



Cornwall Partners in Care
Unit 1 & 2 Mount Hawke Business Park
Highfield Road
Mount Hawke
Truro
TR4 8DZ

2nd March 2018

Jonathan Price
Cornwall Council
New County Hall
Truro
TR1 3AY

Dear Jonathan,

In response to the recent Invitation to Tender for the Home Care and Supportive Lifestyles 2018 contract, we have been approached by around 60% of all Domiciliary Care and Supportive Lifestyle providers in Cornwall, who have expressed their extreme discontent at the gross unfairness of the Councils approach.

The primary purpose of this letter is to request that the current ITT process be paused so that Providers' concerns can be properly evaluated and addressed. Providers are keen to work with the Council to help develop an effective solution.

In addition to the Clarification Log, which is more for direction questions, I thought it might be useful to summarise some of the issues identified so far and bring them to your attention. The concerns can largely be split into four broad areas; Fees, Bureaucracy, Costs, and Choice and Control.

We are continuing to work with Providers to collate information and may expand upon the contents detailed below in due course.

Fees and methodology

Whilst in principle, the notion of increasing the wages that Providers pay their staff to the Foundation Living Wages of £8.75 is supported, there is some concern that the proposed 'ceiling rate' fee levels and contracting methodology via a Dynamic Purchasing System (DPS) based on bidding down, will only drive hourly rates lower and make it harder for Providers to remain financially viable and thereby offer long term sustainability.

Any increase in pay rates is welcome, but it is likely to impact on the amount of hours that staff work, as an increase in wages could lead to a decrease in benefits. Some staff will drop hours in order to stay below certain thresholds, for example Housing Benefit.

This has been raised previously, but it is one of the major concerns amongst Providers; the Night Rate offered to both the Home Care Sector and the Supportive Lifestyles sector is financially unviable. This may lead to Providers ceasing to offer a night cover service, which will particularly impact the sector with 'urgent night cover' service requests.

Within the Supportive Lifestyles ceiling rates the Day Rate (1 to 1 rate) is diluted by the Core Shared Support rate. It has been noted that averaging the 1:1 rate, the Core Shared Support rate and the Night Rate equates to the current Framework Rate of £14.53, which is already known to be financially unsustainable even before Providers are expected to meet the proposed additional costs and paying support staff the Foundation Living Wage. This also calls into question whether these rates have been legitimately formulated using a Care Cost calculator, or are merely a manipulation of the current Framework Rate.

The Council stipulates within the DPS Purchasing System Agreement (19.3.10) that Providers are to provide TUPE indemnities. Whilst it is not clearly stated that this includes the potential liabilities relating to sleep in back dated payments, Providers wish to point out that this will be contrary to employment case law and HMRC instructions.

Onerous bureaucracy

In the build up to this ITT, it was repeatedly indicated that it would be a “light touch” commissioning approach. The general feeling amongst Providers is that they have been misled, as the documents are over prescriptive, with the Council dictating how Providers run their businesses and goes far beyond what the Care Quality Commission dictates, thereby preventing Providers from running their own businesses their way and incurring further additional costs. For example, requiring monthly 1 to 1’s, Monthly Team Meetings, the Registered Managers requirement to review all records for each individual within their registration on a least a quarterly basis, requiring Providers to complete the National Minimum Data Set and the Council retaining the right to tell Providers when to remove staff, potentially leaving them open to employment litigation. The list goes on and does not suggest “light touch”.

Providers who engaged throughout the consultation process feel that their views have been overlooked or ignored and that the initial indications given by the Council are in no way reflective of their discussions with the Council, nor the indications and assurances provided by the Council prior to the ITT. Whilst not all requests can be accommodated, Providers that actively engaged in the development of this contract have expressed their dismay that their suggested inclusions and ways of delivering care in Cornwall have been ignored and are not reflected in the design of the service model.

In some areas, the ITT reflects an unexpected shift in direction without any explanation provided. A prime example of this would be Peter Tempest previously indicating that funding would be provided via a “Cash Envelope” to allow Providers the flexibility to deliver outcomes and take an innovative approach to service delivery and identify cost savings. This has been changed to “minute by minute” commissioning using an Electronic Call Monitoring (ECM) system at the Provider’s expense which was something expressly requested by Providers to not be included.

Under the stated terms, liability falls extremely heavily upon the Provider. This will dramatically affect a Provider’s ability to secure both insurance and finance which will harm their long-term sustainability.

Currently, a number of Providers are using their own property for residential support services for their Service Users. The Council has no right to enforce the use of these properties if the owners are not successful or choose not to apply and there does not appear to be a clear plan in place to deal with such situations.

There are concerns that it has become the Providers responsibility to seek & arrange assessments, and some doubt that this can be achieved in a reasonable timeframe.

The very prescriptive duties for Night Staff are not conducive to Support Worker roles and would not provide quality outcomes. They are far more akin to Team Leader roles and you need your Team leaders on day shifts to support the quality of the service provision and direction and management of staff. The decision to solely commission waking staff will also adversely affect the current recruitment shortfall across Cornwall. We are also likely to receive criticism from CQC as we are working in people's own homes and not in an office environment. This work would also require Internet Access which again would be a further cost to the Provider.

It was very concerning to read that in order to be awarded a contract the tenderer must score a minimum of 2 Points for each of the Method Statements. The Judgement for a Score of 2 is 'Minor Reservations' with the Interpretation being: some minor reservations of the relevant ability, understanding, experience, skills, resource and/or quality measures required to provide the goods/works/services. With little or no evidence to support the response. Surely responsible commissioning would require providers to at least achieve a score of 3 with a judgement of Acceptable.

Increasing costs

The Living Wage Foundation rate is expected to add an average of 15% to Providers' wage bills.

There does not appear to be any guarantees of future uplifts of any kind, let alone to keep pace with Foundation Living Wage which increases each year. Providers are asked to adhere to paying the Living Wage Foundation rate, however the Council show no such commitment, with the Call off Agreement stating "the Council may at its sole discretion increase the Call Off Contract Charges payable by an amount determined by the Council". This places a huge level of risk with the Provider and there needs to be a reciprocal commitment by the Council with a specific formula recognising an annual uplift or at the very least an agreement by both parties to review and uplift if finances allow.

There is now an expectation that Providers will be forced to cover the costs of purchasing and running an ECM System without any indication that new costs like these have been accounted for when calculating the fee ceiling rates. Even for relatively small Providers, the upfront cost is likely to be over £5000 (with the exception of Providers who have already had it funded for them by the Council, which is definitely not an equitable situation).

ECM was piloted for 12 months by the Supportive Lifestyles sectors and the Council concluded that it did not work for that type of service, yet it seems that information has been forgotten or is being ignored.

Choice and Control & Dynamic Purchasing

Questions are being raised on how this system fits with the Care Act and with Service User's Human Rights, where Service Users are supposed to be able to choose their own Provider. There does not appear to be any choice if Service Users are being removed from Providers who are not successful in applying or that choose not to apply to join the DPS system. This situation will also affect Providers who have not previously needed to register with CQC, as they will not be able to secure CQC registration prior to the tender deadline and are now expecting to have their Service Users forcibly removed from June 9th.

The clarification response on mobilisation is very vague and offers no clear time frame of events covering when and how the removal of their Service Users will take place. There is also no indication on what would happen if there is not enough capacity within the DPS or if Providers on the DPS do not bid. This lack of any clear information on such a crucial situation makes it incredibly difficult for both Providers and Service Users to plan for their future.

Within the Service Specification (7.30) it is stated that current Framework Providers who do not achieve a place on the DPS Agreement or who do not apply will be required to continue to deliver the services under the terms of the current Framework until formally terminated by the Commissioners. This is not enforceable as the Contract will have expired.

Finally, in light of all of the above, it was very discouraging to be told recently by a local MP that Cornwall Council are towards the bottom of the lowest 20% of all Council's by percentage of their total budget spend on Social Care and the input of a further £20 million would not take them to the top of the lowest 20%, thereby evidencing the disparity of funding placed by Cornwall Council to its Social Care sector. It would be extremely useful if Cornwall Council could acknowledge this situation and provide details on the plan to improve things for the Service Users in our County.

Providers in Cornwall are asking to work with the Council to develop an effective solution that works for everybody, especially the service users.

Yours sincerely,

Richard Monk
Executive Officer
Cornwall Partners in Care

Cc's to;
Iris Chalmers
Bernie Edwards
Kate Kennally
Rob Rotchell
Helen Charlesworth
Karen Hooper
Vicky Allen
Kim Dowsing
All Cornish MP's
All Cabinet members