak in the next couple of weeks.

## **5. Consultation**

- 5.1 The speed of infection rate of the new Covid variant and the associated negative impact upon service delivery is such that we are not able to undertake detailed consultation prior to implementing changes in service.

An Equalities Impact analysis is being completed to inform us in the light of the actions we are taking whether there is any differential impact on people with protected characteristic under the Equalities Act (2010)

In addition, the proposals set out above have been developed in collaboration with both our in-house direct care service and PVI providers.

## **6. Alternative Options Considered**

- 6.1 Do nothing – If the Council does not take any action, the increasing staff shortages will continue to impact on service delivery and in the circumstances, this will most likely result in those individuals with urgent or acute care needs not being met, potentially risking life in respect of those who are most vulnerable or in need of critical care.

Providers are already experiencing difficulties covering their calls. If the situation escalates (as predicted by LRF) this will place vulnerable people in a position where essential care calls may be delayed, missed or cancelled at short notice on an ad hoc basis and providers may seek to withdraw from providing services entirely in order to manage these issues independently.

Two PVI homecare providers gave notice on 07/01/22 on care packages in NE Derbyshire citing lack of staff to sustain and without action more are likely to follow.

Without taking these actions we face the possible collapse of the homecare system with a resulting demand on the health and social care system including emergency services including acute hospitals that cannot be met.

- 6.2 Directing P&P teams to complete the RAG rating exercise instead of Providers with a subsequent P&P Review - The relationship between P&P and the providers is essential in supporting this phased and proportionate response to managing limited homecare resources. Previously, when this work was undertaken in accordance with the Coronavirus Act 2020 ('Care Act Easements') this was coordinated centrally by P&P teams. This approach resulted in care being released with some providers but not necessarily at the right time or location that could ease the pressure on another call or provider.

Consequently, by keeping the providers central to this process this utilises their significant knowledge of the individuals they support and enables them to flex their rotas in a way to maximise the benefits to the system and the most vulnerable in the most efficient and effective way.

Whilst providers are central to the process, safeguards continue to be provided via the requirement for providers to notify ASC of any changes to care packages. Local P&P teams will review these changes to ensure any additional risk or vulnerabilities are taken account of.

## **7. Implications**

7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **8. Background Papers**

8.1 [COVID-19: ethical framework for adult social care - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/covid-19-ethical-framework-for-adult-social-care)

## **9. Appendices**

9.1 Appendix 1- Implications.

9.2 Supporting the Covid response in Adult Social Care

## **10. Recommendation(s)**

The Cabinet Member is asked to:

- i) Approve the temporary suspension of 'non-essential' homecare services to adults by applying the three-stage process set out in 4.4 above.
- ii) Note that this decision is subject to a minimum fortnightly review by senior managers as part of ongoing capacity modelling across the health and social care system in Derbyshire and in response to national guidance

## **11. Reasons for Recommendation(s)**

11.1 Despite the considerable efforts already undertaken to manage the impact of the current staffing crisis in home care provision we will not be able to continue to meet the assessed needs of local people who require care and support and this will result in a situation where those individuals with urgent or acute needs will not have their needs met, potentially risking life in respect of those who are most vulnerable or in need of critical care.

It is essential that the response to this situation is proportionate and appropriate for the County as a whole and the proposals set out in 4.4 above provide a framework to implement a risk based approach to directing the limited resources available to where it is most needed.



## 12. Is it necessary to waive the call-in period?

12.1 Yes

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**Appendix 1**

### **Implications**

#### **Financial**

1.1 We are continuing to fund the PVI home care providers on the basis of contracted hours to maintain the viability of these service in the face of an unpredictable market

We have paid the work force retention grant as required.

There are no other financial considerations

#### **Legal**

2.1 Working with people to look at alternative and creative means of delivering against their assessed unmet eligible needs and outcomes needs is within the scope of the Care Act 2014.

The report outlines how the Council has sought to utilise the flexibilities within the Care Act 2014 and Care Act Statutory Guidance to continue to meet the needs of all service users, as set out within the letter from the Department of Health and Social Care to the Directors of Adult Social Services dated 29/12/21 (appendix 1). Whilst there is a great deal of flexibility within the Care Act as to how to meet need, the Council remains under a statutory duty to meet all eligible needs but ASC report that there are insufficient resources to respond to the unprecedented demand on services and chronic lack of homecare capacity which has been further compromised by the recent rapid, exponential rise in Covid infections.

As the [Care Act easements provision in the Coronavirus Act 2020 expired](#) on 16 July 2021, there is no legal framework currently enacted to enable local authorities to focus its resources on meeting the most serious and urgent care needs. Chapter 13 of The Care and Support Statutory Guidance however provides detailed guidance as to the processes necessary when reviewing and revising Care & Support Plans. The Council is only under a statutory duty to meet the unmet needs of those assessed as meeting the eligibility criteria

- 2.2 The Civil Contingencies Act 2004 places responsibilities on Local Authorities to prepare and respond to emergencies and work closely with the emergency services and voluntary organisations in doing so. Category 1 Responders (e.g. emergency services, local authorities, NHS bodies) and Category 2 Responders (Health and Safety Executive, transport, utility companies and the voluntary sector organisations) are required to come together to form 'Local Resilience Forums' (based on police areas) which will help co-ordination and co-operation between responders at the local level.
- 2.3 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 apply a framework of fundamental standards where a provider is carrying out a regulated activity such as the Direct Care residential homes and domiciliary services. These include, amongst others, the requirement to provide safe care and treatment (Regulation 12) and the requirement to provide sufficient numbers of suitably qualified, competent, skilled and experienced staff to meet the needs of the people using the service (Regulation 18).
- 2.4 The Council has powers in accordance with S1-6 of the Localism Act 2011 to do that which will be to the 'benefit of the authority, its area or persons resident or present in its area.' The proposed benefit of this action is to ensure that resources are most effectively to address the staffing issues caused by the increased Covid-19 infection rates following to the emergence of the Omicron variant. Due to the timescales involved it has not been possible to consult widely but direct consultation with effected service users is being undertaken and the suspension is for a time limited period.
- 2.5 An Equality Impact Analysis ('EIA') is being undertaken in respect of these proposals and should be completed as soon as practicable. The decision should be reviewed in light of the EIA, once completed.

## **Human Resources**

- 3.1 DCC contracts with Direct Care worker communities will enable flex of service deployment as required. Every effort has been utilised to seek additional staffing resources by maximising the use of the Council's wider existing workforce, including utilising staff who do not have a DBS check in appropriate supportive non-direct roles allowing support staff to be redeployed to roles providing direct care.
- 3.2 ASCH has put in a request to LRF for support up to an additional 5000 care hours to bolster DCC home care and residential services.
- 3.3 PVI agencies will have their individual contract arrangements in place that are likely to enable them to flex the deployment of their staff, though this is a matter for these providers to consider

## **Information Technology**

4.1 Use of IT and Assistive technology will be promoted as part of the reviews

## **Equalities Impact**

5.1 Being undertaken

## **Corporate objectives and priorities for change**

6.1

## **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

Issues of health and safety and risk management have been considered the details of which are set out below

7.1 Risks to the individual may include:

- Neglect/self-neglect
- Missed medication with impact on the persons physical or mental health
- Lack of regular monitoring to maintain personal safety and wellbeing
- Injury or death
- Increase in safeguarding referrals
- Breakdown of informal/family care arrangements

7.2 Risk to the organisation

- Loss of reputation
- Legal action

7.3 Mitigating the risks

By RAG rating the homecare clients, we are seeking to minimise risk by ensuring only non-essential care packages/elements of care packages are impacted. This should enable resources to be directed towards those considered most at risk, should their care package be affected.

The approach we have undertaken is underpinned by the values and principles outlined in the Covid 19 Ethical Framework for Adult Social Care

These are:

1. Respect
2. Reasonableness
3. Minimising harm
4. Inclusiveness
5. Accountability
6. Flexibility
7. Proportionality
8. Community

These have also been circulated to all our P&P staff to ensure that they are reminded of the values and principles of their profession and maintain best practice in engaging with local people and communities and supporting people to make decisions regarding their own care arrangements.

The above decision-making process enables a consideration of individual wellbeing, overall public good and the resources that are available.