Briefing Note

Title: **Time to Care – A Unison report into homecare**
Date: **19.12.2012**
Audience: **Directorate Leadership Team – Elected Members**
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1. Introduction:

This briefing serves to update DLT and Elected Members with the outcomes of a recent on line survey conducted by UNISON which details 431 responses from Unison members and non members who deliver home care.

The Unison 'Time to Care' national survey was undertaken in June/July 2012 and the consequent report published in October 2012.

Unison claim the objective of the survey, consequent report and Charter is to establish a baseline of safety, quality and dignity of care by ensuring employment conditions which:

a) do not routinely short change clients and
b) ensure the recruitment and retention of a more stable workforce through more sustainable pay, conditions and training levels.

As a result of the survey findings Unison are calling for Councils to commit to becoming Ethical Care Councils by only commissioning home care services which adhere to their Ethical Care Charter:

http://www.unison.org.uk/acrobat/21188.pdf

Unison intends to publish the names of the Councils who do not respond to their request.

This briefing gives additional information to support a balanced line of reasoning required to consider the request to adhere to the Ethical Care Charter and highlights the risk to Rotherham MBC on points where it could be interpreted we fall short of Unison's expectation.

2. Critique of Time to Care - A Unison report into home care:

2.1 The report is short sighted assuming the priority of Councils is to seek savings rather than a quality, efficient, flexible service which is responsive to the needs of those it serves. The priority of the Council to achieve quality provision can be well supported and evidenced by the Commissioning and Contracting Team.

2.2 The survey has a limited focus on staff opinion and does not involve the Service User or canvass their opinion so lacks credibility regards the assertion that care is not delivered in a dignified manner.

2.3 This was a national survey with a relatively small response (431) from a care workforce estimated to be in the millions. There are over 1.6 million organisations providing home care in the UK.

2.4 The report centres on contracted council services but fails to identify whether the staffs surveyed are/were employed by organisations that contract with the Council. Its relevance to contracted services is therefore unclear.

2.6 It also fails to address the growing number of PA's and personal care services commissioned by individuals via Direct Payments which are not commissioned directly by the Council and therefore efforts focused on Council contracted services alone seem misplaced.

2.7 The report doesn't distinguish between service commissioned on behalf of the individual and a commissioned service achieved through a transparent tender process.

2.8 The request is for all LA's to enforce the Ethical Care Charter but there is no commitment to enforce this actively with other organisations outside local authority contracts. Possibly naïve, but this could divide the care market into becoming a non competitive environment. Unison don't reference their intention with the wider care market which must reduce the Charter's impact. It could also increase the cost directly to service users who self fund and contribute to the cost of their care and force LA's into a position where they are able to support fewer people.

For the above reasons compliance with the Unison request must be carefully considered.

3. Consideration to be given to the request:

3.1 Consideration to be given to the response to the request is summarised against the principles which the **Ethical Care Charter** asserts (shown in bold type):

3.2 Homecare workers should be paid for their travel time, travel costs and mobile phones

Eligible Workers should be paid Statutory Sick Pay

We will soon have comprehensive details of each contracted provider's compliance with employment policy/legislation. We have no reason to believe at this stage that contracted providers are not fulfilling their legal obligations as employers.

This is reinforced as a standard in the Community and Home Care (CHCS) as contract standards:

3.2.1 We expect providers to comply with all statutory obligations as laid down in employment legislation. If it is found that practices are unacceptable then this will constitute a breach of contract and may be considered grounds for termination of the contract as defined in Clause15 (Termination of the Framework Agreement).

3.2.2 Providers must comply with The Working Time Regulations (1998)/The Working Time (Amendment) Regulations 2009. A recent review of compliance of our contracted providers with this particular point of law we found no cause for concern.

3.2.3 We ensure that Providers have the relevant policies and procedures in place prior to entering into a contract and verify that all contribute to the reasonable working conditions for staff (see Appendix 1).

3.2.4 Contracted domiciliary care providers in Rotherham have benefited from an annual uplift for the previous four years (at least). This would enable the provider to increase the wage paid to their workforce.

3.3 Homecare workers will be given the opportunity to regularly meet co workers to share best practice and limit their isolation:

3.3.1 To combat isolation and to offer support to workers contracted providers are expected to hold regular team meetings and undertake regular supervision sessions both branch based and in the field with staff. Providers produce news-letters to keep workers informed. Training opportunities for staff also provide an opportunity for staff to mix with other staff.

3.3.2 Other arrangements of support to workers are also in place such as and not restricted to:

Locality branch based offices enabling easy access for care workers.
Care workers have mobile phones for easy communication.
Night workers operate in twos

3.3.3 In addition Rotherham MBC considers that carers have social contact with all clients during the time they deliver care. The opportunity to exchange social dialogue is beneficial not only to the service user but to the worker themselves.

3.4 Visits will be scheduled so that Carers do not rush their time, or leave early to get to the next client.

3.4.1 Providers can (and do) exercise discretion and vary the service when they are found in circumstances where service user's needs are in excess of the time allocated to complete care and there is inadequate time to get authorisation from Rotherham MBC.

3.4.2 Where Service User's needs increase/decrease the providers inform Assessment Direct and a review of needs by the Assessment and Care Management Service is requested to be completed to ensure more appropriate care provision is planned.

3.4.3 Providers are required to reduce travel time as much as possible when scheduling care rounds. They in the main rely on electronic scheduling systems to complete this task efficiently to lessen the pressure on carer's travel time and maintain consistency of carer/client.

3.4.4 In Rotherham contracted Care Providers are arranged so they prioritise care in an Area Assembly. This has the effect of providers recruiting staff locally reducing travel time to and from work. Workers also have increased knowledge about travel in the area they are assigned to again having the effect of reducing pressure on travel to and from the Service Users.

3.4.5 As part of the contract monitoring process provider's staff rotas and schedules are examined looking specifically for 'call cramming' (travel time unaccounted for).

3.4.6 Commissioners ensure there is no unreasonable demand on care workers that falls outside the contract with the council and therefore their contract of employment i.e. health care tasks, tasks which are not planned or prescribed which increase demands and pressures on carer's time.

3.4.7 From April 2012 there have been approximately 39 concerns (some of which were not substantiated) expressed about the length of time carers spend with the service user. To put this into context around 450,000 hours of care have been provided during this period.

4. The time allocated should match client needs. In general 15-minute calls will not be used as they undermine the dignity of clients

Visits should be based on client need and not minutes or tasks. Workers will have the freedom to provide appropriate care and will be given time to talk to their clients

4.1 Service Users receive care according to the needs and objectives identified on the Customer's Support Plan as a result of an Individual Social Care Assessment and as agreed with the Service Users. Often this involves support to socialise where it is found service users are isolated.

4.2 We have not introduced minute by minute billing which increases pressure on carers and we have no plans to introduce this payment method.

5. Clients will be allocated the same homecare workers wherever possible.

5.1 Regular Home Care team members are identified for each Service User, changes to the carers are minimised and planned changes must be notified to the Service User giving a maximum of three (3) days notice. Care workers therefore develop sustained contact and deliver care efficiently.

5.2 Providers must ensure that all team members are given an appropriate and adequate briefing regarding the Customer's needs and specific details of the way in which they are to be met.

5.3 From April 2012 to present date there have been only 2 concerns expressed about the consistency of Carer. Face to face interviews are carried out with a number of our Service Users and the vast majority are responding positively to questions regarding how their needs are met in a dignified way.

6. Providers will have clear and accountable procedure for following up staff concerns about their clients' wellbeing

6.1 Home Care providers are required to monitor individual Service Users on an ongoing basis and report any significant changes immediately to the Adult Care Management as appropriate or to the most appropriate person e.g. District Nurse, General Practitioner, etc. Such changes may include deterioration which affects the care needs of the Service User (e.g. additional support required). They are required to ensure that daily records are kept in the Service User's home which monitor progress and record significant issues.

7. All Home Care Workers will be regularly trained to the necessary standard to provide a good service (at no cost to them and in work time).

7.1 Contracted services are required to train Management and Staff to comply with Department of Health's regulations, registration requirements and the CQC Essential Standards for Quality and Safety and best practice guidance (Skills for Care).

7.2 Staff records record the content of induction training and the period it is delivered over, how competence is assured and any follow up training support provided.

7.3 The Council monitors the training and development practices of the provider. If it is found that practices are unacceptable then this will constitute a breach of contract and may be considered grounds for termination of the contract.

7.4 We ensure that the care workforce is adequately skilled and complete and refresh both mandatory and specialist training that providers are obliged to provide for their staff. Providers should comply with the Skills for Care Standards, CQC Essential Standards and complete the National Minimum Data Set.

7.5 The providers are expected to have a workforce develop plan which is monitored by RMBC

7.6 RMBC Workforce Learning and Development Team support access for providers to ensure that ample training opportunity is provided free of charge with some funding available to pay for the costs of backfill to cover scheduled care.

8. All home care workers will be paid at least the Living Wage (as of September 2012 (£7.20/hr) outside London. The living Wage has been re calculated again in November 2012 to £7.45/hr. If Council employed homecare workers are paid above this rate are outsourced it should be on the basis that the provider is required and is funded to maintain these levels throughout the contract.

8.1 Council employees transferred if services are outsourced will be protected by TUPE legislation. To agree to the point above in the Charter seems again futile.

8.2 Rotherham is a Borough with higher than average dependency on Social Care. The agreement to this Charter may increase domiciliary care budgetary pressures.

8.3 Some providers are already paying above this rate, further information is currently being sought from our contracted providers.

8.4 Agreeing to the Ethical Care Charter for Home Care providers will mean challenges from other sectors contracting with the council.

8.7 Agreeing to comply with the Ethical Care Charter may mean that we will be required to pay all staff whether working for contracted services or employed in house at least the living wage. There are Rotherham MBC staff grades A/B who are paid less than the living wage.

8.8 Contracted Homecare organisations are required to meet statutory obligations by paying above minimum wage which is enforced. It is possible we will not be able to enforce the principles of the Charter.

8.9 The relationship of quality and cost are not interdependent. Paying a higher cost for care will not necessarily guarantee higher quality. In Rotherham there are overall no concerns regarding the quality of contracted care provision.

9. Points of vulnerability to be considered:

9.1 The following section details possible risk to Rotherham MBC on points where it could be interpreted we fall short of Unison's expectation.

9.2 Most contracted Home Care organisations not just those contracted to RMBC employ staff on Zero Hour contracts. These contracts are legal and providers state this is preferred by the employed because it offers flexibility to a workforce with a high % of women.

9.2 Unison want calls with a duration of 15 minute to cease. However 15 minute calls are commissioned by A&CM from care providers frequently following a needs assessment.

9.3 As a Strategic Commissioning Unit there are ongoing concerns regards the wages paid in the care sector as a whole. The Retail Sector (for example) is capable of attracting staff away from the care sector making recruitment difficult for care organisations. The risk that this reduces capacity of the care workforce is a concern. Increasing the wages to carers may naturally evolve where providers compete with other sectors to recruit staff.

Currently there are no capacity issues with care providers however work has commenced prior to the publication of the report to examine the employment practice of contracted Home Care providers in Rotherham. The outcome of this will feed into the negotiation points for allocation of an annual uplift.

9.4 In terms of procurement law the Scottish Parliament asked the European Commission for its view as to whether such a requirement would be compliant with European legislation, and the European Commission responded saying:

- any requirement in the tender process to pay the living wage is likely to breach the relevant legislation
- requirements regarding the level of wage payable to workers are likely to restrict freedom to provide services, and may not go beyond the mandatory legislative rules for minimum protection
- anything more than the minimum wage could not be enforced.

As a result, although public bodies can encourage their service providers to apply the living wage, **it is not lawful for a public body to treat a contractor which pays the living wage more favourably than one which does not.**

In summary

Rotherham MBC is insistent that contracted care providers comply with the majority of the principles outlined in the Ethical Care Charter which mirror current legislation/policy and Service Specified and Associated Contract. Our contracted services are continuously monitored in line with standards set out in our service specification and Framework Agreement terms and conditions. Deviation from this standard will result in intervention that is supportive of the organisation to improve. Where it is found that improvement is not achieved the default notices will be served to protect service users.

Appendix 1

Policies and Procedures that all contribute to the reasonable working conditions for staff prior to contracting with them.

- Staff training and development plans;
- Disciplinary and grievance procedures
- Risk assessment records;
- Guidance for all staff on safety precautions to be taken following assessment of risk, including - written procedures on Fire prevention, First Aid, Safe use of Electricity, Food Safety and Hygiene, Safe Moving and Handling, Control of Infection and reporting Infectious Diseases, management of medication, reporting of injuries, diseases, accidents and dangerous occurrences;
- Public Interest Disclosure Act, 1988, with special reference to the Rotherham Council's procedures and policies regarding "whistle blowing".
- Staff supervision records;
- Policies relating to equality, diversity and anti oppressive practice;
- Register of gifts/bequests accepted/refused from Customers;
- Accident records,
- Staff files and recruitment procedures,
- Workforce Development Strategy
- Workforce Development Plan
- NMDS-SC reports
- Control of Substances Hazardous to Health (COSHH) 1998
- Disability Discrimination Act (1995)
- Disability Discrimination Act 2005
- Employment Equality (Age) Regulations 2006
- Employment Equality (Religion or Belief) Regulations 2004
- Equal Pay Act (1970)
- Gender Recognition Act 2004
- Health and Safety at Work Act (1974) and all subsequent guidance
- Health and Social Care Act (2001)
- Human Rights Act (1998)
- Lifting Operations and Lifting Equipment Regulations (1998)
- Management of Health and Safety at Work Act Regulations (1999) (amended 2003)
- Manual Handling Regulations (1992) (amended 2002)
- Part Time Workers (Prevention of Less Favourable Treatment) Regulations (2000)
- Provision and Use of Work Equipment Regulations (1999)
- Reporting of Injuries, Diseases, and Dangerous Occurrences Regulations (1995)
- Sex Discrimination (Gender Reassignment) Regulations 1999
- Sex Discrimination Act (1975)
- Sex Discrimination Act (Amendment Regulations) 2008
- The Working Time Regulations (1998)
- The Working Time (Amendment) Regulations 2009
- Equality Act (2010)