

REPORT TO ABERDEENSHIRE COUNCIL – 17 JANUARY 2019

ETHICAL CARE CHARTER

1 Recommendations

Council is recommended to:

- 1.1 Note the findings and conclusion as set out in the report to Aberdeenshire Integration Joint Board on 31 October 2018. (Appendix 1)**

2 Background

- 2.1 Council were previously asked to consider the Unison Ethical Care Charter (April 2017). Council agreed to reconsider this charter once officers and the Integration Joint Board had undertaken further work.
- 2.2 The Chief Officer circulated to the Integration Joint Board a report dated 21 September which provided an update on progress towards achieving the standards set out in UNISON's Ethical Care Charter for staff engaged in health and social care services and explained why Aberdeenshire Council was unable to guarantee standards for commissioned services, due to restrictions in procurement legislation.
- 2.3 Having noted that a small number of other Scottish Local Authorities had already signed up to the Charter, there was extensive discussion on what commissioning authorities were allowed to stipulate in procurement, and how bids could be assessed with a weighting in favour of the required standards; the need to establish equitable standards of pay and conditions across all staff, regardless of provider; the potential to participate via the Convention of Scottish Local Authorities (CoSLA) for a tri-partite national agreement; the limited influence of the Partnership whose commissioning was undertaken by Aberdeenshire Council under direction; and the legal restrictions on what could currently be achieved and enforced.
- 2.4 The Joint Board agreed:-
 1. to endorse for its interest the progress made towards achieving the standards set out in the Ethical Care Charter for staff engaged in health and social care services in Aberdeenshire.
 2. to acknowledge that, because of restrictions in procurement legislation, Aberdeenshire Council could not guarantee the standards set out in the Charter for commissioned services, could not adopt the Charter, and would not consider it again unless the procurement rules changed.
 3. that the findings and conclusions of the report be shared with Aberdeenshire Council at a future meeting.

- 2.5 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

3 Scheme of Governance

- 3.1 The Council is able to consider and take a decision on this item in terms of the General Provisions in the List of Committee Powers in Part 2A of the Scheme of Governance as the matter has not been delegated to any other Committee, and Council agreed on 27th April 2017 that it should receive this report.

4 Implications and Risk

- 4.1 An equality impact assessment is not required because we are not changing existing policy.
- 4.2 There are no staffing and financial implications.
- 4.3 The following risk has been identified as being relevant to this matter on a corporate level: ACORP 003 Workforce.
- 4.4 A Town Centre Assessment is not required because there will be no significant impact, as a result of this report, on Town Centres.

Adam Coldwells
Chief Officer
Aberdeenshire Health and Social Care Partnership

14 December 2018

APPENDIX 1

REPORT TO ABERDEENSHIRE INTEGRATION JOINT BOARD – 31 OCTOBER 2018

ETHICAL CARE CHARTER

1 Recommendation

It is recommended that the IJB:-

- 1.1 **Endorse the progress made towards achieving the standards set out in the Ethical Care Charter for staff engaged in health and social care services in Aberdeenshire;**
- 1.2 **Accept that Aberdeenshire Council cannot guarantee the standards set out in the Ethical Care Charter for commissioned services due to restrictions in procurement legislation and therefore cannot adopt the Charter;**
- 1.3 **Agree to report the findings and conclusion as set out in this report to a future meeting of Aberdeenshire Council.**

2 Risk

- 2.1 IJB Risk 3 - Workforce capacity, recruitment, development and staff empowerment. Significant progress in the application of Statutory Guidance, including consideration of fair work practices, in the procurement and commissioning process has been made in Aberdeenshire. This offsets any risk associated with not adopting the Ethical Care Charter.

3 Background

- 3.1 UNISON's Ethical Care Charter was launched in October 2012. It was developed in response to a UK wide survey of the working conditions of home care workers and publication of the subsequent report, "Time to Care". The report described home care workers as "a committed but poorly paid and treated workforce" and linked poor terms and conditions with lower standards of care.
- 3.2 UNISON's primary aim in developing the Charter was to improve quality and dignity of care by ensuring a more stable, well paid and trained workforce. This would be achieved by encouraging councils to adopt the principles of the Charter when commissioning services, becoming recognised Ethical Care Councils.
- 3.3 The Charter is structured in three stages:

Stage one:
 - Care based on client need, not minutes or tasks

- 15 minute visits should not generally be used, unless appropriate
- Homecare workers to be paid for travel time, travel costs and other necessary expenses
- Visits to be scheduled based on need
- Eligible workers should be paid statutory sick pay

Stage two:

- Clients would be allocated the same worker/s wherever possible
- An end to zero hours contracts
- A clear procedure for following up staff concerns about their clients wellbeing
- Proper training to provide a good service (paid for and in work time)
- Homecare workers to be able to meet co-workers to share best practice and limit their isolation

Stage three:

- Homecare workers should be paid at least the Living Wage and where they are paid above this rate any outsourced workers should be required to maintain that rate throughout the contract
- An occupational sick pay scheme should cover all staff who should not be pressurised to work when ill, to continue to care for their vulnerable clients.

3.4 A paper was presented to Aberdeenshire Council on 27th April 2017 with the aim of commencing a formal process to allow Aberdeenshire Council and the Integration Joint Board to explore the implications of signing up to the UNISON Ethical Care Charter and thereafter make a recommendation on future action. The following actions were agreed:

- To note the UNISON Ethical Care Charter,
- To invite UNISON to update the information in their Charter, and
- That, on receipt of the updated information from UNISON, officers consider any future actions and report back to a future meeting of the Council.

Current Situation in Scotland

3.5 Following the meeting of Aberdeenshire Council in April 2017, further information was requested from UNISON by Aberdeenshire HSCP, details of which are below. UNISON did not update the Charter.

3.6 A survey of home care workers was undertaken by UNISON Scotland in 2013, following which the report, "Scotland: it's time to care", was published in February 2014. Findings were comparable to the 2012 UK-wide survey with the majority of workers considering the service insufficient to meet the needs of elderly and vulnerable people in terms of both time scheduled and the quality of care they could offer.

3.7 In July 2016, UNISON Scotland published "We care, do you?" in which responses to the latest survey of UNISON members employed as home care workers in Scotland were considered in parallel to information about home care provision obtained from 31 Scottish local authorities. UNISON Scotland concluded that home care workers in Scotland continued to work under significant time pressure, maintaining care for an increasingly vulnerable population often at a cost to their own time and health. A marked difference

was noted in the reported experience of home care workers and the situation as perceived by the local authorities.

3.8 To date, nine Local Authorities in Scotland have adopted the Charter:

- Fife
- Inverclyde
- Aberdeen
- Renfrewshire
- Stirling
- North Lanarkshire
- North Ayrshire
- East Ayrshire
- West Dunbartonshire

Current situation in Aberdeenshire

3.9 The starting point for provision of both in-house and commissioned home care services is an outcomes focused assessment, from which will be determined the client's eligibility for statutory support. Resource is allocated according to level of assessed need. Self-Directed Support affords the person choice in how that resource is used and their support provided. Needs that are not eligible for statutory support are addressed through a person's wider support network, including family, friends, community and third sector.

In-House Care at Home

3.10 An evaluation of current in-house home care provision confirms that the service meets the majority of standards set by the Charter, with home care workers enjoying the same terms and conditions as all other employees of Aberdeenshire Council.

3.11 The service operates a social care bank so that it can continue to respond effectively when capacity reduces or demand increases. Use of relief contracts in these specific circumstances provides flexibility for the service and the employee. Zero hour contracts are not used routinely or in place of permanent contracts.

3.12 Fifteen minute visits are not scheduled routinely or inappropriately, but may be included as part of an outcomes focused support plan when considered appropriate to promote rehabilitation, enable and maintain independence and prevent development of dependence on statutory services.

Commissioned services

3.13 Progress has been made towards achieving the standards set out in the Charter in regard to services commissioned by Aberdeenshire Council. However, whilst these standards can be promoted and encouraged by public bodies during the commissioning process, they are unable to dictate the specific terms and conditions of staff employed by those competing for contracts.

3.14 The Scottish Government provided Statutory Guidance in 2015 on the Selection of Tenderers and Award of Contracts under the Procurement Reform (Scotland)

Act 2014 which instructs public bodies in evaluating fair work practices, including the Living Wage, when procuring services. Further clarification provided by the European Commission confirmed that contracting authorities are unable to make payment of the Living Wage a mandatory requirement as part of a competitive procurement process where the Living Wage (currently £8.75 in Scotland) is greater than any minimum wage (currently £7.83 per hour in the UK for those aged over 25) set by or in accordance with law. As a result, it is not possible to reserve any element of the overall tender score specifically to the payment of the Living Wage.

- 3.15 Whilst the Scottish Government considers payment of the Living Wage to be a significant indicator, failure to do so does not determine whether the employer's approach as a whole fails to meet fair work standards. Public bodies must consider whether it is relevant and proportionate to include a question of fair work practice as part of the competitive procurement process. A range of factors must be considered but it would be considered appropriate to include such a question where fair work practices are likely to directly impact the quality of service provided.

Aberdeenshire Council includes a question on fair work practices as recommended in the Statutory Guidance when inviting providers to tender for home care contracts. This section can be weighted at up to 30% of the overall score but will vary, with the exact weighting determined by the project tender group according to the specific requirements of the contract.

Analysis

- 3.16 Adopting the Ethical Care Charter is considered a commitment by the organisation to work towards achieving the standards, rather than a declaration that those standards have already been achieved. Since 2012, 9 out of 32 Scottish Local Authorities have adopted the Charter.
- 3.17 Significant progress has already been made in improving the terms and conditions of home care staff across Aberdeenshire. The terms and conditions of our in-house staff meet the requirements of UNISON's Ethical Care Charter. The application of Statutory Guidance on the Selection of Tenderers and Award of Contracts is also understood to have improved the terms and conditions of those working in commissioned services.
- 3.18 However, UNISON's Ethical Care Charter goes beyond fair work practices as defined by the Statutory Guidance and whilst both can be promoted as good practice in the commissioning process, they cannot legally be contractually enforced.
- 3.19 UNISON's Ethical Care Charter calls for an end to routine and inappropriate fifteen minute visits and to zero hour contracts. It is the view of those commissioning home care services that all visits are appropriately scheduled to meet assessed need and as agreed as part of an outcomes focused support plan. Further it is the view of service providers that relief contracts are used only when appropriate to the needs of the employee and the organisation. Whilst these views may appear to contrast with those of home care workers reported by UNISON, the surveys were carried out in 2012, 2013 and 2016 and reported for both Scotland and the UK as a whole and therefore may not fully

and accurately reflect the current experience of home carer workers in Aberdeenshire.

Conclusion

- 3.20 The main objective of UNISON's Ethical Care Charter is to establish a minimum baseline for the safety, quality and dignity of care by ensuring employment conditions which do not routinely short change clients and which ensure the recruitment and retention of a more stable workforce through more sustainable pay, conditions and training levels.
- 3.21 Significant progress has already been made in Aberdeenshire with the application of Statutory Guidance including consideration of fair work practices in the procurement and commissioning process. However, Aberdeenshire Council cannot legally enforce the requirements of the Ethical Care Charter contractually and therefore should not adopt the Charter if we cannot, in good faith deliver those requirements. There would be no benefit in the matter being revisited by officers unless there is a change in procurement legislation

4 Equalities, Staffing and Financial Implications

- 4.1 An equality impact assessment is not required because the terms and conditions of our in-house staff meet the requirements of UNISON's Ethical Care Charter and the application of Statutory Guidance on the Selection of Tenderers and Award of Contracts is also understood to have improved the terms and conditions of those working in commissioned services. Therefore there would be no differential impact in relation to protected characteristics from the adoption of this Charter.
- 4.2 The Chief Officer, along with the Chief Finance Officer and the Legal Monitoring Officer within Business Services of the Council have been consulted in the preparation of this report and their comments have been incorporated within the report.

Adam Coldwells
Chief Officer
Aberdeenshire Health and Social Care Partnership

