

MAYOR AND CABINET			
Report Title	Adoption of the Unison Ethical Care Charter		
Key Decision	Yes	Item No.	
Ward	All		
Contributors	Executive Director for Community Services, Executive Director for Children's Services, Executive Director for Resources, Head of Law		
Class	Part 1	Date:	20 September 2018

1. Summary

- 1.1 Unison have developed the Ethical Care Charter ('the Charter') as a suggested way for Councils to improve homecare. It is a set of commitments for Councils to use in order to implement minimum working standards. Unison state such implementation will protect the dignity and quality of life for Service Users and the workers that care for them. (Ref: www.savecarenow.org.uk and copy of the Charter [here](#)).
- 1.2 This report sets out the policy context, background and resource implications of implementing the Ethical Care Charter, and the practical issues in so doing.
- 1.3 The precise financial implications of such a policy are difficult to quantify at this stage. However, preliminary indications are that full implementation of an Ethical Care Charter, is likely to entail a level of additional financial investment from the Council. There may also be legal issues to be addressed and practical issues to overcome in implementing such a policy.
- 1.4 The Ethical Care Charter aims to benefit the workforce, improve services and consequently benefit service users.
- 1.5 Issues in relation to practicalities of implementation-and associated cost implications - are summarised in the report and will be weighed against the cost implications.
- 1.6 The Charter is structured in three Stages with adoption of different pledges within each Stage. The Stages are further explained in the Policy Context section, below.
- 1.7 Appendices to this report:
 - Appendix 1 Council Annex, February 2018

- Appendix 2 The Charter Stages and Pledges
- Appendix 3 Financial Assumptions and Considerations

2. Purpose

The purpose of this report is to

- 2.1 Obtain approval from Mayor and Cabinet on the Full Council's decision (taken 21 February 2018- see *appendix 1*) to sign up to the Unison Ethical Care Charter (ECC);
- 2.2 Identify the relevant policy context and set out the contractual, financial and legal implications and associated risks of implementing an Ethical Care Charter, for provision of homecare for adults and children within Lewisham;
- 2.3 Recommend a preferred approach for Lewisham's adoption of an Ethical Care Charter.

3. Recommendation/s

Mayor and Cabinet is recommended to:

- 3.1
 - a) Agree with the full Council's recommendation to adopt the Unison Ethical Care Charter
 - b) Approve a phased implementation of an Ethical Care Charter, with a structured approach to the adoption of the pledges for each new contract procured from April 2019 (as outlined in section 7.1.5 as a 'tailored' approach).

This approach will ensure that future procurements of homecare are taken in the context of Lewisham's commitment to being an Ethical Care Council as well as ensuring affordability and market sustainability.

4. Policy Context

- 4.1 The Ethical Care Charter has been developed by Unison as part of the Save Care Now campaign. Unison are calling on Councils to sign the Charter and suggest that this is a way of ensuring the health, safety and dignity of vulnerable people in receipt of home care. The signing up to an Ethical Care Charter is a public commitment and signifies the first stage in a process of change for the delivery of care in a person's own home.

The Save Care Now campaign has identified the main issues in the delivery of home care as:

- Too many homecare visits are short, rushed and undignified
- There is no continuity of care
- Care workers' concerns are not listened to

- Care workers are not given enough training
- Care workers are not paid fairly
- Many people are being denied care entirely

4.2 As at July 2018, 32 UK Councils have signed up to an Ethical Care Charter (and have varied the speed & scope of implementation - to meet their particular situations). In London this includes Southwark, Greenwich, Islington, Camden, Tower Hamlets, Croydon and Hammersmith and Fulham. For more information about the implementation of the Charter, see Professor Sian Moore (2017) evaluation in [background documents](#).

4.3 In Unison’s “Guidance to councils and other providers in adopting the ethical charter” they suggest implementing the Charter in three Stages, with the pledges in Stage 1 implemented immediately and a longer planned approach for implementation of Stages 2 and 3.

- Stage 1 looks at ‘time’ in terms of ordering care, visit lengths, travelling and statutory sick pay.
- Stage 2 considers continuity of care, ‘zero hours’ contracts, training, sharing best practice and appropriate procedures for staff to raise concerns.
- Stage 3 focusses on the Living Wage Foundation Living Wage rates and occupational sick pay

The Unison Stages and associated pledges are summarised at Appendix 2.

4.4 Lewisham’s Sustainable Community Strategy 2008-2020 “Shaping our Future” articulates a strong vision for Lewisham based on a set of core principles including those of reducing inequality and delivering dynamic and prosperous communities.

The Strategy recognises that only through concerted action by all partners and achievement against all of our priority outcomes will our communities be able to thrive.

The borough is ranked¹19th (out of the top 20) amongst local authority districts with the highest proportions of children in income deprivation, and similarly ranked for deprivation affecting older people. Child Poverty is a challenge for the borough² with Lewisham’s 2018 JSNA citing HMRC (2014) that more than a quarter of children under 20 live in poverty. Lewisham is committed to improving the proportion of children

¹ Department for Communities and Local Government (2015) English indices of deprivation (lasts release) -The 20 local authority districts with the highest proportions of children and older people in income deprivation, respectively Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/465791/English_Indices_of_Deprivation_2015_-_Statistical_Release.pdf [accessed 27th June 2018]

²LB Lewisham (2018) Joint needs assessment: picture of Lewisham-part B Available at: <http://www.lewishamsna.org.uk/sites/default/files/A%20Picture%20of%20Lewisham%20-%20Part%20B.pdf#overlay-context=a-profile-of-lewisham> [accessed 27th June 2018]

living in poverty, intending to positively influence health outcomes in later life.

According to the census 2011, 11% of households in the borough³ are lone parent households, compared with 8.5% in inner London. The overwhelming majority (91.5%) of lone households in Lewisham are headed by women. According to Lewisham's Poverty Commission's final report⁴ (2017), regards to educational attainment, our children receiving free school meals (FSM) and achieving grade C and above for English and maths, ranks at 45.9% to 56.2% of all children (in Lewisham).

- 4.5 Lewisham's Corporate Priorities include ensuring the care is provided for the most vulnerable in our community and that local businesses are supported to grow. The promotion of health and wellbeing of residents is key as is empowering residents to play an active role in their neighbourhoods.

5 Scope

Below, we set out which home care services we consider to be within scope of the Charter.

5.1 In Scope

The matters set out in the Charter have the potential to affect commissioning of homecare services for adults and children from external providers by London Borough of Lewisham to discharge the Borough's own responsibilities.

Under 'lead commissioning' arrangements, Lewisham also commissions homecare services on behalf of NHS Lewisham CCG (the "CCG"). The purpose of those services is to deliver the CCG's responsibilities in relation to NHS fully funded NHS Continuing Healthcare.

The 'lead commissioning' arrangements result in a single contract or contracts, under which the responsibilities to service users of both the Council and the CCG can be delivered. The terms of those contracts apply equally to the Council and the CCG, regardless of whether it is the Council's or the CCG's responsibility to deliver the service to a service user. Lewisham Council also commissions homecare for children & young people in relation to NHS Continuing Health Care funded care.

³ LB Lewisham (2017a) Lewisham Poverty Commission 2nd Meeting, , 4th MAY 2017
Child Poverty, childcare and lone parent unemployment Available at:
<https://www.lewisham.gov.uk/inmyarea/Documents/LPCChildPovertyChildcareLoneParentUnemploymentReport.pdf> [accessed 27th June 2018]

⁴ LB Lewisham (2017b) Working together to tackle poverty in Lewisham- the final report of the Lewisham Poverty Commission October 2017 Available at:
<https://www.lewisham.gov.uk/inmyarea/Documents/LewishamPovertyCommission.pdf>
[accessed 27th June 2018]

These are commissioned through a framework agreement or spot purchase arrangements with a number of external providers

Therefore in practice, the potential benefits and impact of Lewisham Council signing up to the Ethical Care Charter will also be realised by NHS Lewisham CCG in relation to NHS Continuing Health Care funded care. Any consequent alteration to a contract or to the terms of a future procurement exercise will also have impact not only on the Council but also on the CCG.

The CCG is aware of this report to Mayor and Cabinet. Following Mayor and Cabinet decision on the adoption of the Charter, the CCG is likely to assess the implications for its contracts for personal care and support.

5.2 Out of Scope

For the reasons set out below, the following services which provide home care are considered out of scope for the Charter.

5.2.1 *In-house Services*

It is likely that the matters covered by the Charter will already be in place for all in-house services staffed by Council employees. There might be some circumstances, where there is a need to use agency workers to cover in-house staff absences.

The Council uses one managed service provider, Reed Specialists, who in turn have a network of third-party suppliers who supply the agency workers for the Council. The Reed contract does not include homecare provision. However, the contract does allow, for example, specialist OT or support planners who may go into people's homes, to provide other services. But please note that this number of staff is minimal.

Given this context, the Reed Specialist contract has been considered out-of-scope.

5.2.2 *Direct Payments (DP)*

Adults who have been identified and assessed by London Borough of Lewisham as being eligible for services have the option to purchase services directly to meet their home -based needs for care & support.

The Charter applies to services commissioned by the Council. As the individual - not the council - commissions direct payment services, the Charter does not apply. Adoption of the Charter standards across DP would require the co-operation and commitment of these individuals.

It is possible for individuals to choose to use Council-commissioned home care services as their DP arrangements (that is, services which

are in-scope – see previous section). In those cases, the service received by the individual will be consistent with the in-scope services.

6 Background

6.1 In summary, Lewisham Council has several contracts for home care for both Children and Adults. Work has been carried out to identify those contracts currently in place which would be affected by the Charter; to examine how implementing the pledges would affect the contracts; and how that might be implemented.

6.2 The identified contracts are:

A Home Care Services (Neighbourhood Lead Providers) - (Adults) - *ends March 2019*. This is a framework agreement on a neighbourhood basis, involving contracts with four providers (one for each neighbourhood);

B Personalised Care and Support in the Home (Children and Young People's) – *ends March 2020*. This is a framework agreement, involving contracts with various providers;

C LD Framework Agreement (Floating Support) + spot purchased agreements – *various end dates*. This is a framework agreement, involving contracts with over 20+ providers;

D Extra Care Services (Cinnamon Court Scheme and Cedar Court Scheme) - single contract, *ends June 2020*. This is a single contract with a single provider;

E Extra Care Services (Conrad Court Scheme and Hazelhurst Court Scheme) – *ends October 2019*. This is two separate contracts with a single provider.

7. Options

7.1 Below are options considered by officers in respect of signing up to the Unison Ethical Care Charter and determining the recommendation (see section 3.1).

In considering which option to follow, one relevant issue is any potential financial and resource implications for the Council. Work done so far shows that full adoption of all the Charter pledges would mean that additional costs to the Council are likely, although in many cases the detailed financial modelling required for full costing has not been possible at this stage. Those costs would be incurred where adoption of the pledge(s) would involve an alteration of the terms of any current in-scope contract, or change the terms of any future procurement process for home care services. Financial and resource implications have been considered (see financial section).

In signing up to an Ethical Care Charter (the “Charter”), the options are:

- a) Do not sign up to the Charter;
- b) Immediate implementation of the Charter (October 2018) for current contracts (and immediate implementation expected when forming all new contracts);
- c) Phased implementation of the Charter, starting immediately (October 2018) with Unison’s Stage 1 (see Appendix 2) , for current and new contracts;
- d) Phased implementation of the Charter , starting with Unison’s Stage 1 when forming new contracts (from April 2019) i.e. no change to existing contracts;
- e) Phased implementation of the Charter , with a tailored approach to the pledges which will apply for each new contract, (from April 2019) i.e. no change to existing contracts;

7.1.1 (Option A) **Do not sign up to the Charter**

While this is potentially an available option, it is not recommended.

Agreeing to adopt the Charter would helpfully communicate the Council’s intentions and aspirations in relation to the delivery of excellent & sustainable home care services now and into the future.

7.1.2 (Option B) **Immediate implementation of the Charter (October 2018) for current contracts (and immediate implementation of the Charter when forming all new contracts)**

This option carries very *high risks*, which could result in failing to implement the Charter successfully. That is because of:

- insufficient time to manage the change across over 30 stakeholders and high-value contracts which, in the main, introduce instability into a period of flux in which contracts have less than 12 months duration ;
- presumed access to additional resources - that cannot be absorbed in business-as-usual costs;
- systems needed to monitor compliance would need to be introduced quickly and may not give full assurance of at least Stage 1 pledges across over 30 contracts, in the remaining six months of 18/19;
- potential reputational risk, for the Council, of patchy or inconsistent implementation;
- potential inflexibility in wording of ‘zero-hour contract’ pledge that may diminish any genuine benefits that may be preferred by a worker for their working arrangements;

- immediate or longer-term unintended consequences of potential workforce destabilisation :
- with care workers potentially transferring into other areas of provision - such as domiciliary care employment- instead of (and to the detriment of) care home employment);
- providers choosing not to comply (where we cannot compel them to apply) and, instead, exiting the home care market, thus diminishing client choice in the provider market;
- the potential for legal challenge by existing contractors or by potential bidders for contracts, who are detrimentally affected by the changes.

7.1.3 (Option C) Phased implementation of the Charter, starting immediately (October 2018) with Unison’s Stage 1 (see Appendix 2), for current and new contracts

Implement Unison’s Stage 1, Stage 2 and then Stage 3 as their guidance suggests, although several contracts are already compliant with some of the pledges in Stage 2 and Stage 3.

This option carries high risks but phasing allows more time for planning, securing provider commitment to change and setting up structures for implementation.

Also, using Unison’s Stages, there are pledges in lower Stages that may need longer time for agreement or involve conflict that may subsequently frustrate progression to the next Stage;

7.1.4 (Option D) Phased implementation of the Charter, starting with Unison’s Stage 1 when forming new contracts (from April 2019) i.e. no change to existing contracts

- Implement Unison’s Stage 1, Stage 2 then Stage 3, as their guidance suggests, although some of the pledges we are already compliant with are in later stages.

This option carries Medium Risk because it affords a longer lead-in time (longer than option C above) for planning, securing commitment to change from wider stakeholders and gives time (where relevant) for structures to be set up ready for implementation, and managing the legal risks.

7.1.5 (Option E) Phased implementation of the Charter, with a tailored approach to the pledges which will apply for each new contract, (from April 2019) i.e. no change to existing contracts

This is the recommended option.

Lewisham Council could implement the pledges in phases that best suit the Lewisham context (i.e. a ‘Lewisham’ Ethical Care Charter). In which case, the pledges may be grouped into ‘Levels’ of implementation.

Table 1 (below) summarises the current status of the ECC pledges within Homecare Services in Lewisham, and gives an indication of the areas which will need addressing in developing the procurement strategy.

Level i pledges will be the default for all new contracts, with the option for officers to work with providers to pragmatically incorporate (or make explicit commitment to work towards achieving) relevant remaining Level ii and iii pledges, at contract level.

Risk level

This option carries Medium /Lower Risk (with considerations of risk similar to option D above). Option E is a more sophisticated response to Charter implementation, allowing flexibility in maintaining the spirit of the pledges whilst still recognising realities of the Lewisham context, and providing a more robust basis for managing the legal risks.

Option E is likely to facilitate earlier agreement amongst stakeholders, especially providers.

Next steps

- Officers will prepare for April 2019 start by
 - a) convening a review group in 2018/19 with representation from current providers, local NHS and Unison reps tasked with articulating Lewisham Level i pledges and securing provider's immediate commitment to them and
 - b) reporting to the Integrated Joint Commissioning Group⁵ (IJCG) by April 2020 on
 - (b1) an assured process that agrees the approach for deciding criteria and terms by which new Lewisham homecare contracts will incorporate a particular Levels ii and iii pledge and ensuring financial implications for adopting the pledges are clearly indicated;
 - (b2) addressing issues identified in Option C above;
 - (b3) the evidence providers will collect and report on to measure and assure on delivery of any given pledge at Levels i, ii or iii;
 - c) agreeing with Mayor and Cabinet on their reporting requirements for this Charter adoption

⁵ The IJCG is a senior –level group , reporting to the Lewisham Health Care Partner Executive Board. The IJCG's remit is to improve collaborative and joint working across the CCG and the Council, to deliver strategic commissioning. See " *Strengthening Lewisham's Governance and Partnership Arrangements for the Delivery of Community Based Care*, [paper to HWB 6th July 2017](#) (item 3 - Whole System Model of Care - Governance and Partnership Arrangements for CBC)

Table 1: Summary of the Status of ECC Pledges within Homecare Services in Lewisham

A: Homecare Services (Neighbourhood leads) B: Children and Young People- Personalised Care and Support C: LD Framework Agreement (Floating Support) D: Extra Care Services (Cinnamon Court/Cedar Court) E: Extra Care Services (Conrad Court/Hazelhurst Court)			Contracts				
			A	B	C	D	E
Contract ends (mm/yy):			03/19	03/20	various	06/20	10/19 10/22
Stg	Plg	Level i					
3	11	All homecare workers will be paid at least the Living Wage . (calculated every November) [N/A across all contracts] If Council employed homecare workers paid above this rate are outsourced it should be on the basis that the provider is required, and is funded, to maintain these pay levels throughout the contract	●	●	●	●	●
2	8	Providers have clear and accountable procedures for following up their staff's concerns about their client's wellbeing.	●	●	●	●	●
2	6	Clients are allocated the same worker wherever possible.	●	●	●	●	●
1	1	Starting point for homecare visits will be client need and not minutes or tasks.	●	●	●	●	●
1	4	Visits are scheduled so that homecare workers are not forced to rush their time.	●	●	●	●	●
2	9	All homecare workers will be regularly trained to the necessary standard to provide a good service (at no cost to themselves and in work time).	●	●	●	●	●
Stg	Plg	Level ii					
1	2	15 minute visits will not be used.	●	●	●	●	●
2	10	Homecare workers will be given the opportunity to regularly meet co-workers to share best practice and limit isolation.	●	●	NDA	●	●
1	5	Homecare workers who are eligible must be paid statutory sick pay .	NDA	●	NDA	●	●
1	3	Homecare workers are paid for their travel time/travel costs and other expenses such as mobile phones.	●	●	NDA	N/A	N/A

A: Homecare Services (Neighbourhood leads) B: Children and Young People- Personalised Care and Support C: LD Framework Agreement (Floating Support) D: Extra Care Services (Cinnamon Court/Cedar Court) E: Extra Care Services (Conrad Court/Hazelhurst Court)			Contracts				
			A	B	C	D	E
Contract ends (mm/yy):			03/19	03/20	various	06/20	10/19 10/22
Stg	Plg	Level iii					
2	7	Zero hour contracts will not be used in place of permanent contracts.	●	●	NDA	●	●
3	12	All homecare workers will be covered by an occupational sick pay scheme .	NDA	●	NDA	NDA	●

KEY:

● *pledge is FULLY met now or specified/expected in the contract*

● *pledge is PARTIALLY met*

● *pledge is not currently met*

NDA *insufficient information further analysis necessary; variable case-by-case*

N/A means the pledge is not pertinent to the particular contract

Stg means the Unison Stage number 1,2 or 3

Plg means the Unison Pledge number 1 to 12

7.2 The analysis in Table 1 above demonstrates that six out of the twelve pledges are currently being fully met -

7.2.1 *Pledge 8-* all Council contracts expect providers have clear and accountable procedures for following up their staff's concerns about their client's wellbeing and we monitor & evidence that this is complied with ;

7.2.2 *Pledge 6-* providers are designing their rotas with the aim of facilitating relationships when allocating a consistent care worker (or group of workers) to a client, where possible;

7.2.3 *Pledge 1-* care packages are designed to meet the client's needs as identified during the assessment and review process. Clients and their families are encouraged to be involved in identifying the outcomes that are important to them and how the Care Agency can assist with meeting these.

7.2.4 *Pledge 4-* the timing and length of care visit is determined by the client's individual preferences and care needs. Processes are in place to allow Care Workers to vary the duration of the visit to deal with unplanned events – client unwell, waiting for Doctor to attend etc.

7.2.5 *Pledge 9-* the training provided to Care Workers (content, impact and frequency) is monitored by Commissioning Staff and minimum levels of training are specified in contracts.

7.2.6 *Pledge 11*- in relation to pledge 11, note that the Council considered that issue in May 2009, in relation to council staff and with the effect of thereafter committing to covering LLW costs in contracts, at point of contract renewal.

At that time, the council had stated its commitment to ‘the establishment of the London Living Wage’. The matters taken into account when making that commitment included the impact of the Council’s fiduciary obligations; the requirement to comply with Best Value obligations (Local Government Act 2003); and the impact of legal obligations such as the Public Contracts Regulations (under which there is some but not unlimited scope for giving weight to ‘social’ factors during a procurement process). The result was that the approach taken now is that when procuring contracts the Council takes a case by case approach, weighing up the costs of the contract against the benefits of fair employment terms for contractors’ employees and any resulting benefit to the Council.

Each case is to be considered separately and flexibly, with any impact on costs fully assessed and justified. This was the approach taken when procuring the home care contracts. It has resulted in a position where the majority of home care providers are contractually required to ensure that the Care Workers are paid the London Living Wage.

7.3 The analysis in Table 1 above demonstrates that two out of the twelve pledges are currently being partially met -

7.3.1 *Pledge 2* -which focuses on prohibiting 15 minute care calls is not always met in Extra Care Services as some care visits are scheduled just to enable a Care Worker to accompany a client who lives on site to the Communal Lounge Area for meals or other social activities.

7.3.2 *Pledge 7* - has been discussed with Providers, who report that Care Workers often prefer the flexibility of zero hour’s contracts. Providers are strongly encouraged to offer guaranteed hours contracts and record/repeat the offer. Several home care providers have made encouraging progress in the uptake of guaranteed hours contracts amongst Care Workers.

7.4 With regards to the remaining pledges 3, 5, 10 listed in the Care Charter, there is some variation in how the matters in the Charter are addressed within current contracts, for example payment of travel time.

Only one commitment is not currently included as a requirement in any contracts – pledge 12: “*All homecare workers will be covered by an occupational sick pay scheme*”.

8. Financial implications

- 8.1 The recommended approach proposes three levels of implementation.

Level i impact is expected to be cost neutral because the contracts in scope are already compliant with the selected pledges.

Level ii impact is estimated at £0.72m, if implemented in full. This includes the cost of travel for staff and increasing the length of some short visits.

Level iii impact is estimated at £0.76m and includes the cost of implementing occupational sick pay schemes.

The approach to modelling the financial impact is set out in appendix 3.

- 8.2 Implementation of Level ii and Level iii would constitute a budget pressure for the Council and therefore the affordability of adopting any particular pledge within a contract will be considered at the beginning of each new procurement.

- 8.3 If the pledges were implemented in full as contracts were re-let the estimated phasing of costs would be as follows:

Level	19/20 £m	20/21 £m	Full year £m
i	0	0	0
ii	0.46	0.65	0.72
iii	0.63	0.72	0.76
	<u>1.09</u>	<u>1.37</u>	<u>1.48</u>

- 8.4 There would also be a financial implication for the CCG, on whose behalf, the Council arranges care for service users/patients, through contracts with care providers.

9. Legal implications

- 9.1 The Council is considering adopting Unison's Ethical Care Charter. Various legal issues need to be taken into account. The overall impact is that a blanket approach of requiring current contractors to comply with some or all of the Charter pledges, or of not inviting or considering tenders from contractors who do not comply with those pledges, would be unlawful. A more granular approach taking into account specific issues relevant to the contract is less likely to be potentially unlawful or subject to challenge.

- 9.2 Legal issues to be taken into account in this decision are set out below. The report sets out the potential impacts of the options.

- General powers and decision making:
The Council has a general power of competence contained in the Localism Act 2011. General decision making principles require consideration of all relevant matters, including financial impacts and the Council's fiduciary duty to its council tax payers.
- Best value:
The Council has a duty to obtain best value in the procurement of works, services and supplies and to secure continuous improvement in the way functions are carried out, having regard to a combination of economy, efficiency and effectiveness (Local Government Act 1999). This means that when procuring contracts the Council must, on a case by case basis, weigh up the costs of the contract against the benefits of the particular relevant issue (here, drawn from the Ethical Care Charter).
- 'Non-commercial' matters:
Some matters are irrelevant considerations and may not be considered in a procurement or contract process. That applies to 'political' matters which are defined as 'non-commercial'. Authorities are prohibited from having regard to these in the contractual process, which would include new procurements and changes to existing contracts (Local Government Act 1988).

'Special' considerations (which can include 'economic, innovation-related, environmental, social or employment-related' matters) can be taken into account when deciding on awarding a contract but only where they are 'linked to the subject-matter of the contract' (Public Contracts Regulations 2015 Regulation 70). Employment / workforce matters are not 'non-commercial' to the extent that they are relevant to the achievement of best value (Local Government Act 1999 s. 19). This assists with taking such matters as the terms and conditions of employment into account, so that workforce conditions (such as travel time/zero hours) might be taken into account as part of a procurement / contract process but only where this will achieve best value.

'Social Value' must be considered for contracts worth over the EU procurement threshold; that is, how a procurement might improve the economic, social and environmental well-being of the area, and how the procurement might be done so as to secure that improvement (Public Services (Social Value) Act 2012). The same approach can be applied to all contracts.

- Legal requirements:
It is, of course, lawful to require contractors to comply with legislative requirements such as equality legislation and the minimum wage provisions.
- Consultation:
As the report sets out, there may be circumstances where consultation is required (for example with providers or service users). Where that is the case, a decision on – for example – a change to a particular

contract should not be made until the consultation has concluded and the result can be taken into account.

- 9.3 If the Council wishes to sign the Charter (in whatever option is preferred), it should ensure that it is prepared to adhere to the commitments made in order to avoid a risk of Judicial Review. The Council should ensure that the terms of the adherence to the Charter do not involve any breach of the matters set out above, in order to avoid a risk of challenge by a contractor or service user.
- 9.4 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.5 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 9.6 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 9.7 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the

duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

9.8 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

10. Crime and Disorder Implications

10.1 There are no direct crime and disorder implications arising from this report.

11. Equalities Implications

11.1 The adoption of an Ethical Care Charter has the potential to directly affect the care workforce in Lewisham, and is intended to have a positive direct impact on the user experience for residents receiving homecare services. The adoption does not involve a change in service and therefore does not require a formal Equality Analysis

Assessment⁶ but the following sections give due regard to likely effect of adoption with regard to direct and indirect discrimination.

- 11.2 The Charter will affect care workers and other support workers and seek to reduce potential disparity (in certain circumstances of employment) between permanent and non-permanent staff. The Charter proposes adopting a set of commitments, which can be incorporated into the contracts for commissioned homecare services and will therefore affect workers in the social care sector.
- 11.3 This is a sector characterised by a high percentage of female employees. Therefore there may possibly be a positive impact on the working conditions and therefore quality of life for a larger number of women of working age.

- **Age**

Workforce

The age profile for both care worker and other support worker groups are broadly similar across age bands, with older care workers (over 65 yrs) a very small percentage of the workforce⁷.

The context of their work is such that care workers & other support workers in London have lowest levels of permanent contracts and highest temporary or other contracts⁸ amongst those in care work. March 2018, the proportion of care workers on zero-hour contracts in Lewisham (42% - across all care categories) exceeds London (37%) and England (24%) averages⁹.

The ECC seeks to ultimately increase the number of people able to work on permanent contracts, if they want to do so, with the associated job securities this could bring to a working-age population.

Service user

The adoption of the ECC will not negatively impact the age of the person supported by the care worker. The age profile of people receiving care is independent of the workforce providing care.

- **Sex**

Workforce

⁶ <https://www.lewisham.gov.uk/mayorandcouncil/aboutthecouncil/equality-and-diversity/Pages/Equality-analysis-assessments.aspx>

⁷ <https://www.nmds-sc-online.org.uk/reportengine/GuestDashboard.aspx?type=AgeBand>

⁸ <https://www.nmds-sc-online.org.uk/reportengine/GuestDashboard.aspx?type=EmploymentType>

⁹ <https://www.skillsforcare.org.uk/NMDS-SC-intelligence/Workforce-intelligence/documents/Local-authority-area-summary-reports/London/Lewisham-Summary.pdf>

The female/male ratio of the care worker and other direct care roles is 83% and 17% respectively (at London Level)¹⁰ and is similar female/male ratio across all the care sector.

The adoption of the ECC may not change the ratios of women and men involved in direct care work.

Service user

The adoption of the ECC will not negatively impact the sex of the person supported by the care worker. Decisions that providers currently make to accommodate the sex preferences of clients for a particular worker attending them, will not be negatively impacted by adoption of the ECC.

- **Race**

Workforce

The care workforce is predominantly Black-Caribbean¹¹ in London, 52% in domiciliary care and 47% in care home settings. The ECC will therefore affect this group of the population, with the intention of positive impact but it will positively affect all other groups of people working as care workers or in other direct support roles within domiciliary care.

Service user

The adoption of the ECC will not negatively impact the race of the person supported by the care worker.

- **Disability**

There are no disability implications arising from this report

- **Gender reassignment**

There are no gender reassignment implications arising from this report

- **Pregnancy and maternity**

There are no pregnancy and maternity implications arising from this report

- **Religion or belief**

There are no direct religious or belief implications arising from this report

- **Sexual orientation**

There are no direct sexual orientation implications arising from this report

¹⁰ <https://www.nmds-sc-online.org.uk/reportengine/GuestDashboard.aspx?type=Gender>

¹¹ <https://www.nmds-sc-online.org.uk/reportengine/GuestDashboard.aspx?type=Ethnicity>

- **Marriage and civil partnership**

There are no marriage and civil partnership implications arising from this report

12. Environmental Implications

There are no direct environmental implications arising from this report.

13. Conclusion

13.1 Adopting an Ethical Care Charter is likely to add value to the working conditions for care workers in Lewisham and signal how Lewisham continues to value its care workforce. The adoption of the Charter enhances the likelihood of Lewisham achieving strategic outcomes of its Sustainable Community Strategy 2008-2020, namely “reducing inequality and delivering dynamic and prosperous communities”.

13.2 However, the complexity of commissioning arrangements, for personal care and support, suggests that the Charter would not be suitable for blanket adoption across all such contracts in Lewisham.

13.3 Lewisham is in a good position to adopt many of the pledges within the Charter as - for those contracts that seem most suitable- nearly two thirds of pledges are currently being met.

13.4 However, there will be considerable challenges for the Council to achieve the remaining pledges, and whichever option the Council chooses, becoming an Ethical Care Council, is likely to entail a level of additional financial investment from the Council.

13.5 Therefore a phased & planned implementation of the pledges is proposed, tailored to align with the Lewisham context.

This approach will provide an opportunity to learn as the Charter rolls out to new contracts, as well as inform ongoing contracts.

Background Documents

Moore, S (2017) An Evaluation of UNISON’s Ethical Care Charter
Uni of Greenwich (2017) Available at:
<https://www.unison.org.uk/content/uploads/2017/06/ethicalcarecharterE-DITFINAL.pdf> [Accessed 30th July 2018] London: University of Greenwich (Work, Employment and Research Unit)

If there are any queries on this report please contact **Corinne Moocarme, Joint Lead, Community Services, 020 8314 3342**
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Appendix 1 Council Annex, February 2018

ANNEX 1 – COUNCIL (MOTION 2)

COUNCIL MEETING 21ST February 2018 (page 9) -extract

151.

RESOLVED that the following motion be agreed:

Council notes and welcomes UNISON's campaign for an Ethical Care Charter. Council agrees to sign up to the Ethical Care Charter and thereby to become an Ethical Care Council where:

- The starting point for commissioning of visits will be 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.
- The time allocated to visits will match the needs of the clients. In general, 15-minute visits will not be used as they undermine the dignity of the clients.
- Homecare workers will be paid for their travel time, their travel costs and other necessary expenses such as mobile phones.
- Visits will be scheduled so that homecare workers are not forced to rush their time with clients or leave their clients early to get to the next one on time.
- Clients will be allocated the same homecare worker(s) wherever possible.
- Zero hours contracts will not be used in place of permanent contracts.
- Providers will have a clear and accountable procedure for following up staff concerns about their clients' wellbeing.
- All homecare workers will be regularly trained to the necessary standard to provide a good service (at no cost to themselves and in work time).
- Homecare workers will be given the opportunity to regularly meet co-workers to share best practice and limit their isolation.
- All homecare workers will be paid at least the London Living Wage.
- All homecare workers will be covered by an occupational sick pay scheme to ensure that staff do not feel pressurised to work when they are ill in order to protect their vulnerable clients.

Appendix 2 The Charter Stages and Pledges

Ethical care charter for the commissioning of homecare services

Stage 1

- › The starting point for commissioning of visits will be 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
- › The time allocated to visits will match the needs of the clients. In general, 15-minute visits will not be used as they undermine the dignity of the clients
- › Homecare workers will be paid for their travel time, their travel costs and other necessary expenses such as mobile phones
- › Visits will be scheduled so that homecare workers are not forced to rush their time with clients or leave their clients early to get to the next one on time
- › Those homecare workers who are eligible must be paid statutory sick pay

Stage 2

- › Clients will be allocated the same homecare worker(s) wherever possible
- › Zero hour contracts will not be used in place of permanent contracts
- › Providers will have a clear and accountable procedure for following up staff concerns about their clients' wellbeing

- › All homecare workers will be regularly trained to the necessary standard to provide a good service (at no cost to themselves and in work time)
- › Homecare workers will be given the opportunity to regularly meet co-workers to share best practice and limit their isolation

Stage 3

- › All homecare workers will be paid at least the Living Wage (as of November 2013 it is currently £7.65 an hour for the whole of the UK apart from London. For London it is £8.80 an hour. The Living Wage will be calculated again in November 2014 and in each subsequent November). If Council employed homecare workers paid above this rate are outsourced it should be on the basis that the provider is required, and is funded, to maintain these pay levels throughout the contract
- › All homecare workers will be covered by an occupational sick pay scheme to ensure that staff do not feel pressurised to work when they are ill in order to protect the welfare of their vulnerable clients.

Appendix 3 Financial Assumptions and Considerations

Assumption 1 (Unison Stage 1 or Lewisham's tailored Level i) - visits are to be needs-based and not based on hours

Further considerations

Cost implications are potential changes in the management information system that is needed to enable this way of working:

- Assessment processes (currently using IAS) that are specifically designed to support the discussion, agreement and recording of outcomes information (based on agreed ways of interpreting the information about the results achieved (SPRU, 2003)

Recognition that the collection of outcomes information may be time-intensive and possibly come at extra cost.

- Financial system (currently Controcc) that recognises the capture of outcomes information at client level (i.e. effective link to the client system) and is sophisticated enough to charge clients on adjusted actual hours received versus budgeted hours

Assumption 2 (Unison Stage 1 or Lewisham's tailored Level ii)- travel time costs included

Calculation based on the estimated number of care-workers per contract and free use of zone 3 travel card per week. The homecare contract has a nominal amount in its hourly rate-the change from current allowance and the travel card allowance needs to be calculated

Assumption 3 (Unison Stage 2 or Lewisham's tailored Level iii) - from "zero hours" contract to guaranteed hours contract. Further work necessary
a] to understand the potential TUPE implications
b] to understand the potential implications for CYP moving from a framework competition to guarantee these hours

Note that no costs have been included in the projections so far for this assumption.

Assumption 4 (Unison Stage 3 or Lewisham's tailored Level i)- prevailing rates for homecare- workers which are not LLW (e.g. spot purchases).

Assumption 5 (Unison Stage 3 or Lewisham's tailored Level iii)- the costs of implementing occupational sick pay across homecare contracts. The figures in para 8 assume an average of 10 days sickness per employee.