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| Cabinet Member for Adults and Health | Ref No: AH2_18-19 |
| May 2018 | Key Decision: Yes |
| Shaw Healthcare Contract Variation | Part I |
| Report by Executive Director Children, Adults Families Health and Education and Director of Adults' Services | Electoral Divisions: All |

Summary

This report sets out the changes proposed for the Shaw Healthcare Contract and a recommendation for investment to facilitate these changes.

The contract has 17 years remaining of a 30 year term; the Council commissions day care, residential and nursing services under the arrangement across 12 care homes and care homes with nursing. The last notable contract variation took place in 2011, since then there have been significant changes in local policy and social care legislation which need to be embedded in the contract and more importantly the service delivery.

The proposal is to reconfigure the services to support timely access, improve bed capacity, and increase capability to support people with more complex needs, increase independence and provision to support individuals to have the appropriate time to make long term decisions. It is the intention that the proposals will strengthen the Council's position in the wider care market, so delivering greater value for money across the Adults and Health budget as a whole.

Recommendations:

That the Cabinet Member:

- (1) Approves investment in the Shaw Healthcare contract, as set out at paragraph 3 of the report; and
- (2) Delegates to the Director of Adults' Services the authority to implement any changes related to operational reconfiguration, to be mobilised from July 2018; and
- (3) Authorises the Director of Adults' Services and Director of Law and Assurance to settle variations to the Shaw contract to give effect to the proposals set out in paragraphs 2 and 3.

1. Background and Context

- 1.1 Prior to 2005 the County Council took the decision to no longer operate a number of care homes for older people. This decision led to an opportunity for interested parties to express an interest in providing the services. Consequently, the Council entered into a 30-year contract with Shaw Healthcare (West Sussex) Ltd in February 2005, to build and manage 12 care

homes. Initially the services delivered care and support to those requiring help with physical frailty and dementia. Since 2009 Shaw Healthcare's portfolio (and registration) has extended to nursing.

- 1.2 The Council is 13 years into the contract, which has a current contract value of £19m per annum. The Council commissions 590 beds. There are a further 160 beds available for people funding their own care. The sum of these beds equate to 9% of registered beds within the care home market (for older people) in West Sussex.
- 1.3 The contract also provides day support services in six of the services. The day provision is accessible by people living in the community, utilisation is variable across the services, and future commissioning of these services is an aspect of the proposed reconfiguration.
- 1.4 To respond to changing needs, the contract was designed to be flexible. The last variation was negotiated in 2011. Since then there have been significant changes within local policy, practice and legislation, namely changes to the eligibility threshold, enactment of the Care Act 2014 and the NHS Five Year Forward View, the principles of which need to be reflected in the contract with Shaw Healthcare.
- 1.5 In particular, following the 2011 change in the eligibility threshold, there was no demand for care home services to meet moderate need. This principle was not applied to beds within the Shaw Healthcare contract. The result has been that available workforce in the services has not always been adequate, which has led to under-utilisation. For example in January 2017, only 90% of available beds were in use. In addition the related investment in equipment and technology, suitable to safely meet the needs of customers with more complex needs did not materialise.
- 1.6 The cost of residential and nursing beds that the Council buys from the wider market has continued to rise. Since 2012/13 there has been a real terms price increase (over and above inflation) of 25%. In part this reflects buoyant levels of demand from private funders and a net inward migration of people moving into care homes. It is proposed to invest in the contract to increase available workforce to strengthen the supply base.
- 1.7 The contract operates as a strategic partnership; this means that the Council has an equal role in ensuring that Shaw Healthcare is supported to develop services to meet the projected level and complexity of demand. This includes adapting services to support the direction of policy and practice in adults' services. In addition the expectation of the partnership that innovation will develop, shape and deliver exemplar models of care, such as the discharge to assess offer that has been in place since autumn 2017
- 1.8 West Sussex has a challenging demographic profile of increasing demand, complexity and an increase in dementia prevalence set against a net loss of around 1% of beds from the care Market in 2017/18.
- 1.9 An increase in respite provision and discharge to assess will ensure people are given appropriate time to stabilise, optimise their independence and consider how and where they would like their long term care and support

needs to be met. It will provide the Council with a level of guaranteed supply and certainty which supports stability of workforce.

- 1.10 Some Shaw Healthcare services are rated as “requires improvement” by the Care Quality Commission. The Council’s clear expectation is that, through the investment in additional staff, the services will have increased capability to support in delivering and sustaining the required improvements.
- 1.11 To inform the proposals and set expectations from an evidence base a performance baseline was established. This took account of strategic objectives, commissioning intentions, operational practice and considerations which led to a review of the suitability of the bed configuration, bed utilisation and analysed contract efficiency. Through additional investment, the services will be resourced to meet the needs of more complex customers resulting in better access to the beds and increased utilisation.

2. Proposal

- 2.1 The County Council proposes to make the level of investment required in the contract. The changes through investment will support the services to meet the Council’s expectations on quality. The intention is to increase respite provision and maintain discharge to assess. This provides the Council with a level of guaranteed supply and certainty which supports stability of workforce, fosters innovation and helps to better manage the financial commitment.
- 2.2 The change is proposed in three phases:
 - 2.2.1 Phase one was delivered in October 2017 under the discharge to assess Cabinet Member decision ([AH1-17.18](#)).
 - 2.2.2 Phase two of the contract variation will require investment to secure additional workforce and equipment within the services to deliver commissioning intentions and support the Council to ensure an adequate level of care to meet the increased level of demand and complexity. There will be an increase in the number of dementia beds, short term beds and respite provision. This will provide certainty and guarantee supply for some of the most complex customers. The Council, through the contract, will secure beds that are high turnover and short term which are hard to source and are at a premium in the wider market.
 - 2.2.3 There are 129 beds categorised as low to moderate need. Through investment in additional resource these will be changed to meet high and complex needs for residential and residential dementia provision for individuals funded by the Council. Many of these beds are already supporting individuals with complex needs; however the arrangements have developed in an ad hoc way with the Council being invoiced for the cost differential outside of the main payment mechanism, which is inefficient and makes costs more difficult to manage. The variation will bring the costs into the main payment, providing greater control; including the ability to maximise cost avoidance/savings opportunities. The contract variation will be implemented from September 2018, this will allow for the legal variation to be managed in accordance with the contract’s change procedure.

2.2.4 By investing in additional workforce and increased use of assistive technology and equipment within the contract, the clear expectation is that through increased capability there will be notable improvements in those services that currently require improvement, strengthening the delivery of safe and sustainable services.

2.2.5 These changes will increase the cost of the Shaw Healthcare contract by £2.15m per annum. In order for this to be affordable, operational practice will need to change so that the following benefits will also be delivered:

- Improved access to beds will support an increase in bed occupancy from 95% to 98% utilisation. This equates to approximately eighteen beds. Based on average costs for equivalent beds bought in the wider care market, this should reduce social care placement costs by around £0.59m per annum.
- Change in practice around high cost placements. Conversion of the beds will mean that a placement in a Shaw home will become appropriate for customers whose care needs may have previously required an alternative placement. On average the cost of a bed in the wider market is more expensive than those available under the reconfiguration. A review has been undertaken of high cost placements where people's needs could make them suitable for a Shaw Healthcare placement. This review suggests potential savings in the order of £0.53m per annum could be achieved.
- Consideration of an option to utilise between 10 and 20 beds, to supplement capacity in the Crawley area differently, for example as social care "step down" provision. This creates scope to reduce spending in the wider market by up to £0.18m per annum.
- Other operational changes.
More efficient use of the contract beds will release savings of around £0.3m. Demand pressure, including that from the acute sector, to rapidly discharge social care customers has led to people who require residential care being placed in nursing beds. This results in a loss of income to the Council, because in those circumstances the cost of funded nursing care (which is paid based on a person having a health need), cannot be reclaimed from the clinical commissioning groups. The reconfiguration, and a parallel change to practice, will reduce the number of these situations, which will increase recoverable income by an estimated £0.16m per annum.
Smarter processes for consistently identifying, supporting, planning and (virtually) transferring self-funders, whose finances have dropped below threshold and become the responsibility of the Council, from market provision to the Council's contracted provision. This has the potential to reduce costs by £0.14m per annum, following the contract variation.

2.2.6 The ambition for the Shaw Healthcare contract:

- A high performing contract, with an ethos of continuous improvement and a focus on performance management
- An expectation on Shaw Healthcare to drive quality improvements and operate as a lead innovator, delivering exemplar models of care e.g. discharge to assess underpinned by adoption of trusted assessor

- To strengthen the strategic partnership, recognising it is an integral partner in developing initiatives that support the wider health and social care system.
- To develop mutual understanding and strong operational relationships to facilitate optimal utilisation of the contract through improved communication, proactive management of vacancies and streamlined processes
- To ensure the contract is competitive compared with the wider care market.
- Services are capable of supporting increased demand and able to safely support people who require support with complex physical frailty and dementia.
- All homes have strong links with their local communities, becoming the heart of their community, actively supported by adult social care and Health partners.

2.2.7 Phase three of the contract reconfiguration will result in changes to the day services offer delivered by Shaw Healthcare (this will be the subject of a separate Cabinet Member Decision). To ensure the right offer, in terms of adequacy and service offer of day provision, a strategic review of Council provider services and Shaw Healthcare provision has been undertaken. To date this has considered levels of utilisation across the services, as well as the suitability of the buildings with a view to changing the offer to ensure efficiency and sufficiency of services. The mobilisation is scheduled from autumn 2018. This is expected to deliver savings of around £0.5m, which will help ensure the contract variation is affordable to the Council, by offsetting some of the bed reconfiguration costs.

2.2.8 It is recommended that the Council supports a formal variation of the contract with Shaw Healthcare and in doing so agrees to the additional investment to enable an increase in staffing and provision of additional equipment which will facilitate the reconfiguration of the care home and day support services to best meet the needs of those requiring formal care and support.

3. Resources

3.1 The full year effect of the contract variation will be £2.15m; this is subject to annual indexation in line with the contract term. With this investment Shaw Healthcare will employ an additional 71 full time equivalent support workers and team leaders. This recognises the increase in the complexity of the individuals being referred to the care homes and will enable the Council to access available beds without the need for additional payments. As mobilisation is planned from September 2018, the Council will not pay the full year effect in 2018/19 but a proportionate sum of £1.1m.

3.2 In budget terms, the variation is expected to be an enabler of net savings of £1m across the Adults and Health portfolio. This is a combined expectation of phases 2 and 3 of the reconfiguration, towards which the latter is anticipated to generate approximately £0.5m. As contributions towards paying for the increase in cost, £0.4m has been agreed as part of the spending plan for the Improved Better Care Fund with £0.3m being allocated from the demand funding included in the 2018/19 budget, because the

reconfiguration will play a part in managing that pressure. Allowing for those contributions, and on the assumption that the practice changes described in paragraph 2.2.5 are achieved, the implication for the portfolio is as follows:

| Descriptor | £m |
|--|-------|
| Additional cost | 2.15 |
| Additional funding contributions | -0.70 |
| Balance to be funded | 1.45 |
| Operational savings enabled | 1.60 |
| Savings from existing 'exceptional' cost items | 0.20 |
| Phase 3 day care savings | 0.50 |
| Total savings | 2.30 |
| | |
| Total net saving | -0.85 |

The operational savings have the potential to generate a return across a range. Consequently these will be monitored closely, because they may allow the shortfall to be closed. In the event that this is not the outcome, plans will be laid to manage any gap within the portfolio as a whole.

- 3.3 The reconfiguration will also enable the allocation for adults demand pressures in the Medium Term Financial Strategy (MTFS) to be reduced. By strengthening the Council's supply base for customers with the most complex needs, future price increases for an increased proportion of beds will be determined by the indexation arrangements in the Shaw Healthcare contract, rather than being subject to market factors. This will allow that requirement to be reduced by an additional £0.25m per year. Although this will not result in a cashable saving for the Adults and Health portfolio, over the four year period of the MTFS it will reduce the level of the County Council's budget gap by a cumulative on-going £1m. This will supplement the saving in paragraph 3.2 and means that the variation will produce overall benefits in excess of the original savings target, irrespective of whether the additional funding contributions are included or not.
- 3.4 Under the contract there is an option for the Council to sell any empty bed provision to people funding their own care via Shaw Healthcare. In the event that there are vacancies, this will provide an opportunity to reduce expenditure as the contract rate is reimbursed. Under the contract variation Shaw Healthcare has agreed that any difference between the private rate and contract bed rate will be split equally with the Council.
- 3.5 There are a number of 'one off costs' associated with the variation, including legal, recruitment, staff training and operational equipment. These expenditure items are over and beyond the £2.15m and fall directly to the Council rather than otherwise being recoverable through the contract. Based on industry standards, recruitment to 71 full-time equivalent posts could cost

up to £0.2m, though economies of scale would be expected to reduce that amount to a certain extent. Expenditure of £0.25m is estimated on the operational equipment - hoists, stand-aids, profiling beds and mattresses - that the variation will require, though these are items which will have useable lifetimes that spread over a number of years. In all cases payment will be made on the basis of actual costs incurred. An allocation of £0.45m has been earmarked from the carry forward of the Improved Better Care Fund in 2017/18 to meet the spending that will fall additionally to the Council as 'one-off costs'.

- 3.6 The resource allocated to the contract will need to be increased to effectively oversee the mobilisation and performance of the new configuration. The County Council will recruit to a Contract Officer and Data Analyst role, these roles will also support the Contract Manager with the ongoing management of the contract.

Factors taken into account

4. Consultation

- 4.1 Members - The proposals for the contract variation were considered by Cabinet at a briefing on 26 September 2017, subsequently a briefing was provided to the Health and Social Care Select Committee Business Planning Group on 6 November 2017. Further scrutiny was not requested at that time.
- 4.2 External – the Council has worked closely with Shaw Healthcare to develop a joint understanding of the Council's ambition and the high level aims of the contract variation, through bi-monthly management meetings, operational locality forums and reviewing all available options with the operational managers within Shaw Healthcare.
- 4.3 Internal – The development of the proposals has included involvement with adults services, contracts & performance, adult social care, commissioning, Council provider services, legal and finance. The commissioning strategy and resulting recommendations were formally agreed at the adults' services management group on 16th August 2017. One of the proposals relates to Shaw Healthcare day services provision, the Council options appraisal work stream has been engaged, to ensure that any decisions are aligned and complementary.
- 4.4 Public – A public consultation has not been undertaken, as the overall provision is not changing and residents of the 12 care homes will not be affected by the bed reconfiguration. Public consultation will be considered as part of the review of day services provision (phase 3) and will be subject to a decision by the Cabinet Member for Adults and Health.

5. Risk Management Implications

- 5.1 The affordability of the proposal is largely dependent on the reconfigured provision being used to maximum effect. If that opportunity is to be realised, there are potential implications for operational practice. To give this consideration due prominence, the percentage occupancy of the Shaw

contract will become a key performance indicator for adults' services directorate.

- 5.2 Unless the opportunity to introduce a more central function to oversee referrals to Shaw Healthcare homes (and other care homes) at a county level (that sits outside social work practice) is taken, this potentially jeopardises some of the cost savings and avoidance opportunities. Consequently a coordinated approach to referrals and purchasing will be adopted to provide improved oversight that will further support the optimisation of efficiency, occupancy and value.
- 5.3 Investment is planned to improve the bed booking system for block contracts, to support local commissioners to have an improved picture of availability than is currently the case.
- 5.4 A further risk is that the contract variation may not achieve the intended outcomes, and prove not viable long term, this has been mitigated through the following:
 - 5.4.1 The proposal is underpinned by demographic, operational, provider and performance data; following 12 months of understanding, planning, forecasting and negotiating.
 - 5.4.2 The current contract does not have a specific review period; the Council can undertake a variation at any point, however the benefit of this needs to outweigh the legal costs of varying the contract. A review of the 2018 variation will take place and options considered in the unlikely event the contract appears to be unviable long term.
 - 5.4.3 The mobilisation period will require a significant level of recruitment required for Shaw Healthcare to increase its staff base across the twelve care homes. Workforce is a particular challenge for the care market and the Council recognises that recruitment will be a particular challenge for Shaw Healthcare. The Council will pay actual costs as new staff is employed, rather than giving costs upfront, to minimise the financial risk to the Council.
- 5.5 Shaw Healthcare manages 12 care homes, the Care Quality Commission, as the regulator, carries out inspections of all registered provision. A number of services are rated as 'requires improvement' and staffing levels have been a theme across the inspection reports. With the additional investment Shaw Healthcare will increase staffing capacity by 71 full-time equivalents
- 5.6 The mobilisation of the contract variation will require careful planning to ensure that the objectives of the contract variation are achieved, the services remain safe and contract performance is improved. To achieve this the Council will require additional resource to manage the mobilisation and ongoing contract management; this is requested as part of the reconfiguration decision (refer para 3.6).

6. Other Options Considered

- 6.1 The Council is not in a position to 'do nothing' as increased complexity must be reflected in the contract to make it workable.

- 6.2 A review of the effectiveness of the variation is planned during 2019, following full mobilisation. This will evaluate whether the long term aims are likely to be met. A strategic review of the contract will undertake an options appraisal of all future opportunities under the contract.

7. Equality Duty

- 7.1 The proposal is a variation to the contract with Shaw Healthcare. The people being supported within a Shaw Healthcare care home or care home with nursing may have one of the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; race; religion or belief; sex. It is anticipated that the proposals will positively affect those groups by changing the care and support provision available. The 12 care homes in West Sussex are specialist services for older people, aged over 65 years; they care for those that require support and accommodation for physical fragility, dementia or to meet nursing needs. Shaw Healthcare is expected to meet the Equality Legislation. The contract variation does not change the fundamental principles of the contract, but strengthens them for now and the future. The proposed increase in dementia provision will positively affect people living with dementia and their carers as additional respite provision will support people to remain living in their own homes for longer by supporting them and their carer.

8. Social Values

- 8.1 None

9. Crime and Disorder Act Implications

- 9.1 None

10. Human Rights

- 10.1 None

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