

Adult Social Care Scrutiny Commission Report

Tackle Care Home Staff Ratios:
Manifesto Pledge

Lead Member: Cllr Sarah Russell
Lead Director: Tracie Rees
Date: 4th February 2020

Useful information

- Ward(s) affected: All
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1. Purpose

- 1.1 To provide an update on progress against the manifesto pledge: 'Tackle Care Home Staff Ratio's as part of their commitment to improve Health & Care'.

2. Summary

- 2.1 Whilst legislation under the Health and Social Care Act 2008 (*Regulated Activities 2014: Regulation 18*) requires providers to deploy 'enough' staff, it does not give a specific directive regarding actual numbers.
- 2.2 Therefore, the City Council does not have any legal leverage to force a provider to employ or deploy an arbitrary number of staff to deliver care.
- 2.3 However, the Care Quality Commission (CQC) which is regulatory body for all care homes can take legal action to de-register a home if the quality of care is below the required standard, which can be attributed to inadequate staff numbers.
- 2.4 In addition, the authority has several means through its Quality Assurance Framework (QAF) as detailed at paragraph 4.4 to 4.12, to ensure that care homes are delivering good quality care, which includes staff coverage.
- 2.5 Also, the fee setting process for care homes providers takes into consideration staffing levels and ensures that a fair fee is set that supports care homes to employ appropriate staff levels.
- 2.6 Leicester City compares well against the national average and the comparator group for numbers of nursing and residential homes which are graded by CQC as Outstanding or Good overall. This suggests that whilst the City Council cannot enforce care home providers to employ a certain number of staff, the quality of care they are delivering is improving.

3. Recommendation

- 3.1 The Adult Social Care Scrutiny Commission are asked to note the contents of this report and to provide comment/feedback.

4. Report/Background

- 4.1 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 18, states:

The intention of this regulation is to make sure that providers deploy enough suitably qualified, competent and experienced staff to enable them to meet all other regulatory requirements described in this part of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. To meet the regulation, providers must provide sufficient numbers of suitably qualified, competent, skilled and experienced staff to meet the needs of the people using the service at all times and the other regulatory requirements set out in this part of the above regulations. Staff must receive the support, training, professional development, supervision and appraisals that are necessary for them to carry out their role and responsibilities.

- 4.2 To establish that the regulations are met the Care Quality Commission (CQC) check for adequate staff numbers to meet the needs of those placed. This including evaluation of the complexity of care needs for those placed and whether the numbers of staff are adequate to meet the needs of those placed.

- 4.3 In addition, all care home providers in the city supporting social care clients have agreed to the Terms & Conditions of the Leicester City Council Core Agreement. The Core Agreement requires providers to:

employ an adequate number of sufficiently qualified and experienced Staff for the proper performance of its obligations under this Core Agreement and give notice to the Contracts & Assurance Service of the Council within next Working Day of the occurrence of the prolonged absence (in excess of one Month) or the resignation or dismissal of the Registered Manager or a change to the ownership or directors of the Care Home;

The contract specification requires that providers:

In order for the Service Provider to meet the complex care needs of the Service User, a level of staff support shall be required that ensures that individual care needs are met through a person centred sensitive, enabling and supportive approach at all times so as to promote personal dignity. The Service Provider should be able to demonstrate and evidence how this level has been determined.

The Service Provider shall recruit staff in sufficient numbers and deploy staff of a level of competence, with experience and qualifications to ensure and maintain service delivery of a quality consistent with this Specification and shall provide an appropriate level of continuing training and professional support in the pursuit of best practice and national standards of competence.

Quality Assurance

- 4.4 The Contracts and Assurance Service (CaAS) which is part of the social care department undertake a Quality Assurance Framework (QAF) Assessment of the quality of care on a regular basis. If this assessment demonstrates that there are concerns about the number, quality or abilities of staff employed within the service then an action plan will be issued, and ongoing evaluation of the actions taken will be undertaken by the allocated officer.
- 4.5 If the provider fails to take the required actions, then CaAs will use the terms of the Core Agreement to impose sanctions on the provider. This can include suspension of all new placements to the service, issuing a Notice to Remedy a Breach (NTRB) of the Core Agreement and ultimately termination of the Core Agreement.
- 4.6 The QAF also includes an assessment of Health & Safety at the service undertaken by the Corporate Health & Safety Team. This considers a number of areas covered by the Health & Safety at Work Act and issues related to Fire Safety. If the assessment of Fire Safety procedures at the service raise concerns in relation to staff numbers, this will be raised with the provider and an action plan issued. Staffing in relation to Health & Safety would be judged as a Major or Moderate concern and as such a NTRB would be issued impelling the provider to take actions to address the concerns.
- 4.7 In addition to the regular planned monitoring of providers intelligence is received into the section from a range of sources. This can be concerns or commendations raised by care management officers, whistle blowing concerns raised to CQC, issued raised with Healthwatch or concerns raised by members of the public directly to CaAS.
- 4.8 On receipt of information relating to the quality of care delivery, which may include staffing levels within a service, the allocated Officer will consider all available information and take a decision as to how this should be addressed. This could result in an unannounced visit to the service at any time of the day or night or requesting information from the manager of the service to further investigate the concerns.
- 4.9 An example of this is where officers from CaAs visited a service in response to concerns raised anonymously about the level of support available to residents in the early morning. Officers visited the service at 6am and found that there were a number of residents already dressed and in the lounge area without a member of staff available to support and monitor them. The service is registered to accommodate 19 people and 2 members of staff were deployed between 9pm and 7.30am and 3 people needed 2 members of staff to help them move safely. An immediate request was made for the night staffing levels to be increased to 3 and this was implemented with immediate effect. Officers from CaAS followed this up with a further unannounced visit in the early morning to ensure that this increase

remained in place and was sufficient to meet the needs of the resident group

- 4.10 If the evidence provided demonstrates that the concerns have been substantiated the provider will be issued with an action plan detailing what concerns have been identified, what the provider needs to do to remedy these and the timescale allowed for these to be actioned.
- 4.11 Officers will monitor the progress and ensure that any actions required to ensure the health, safety and wellbeing of residents in placement are taken as a matter of urgency.
- 4.12 If the provider does not make the required improvements following a responsive visit, then CaAs may consider whether the service is in breach of contract and a Notice to Remedy a Breach will be issued. In addition, new placements to the service may be suspended until it has been evidenced that the delivery of care has reached the required level.

Information Sharing and Intensive Support

- 4.13 CaAS meet bi-monthly with other stakeholder organisations to share information on providers who are of concern and to agree a multi-agency approach to issues that need to be addressed with the provider. In addition, there is a sub-regional (Leicester, Leicestershire and Rutland) information sharing meeting, that reports to a Regional Quality Surveillance Group.
- 4.14 Where it is evident that a contracted provider is failing to meet its obligations under the Core Agreement a Multi-Agency Improvement Planning (MAIP) approach can be implemented. Delivery of the MAIP process is via a small team who works intensively with the failing provider to deliver focussed and extensive support to help them address the identified concerns. Visits will be made at least weekly and on occasion may be undertaken every day to ensure that service users are receiving safe and effective care.
- 4.15 MAIP will arrange regular meetings for other statutory bodies who use the service to discuss progress or additional concerns and a joint action plan will be developed to ensure that all required actions are addressed during the time that the MAIP team are working with the provider. Attendance at these meeting may include representatives from other Local Authorities, CQC, Clinical Commissioning Group's within Leicester & Leicestershire, Police, Environmental health, the Infection Control and Prevention team employed by Public Health England to work across Leicester, Leicestershire & Rutland.

Leicester City Council Fees for Care Homes

- 4.16 The fees paid for the delivery of care under the Core Agreement are effective from April each year and approved through the appropriate governance processes within the Council. The Core Agreement requires that the standard price is reviewed annually by the Council and the

implementation of any amended fee rate(s) shall only apply following consultation with the Independent Sector.

- 4.17 The current rates payable (as of April 2019) are set out in the table below. These rates were increased by 5.25% from the equivalent rates in place during 2018/19. The overall increase in care home fees over the last years is shown in the second table.

Residential & Nursing Bands	Weekly Banded Rate 2019/20
Mental Illness/Drug or Alcohol Dependency	£456
Dependent Older People	£508
Learning Disability	£517
Highly Dependent People/Physical Disability	£572
Nursing Band – Accommodation & Personal Elements	£540

Year	Locality Rates	
	Banded Rates	Additional Needs Allowances
2017/18	7.67% (Ave)	4.17%
2018/19	4.82%	4.43%
2019/20	5.25%	4.79%
Total Increase (3 years - compounded)	18.78%	14.0%

- 4.18 A fundamental review of residential and nursing care banded structures was carried out by the Council in 2017/18. The existing fee model and underlying rationale were reviewed and the supporting metrics which drive the calculation of a fair price for care were reassessed using local market data and other independent third-party data sources. The latter allowed for extensive benchmarking of evidence collected from providers within the Independent Sector to support (and quantify) evidence of the drivers of cost. The resultant proposed changes to fee rates were subject to a full consultation with the care home providers.
- 4.19 As part of the detailed reassessment of fee rates, the review methodology included a review of example staffing rotas for typical sized homes (and occupancy rates) that the Council contracts with across the differing placements within the fee banding system. Proposed hours of direct care funded within banded payments also reflected minimum requirements to be compliant with the Council's Quality Assurance Framework (as set out in paragraph 4.4 of this report). The assumptions used for this assessment were not challenged by East Midlands Care the representative body for care home providers in Leicester.

4.20 Ultimately, a care home will deploy the resources available to them to employ appropriate numbers of staff who are sufficiently qualified to deliver the hours of care required. The Council (through its Care Management Division) periodically review a service user's care to ensure that the required level of personal support is being delivered. Where a service user's personal care needs exceed the level of care inherent in the banded fee payments, additional needs payments are agreed with the provider to fund the additional hours of 1:1 support.

Concluding Comments and Next Steps

4.21 Given the limits in the legislation governing staffing numbers in Care Homes, this paper has outlined the contractual requirements and the quality assurance processes that are in place in LCC to ensure that there are adequate numbers and appropriately trained staff to deliver safe and effective services.

4.22 In addition, the fee setting process provides enough resource for providers to be able to employ adequate and appropriately trained staff.

4.23 The quality of care home provision within Leicester City as assessed by CQC the ASC regulator, compares well with the percentage of services assessed as Outstanding or Good within both comparator authority areas and against the national averages.

4.24 There is no evidence within Leicester City that the quality of care home provision is adversely affected by staffing numbers currently in place.

4.25 Families or carers who wish to raise concerns about quality of care or the staffing levels in any care home have the opportunity to talk to CQC on Tel: 03000616161 or via the website on www.cqc.org.uk or can contact Leicester City Council on Tel: 0116 4541004.

5 Financial, legal and other implications

5.1 Financial implications

5.1 There are no direct financial implications arising from this report. As explained in paras 4.18 onwards a sufficiently robust process is in place to set banded rates at amounts which are commensurate with the appropriate staffing required for service users. The bespoke additional needs allowances will cater for any further requirements over and above the banded rate.
Martin Judson, Head of Finance

5.2 Legal implications

5.2 All relevant legal matters are covered within the body of the report.

Emma Jackman, Head of Law (Commercial, Property & Planning)

5.3 Climate Change and Carbon Reduction implications

There are no significant climate change implications associated with this report.

Aidan Davis, Sustainability Officer, Ext 37 2284

5.4 Equalities Implications

Under the Equality Act 2010, public authorities have a Public Sector Equality Duty (PSED) which means that, in carrying out their functions, they have a statutory duty to pay due regard to the need to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act, to advance equality of opportunity between people who share a protected characteristic and those who don't and to foster good relations between people who share a protected characteristic and those who don't.

Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

There are no direct equality implications arising from this update report. The more frequent users of health and adult social care services will be older and disabled people. Equality issues should be a basic consideration in the regulation of service providers, ensuring that people's rights are protected, that they are not discriminated against and that all their diverse needs are met.

Surinder Singh, Equalities officer tel. 37 4148

6 Summary of appendices: None

7 Is this a private Report: No

