

# Birmingham City Council

## Report to Cabinet

22<sup>nd</sup> January 2019



---

**Subject:** ENABLEMENT SERVICE

**Report of:** Corporate Director Adult Social Care & Health

**Relevant Cabinet Member:** Cllr Paulette Hamilton - Health & Social Care

**Relevant O &S Chair(s):** Cllr Rob Pocock - Health & Social Care

**Report authors:** Tim Normanton  
HR Business Partner  
Tel: 07864 930613  
Email: [timothy.normanton@birmingham.gov.uk](mailto:timothy.normanton@birmingham.gov.uk)

Shugufta Jabeen  
Head of Law (Employment & Litigation)  
Email: [shugufta.jabeen@birmingham.gov.uk](mailto:shugufta.jabeen@birmingham.gov.uk)

Are specific wards affected?	<input type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

### 1 Executive Summary

1.1 Cabinet approved a business case for the reorganisation and improvement of the enablement service in July 2018. However, following subsequent extensive negotiations with trades unions, a revised and improved proposal is now

recommended. This includes increased working hours, improved mitigations and changes to break times and travel arrangements, in response to BCC and union concerns regarding the impact on staff.

- 1.2 The approval of the recommendations in this report will lead to vastly improved outcomes for service users including:
  - 1.2.1 Birmingham's citizens who are older will receive intensive therapy-led services which will develop their confidence and ability to manage daily living activities and other practical tasks so they can carry out these activities themselves and continue to live at home independently;
  - 1.2.2 The Enablement Service will have capacity to deliver a responsive service which can support timely discharge from hospital and improve performance in Delayed Transfers of Care;
  - 1.2.3 Enablement will become one of the Council's main tools for efficiently supporting an ageing population by ensuring that any homecare provided following Enablement is appropriate to older adults needs;
  - 1.2.4 Birmingham will build a high quality service, based on evidence and best practice improving the outcomes for older adults. A practice and behavioural shift will take place which will focus on outcomes and will subsequently deliver savings across the care and health system;
  - 1.2.5 Deliver the required improvement in Enablement to address the shortfalls identified in the CQC System inspection in January 2018 where Enablement was identified as an area of underperformance;
  - 1.2.6 The Enablement Service will deliver considerable efficiency through the implementation of common working patterns whilst improving both equity in working hours and compliance with the Working Time Directive.
- 1.3 As a result of the failure to conclude extensive talks with unions over many months and industrial action in the Enablement service by UNISON, the number of service users is rapidly diminishing to the point where the service is becoming financially non-viable, expected savings are not materialising and legal risks are increasing. For these reasons, it is critical that Cabinet approval to implement these revised proposals at the earliest opportunity is obtained in order to complete the necessary reforms and to urgently mitigate the impacts of the current industrial action. This report is late and urgent due to the need to consider fully all the options open to the Council to manage these impacts alongside continuing ACAS negotiations. The agreement of the Chair of Health and Social Care Scrutiny, Councillor Rob Pocock has agreed that this report is to progress as late and urgent. [Paragraph 3.5 Part B Council Constitution 11/9/18].

## **2 Recommendations**

- 2.1 To approve the final revised proposals for an improved Enablement service set out in this report.
- 2.2 To note the agreement by Unison and the City Council to continue with ACAS talks.

## **3 Background**

- 3.1 The Care Act 2014 is clear that local authorities must provide or arrange services that help prevent people developing needs for care and support or delay people deteriorating such that they would need ongoing care and support.
- 3.2 The current Enablement service was constituted from the existing in-house Domiciliary Care Service. In 2011, BCC decided to commission the provision of domiciliary care from the external market and focus on the in-house provision of enablement services.
- 3.3 Enablement provides a community based service to Adults and Older People in their own home which is aimed at helping people recover skills and confidence to live at home independently. The service historically provided short-term home care but, if the business case proposed in 2018 was implemented, it will transform the service user experience to become a modern, therapy-led enablement service. As it stands, the current service is some way short of this standard as referenced in the CQC review report in April 2018.
- 3.4 The current Enablement service has been unable to meet demand or to respond quickly enough to referrals from both hospital discharge and community services. BCC's service is required to support enablement plans which are focussed on the citizen's daily living activities (with peak demand in the morning, mid-day, and evening periods).
- 3.5 Met and unmet demands were each tracked for 12 months to inform the July 2018 business case, evidencing the lack of capacity to meet demand. The lack of capacity is due to the multitude of existing rotas and staff working patterns; the service currently has over 150 individual working patterns.
- 3.6 Since 2014/15, BCC have seen a persistent decline in the referrals to the in-house enablement service. This has been due to the service not being seen as responsive and able to provide continuity in service. For the acute hospitals, referrals need to be picked up within hours which the in-house service is not able to do.
- 3.7 The Sustainability and Transformation Plan (STP) system leadership group undertook work in October 2017 to understand the issues and barriers in supporting hospital flow and smooth discharge. Underpinning this work was a

review of the enablement pathway and process, including case reviews undertaken by practitioners across the city and involving the Homecare Enablement Service.

3.8 This activity identified -

- 28% of citizens could have achieved better outcomes from enablement intervention.
- 37% of citizens who received commissioned home care could have benefitted from enablement intervention.
- The enablement pathway could be reduced from an average of 42 days to an average of 25 days.
- Birmingham could see substantial benefit from more effective enablement; If we reduced the number of hours per week in our care packages following enablement from our current average down to those achieved by Lancashire County Council, BCC would have more independent citizens and could spend the equivalent of 390,000 less hours on care in a year. Improved Enablement performance is a significant contributor to long term improved outcomes for citizens, as well as substantial savings for the ASCH budget.

3.9 Enablement is at the heart of a modern adult social care service and both effective use of resources and high performance are reliant upon the enablement service performing to a high level. The savings proposals in adult social care for the following three years are predicated upon a high performing service. Further, it is expected that when enablement begins to perform effectively it will help to raise the position of Birmingham in Adult Social Care Outcomes Framework (ASCOF) ratings from second bottom nationally.

3.10 In order to meet the needs of vulnerable adults, a new rota is proposed that ensures that staff are available when citizens require the service. The purpose of this proposed new rota is to ensure that access to the service is increased and support meets the needs of service users:

From (current service)	To (future service)
<b>Only 20% of service users are exit enabled.</b>	<b>80% of service users will be exit enabled evidenced by a reduction in social care need or improvement in quality of life outcome</b>
Between 20 and 40% of current paid staff time is downtime (i.e. where no	All hours will be productive with 80% of planned hours being service-user

care or non-caring work is available)	facing
Evening and weekend shifts do not have adequate staff cover to meet service user needs	There will be consistent and even staffing across the seven day working week
There is no capacity to support either planned or rapid hospital discharge and referrals are frequently turned down	Enablement will be a key service in the Older Adult pathway with a crucial focus on discharge from hospital
Service users report seeing up to 15 carers in a week	Service users will recognise their Enablement Team and key Enablement Assistant

#### 4 Options considered and the recommended proposal

4.1 After over 18 months of dispute in relation to this service and significant time invested in mediation, options appraisals and seeking to find agreement with the Trade Unions, the directorate and key stakeholders including the Health service, and citizens, need to resolve the future of this crucial service. Three options have emerged: -

- a) **Option 1** - Implement the alternative final offer rota proposal detailed in Appendix A as the best alternative to a negotiated agreement.
- b) **Option 2** - Implement the rota proposal in the business case agreed by cabinet in July 2018 as the most efficient model of service delivery.
- c) **Option 3** - Decommission the current service.

4.2 The proposal recommended is Option 1. In order to determine the impact of this option on the workforce, officers are seeking to engage with staff to understand preferences and explore mitigation detailed in appendix B.

#### **Final Offer rota**

4.3 The final rota set out below, which has now been shared with the Unions, is based on a modified business case rota, developed to meet the needs of service users whilst allowing sufficient time for the workforce to complete non-caring duties such as travel, admin, emails, training etc. Crucially, management are seeking to minimise non-caring time in this model.

4.4 It is proposed that staff will undertake additional duties which will result in an increase in grade from Grade 2 to Grade 3 (formal job evaluation pending).

4.5 The regular shift patterns proposed (working three days in week one, and four days in week two), and numbers of contracts available are: -

Hours in shift	Working hours	Estimated number of posts
16	07:30 – 11:30	46
23	15:00 – 22:00	60
30	07:00 – 14:00 <i>AND</i> 16:00 – 18:00 or 18:00 - 20:00	88
<b>Total contracts available</b>		<b>194</b>

4.6 The current headcount in the service is 218 (compared with 226 at the time of the Business Case), after current voluntary redundancy requests are processed 199 staff would remain.

4.7 The initial Business Case, BCC has extended the short shift from 14 to 16 hours to meet Unison demands to address the issue of access to Working Tax Credits (WTC) for a worker with dependent children.

4.8 BCC has also extended the medium shift from 21 to 23 hours and increased the number of posts from 50 to 60 to meet Unison demands to mitigate the loss of posts for workers currently working less than 30 hours.

4.9 BCC has extended the long shift by 32% from 22.75 hours to 30 hours to meet Unison demands to address the issue of access to Working Tax Credits (WTC) for a worker without dependent children.

4.10 In increasing the number of contracts, BCC estimates that only 4 individuals are likely to be at risk of redundancy as a result from this proposal. However, BCC recognises that the alternative contracts may not represent suitable alternative employment and that staff who do not accept a contract will be eligible for a redundancy payment.

4.11 The proposed total contracted hours will be 4,750 each week for a total of 194 contracts. This is around 380 more hours each week than proposed in the initial business case (4,375 hours with 218 contracts).

## **Staff preference process**

- 4.12 In the absence of agreement with Trade Unions, the recommendation is to approach staff directly to determine individual preferences. This engagement would provide the opportunity to work with individual members of staff to mitigate the impact of the rota.
- 4.13 Staff would receive a letter with the offer of a meeting with management and HR (where required) detailing the options below and a deadline to respond:
- a) Voluntary Redundancy – choosing to leave through redundancy as soon as possible
  - b) Apply for Flexible retirement (if over the age of 55 and reducing pay by more than 25% - by preferencing a contract with reduced hours)
  - c) Preference hours (and constituency team) in the proposed new rota (and receive a mitigation payment where there is a reduction in hours)
  - d) Compulsory Redundancy (as there is no suitable alternative contract) – this option allows staff to pursue priority mover opportunities across BCC
- 4.14 If staff do not express a preference, and there is no suitable alternative employment offer, they will be redundant subject to priority mover opportunities.
- 4.15 Details of mitigation and support offered to staff who are impacted by this new proposed rota are provided at appendix B.
- 4.16 Unison have objected to this proposed approach (see 5.8, 5.9).
- 4.17 The timeline and next steps for the recommended option 1 are detailed in appendix E.

## **5 Consultation**

- 5.1 BCC has engaged in extensive consultation and negotiations with Trade Union representatives, and staff since a previous rota proposal for this service in April 2017. The 2017 business case rota was withdrawn after strike action and following ACAS conciliation in early 2018. Unison proposed a self-roster model which was rejected as it did not deliver a consistent supply of staff to service users.
- 5.2 Unison submitted a dispute regarding 'potential changes to Enablement rotas in May 2018'. This dispute was used to ballot for further strike action which has been ongoing since summer 2018.

- 5.3 The current business case for a revised (part time) rota was predicated on a three-shift rota (based on 14, 21 or 22.75 hours) agreed by cabinet in July 2018, and informed by substantial staff, trade union and member consultation over the preceding 12 months. Formal consultation commenced in July, with the intention that consultation would close in September 2018.
- 5.4 Consultation has been repeatedly extended at the request of Unison and the current date for end of consultation is 18<sup>th</sup> January 2019. Details of the many management and trade union meetings is set out at Appendix C
- 5.5 Unison demands on the revised service have consistently changed throughout the consultation period as detailed in Appendix D.
- 5.6 BCC has made numerous significant concessions and developed multiple alternative rota proposals. The current final rota is the best option in terms of both affordability and efficiency and meeting citizen needs. This rota also has the minimum employee impact compared to other options previously considered.
- 5.7 ACAS talks in December 2018/January 2019 resulted in an impasse; Unison requested time to prepare a further alternative proposal, but have been unable to articulate how this would be any different to previous proposals.
- 5.8 At ACAS in January 2019 BCC suggested that the only way to determine the impact on individuals is to communicate directly to staff to seek preferences. Unison stated that they would not support this process which they described as 'undermining collective bargaining'.
- 5.9 Unison and management have undertaken impact modelling based on data provided by BCC; however, attempts to quantify financial impact on individuals are speculative, as each employee has unique circumstances which will determine their preference. For example, a significant number of staff could access flexible retirement, and this could result in them choosing to reduce hours in order to access pension benefits, in doing this, they would 'free' another contract, with more hours, for other staff to preference.

## **6 Compliance Issues:**

- 6.1.1 Within the BCC Plan 2018-2022, Enablement contributes to outcome 3 'Birmingham is a fulfilling city to age well in'.

### **6.2 Legal Implications**

- 6.2.1 Moving to implement a change to rotas/working hours without trade union agreement is likely to be challenged. Legal Services have advised that where there is evidence of an impasse in trade union negotiations, it is reasonable to

approach employees directly to seek a preference and inform a way forward in the process. Further advice is provided in the accompanying private report.

### **6.3 Financial Implications**

The financial implications of the three options are set out below: -

- 6.3.1 **Option 1** - Implement the alternative final offer rota proposal detailed in Appendix 1 as the best alternative to a negotiated agreement. The Council will, in the first year of operations, forgo around £600,000 of savings identified in the Business Case – this will result in a shortfall of £300,00 against the first year savings identified in the Business Plan (option 2 below).
- 6.3.2 **Option 2** - Implement the rota proposal in the business case agreed by cabinet in July 2018 as the most efficient model of service delivery. This would deliver around £900,000 savings.
- 6.3.3 **Option 3** - Decommission the Enablement service. A commissioning and procurement exercise may be required to understand market capability and capacity. The Enablement service budget for 2018/19 is £6.27m.

### **6.4 Procurement Implications**

- 6.4.1 There are no direct procurement implications for options 1 and 2.
- 6.4.2 Option 3 has potential commissioning, and procurement implications.

#### **6.4.3 Human Resources Implications**

- 6.4.4 The recommended option, to implement Option 1 significantly reduces the impact on staff hours, and pay, compared to the July business case rota.
- 6.4.5 A detailed analysis of impact is not possible as staff preferences will determine the availability of contracts on the new rota. However, a broad impact analysis is possible, based on several assumptions, which is detailed at appendix E (1). In addition, individual illustrations are provided at appendix E (2)
- 6.4.6 For both options 1 and 2, staff will be required to express a preference regarding the work location, and rota/contract hours they wish to work in the future service. Once this process is completed management will make a final decision on the implementation of the new rota including any selection process for positions and/or redundancy.
- 6.4.7 Where staff accept a new rota/contract, they will be eligible for a mitigation payment facilitated by ACAS as part of a COT3 process.
- 6.4.8 Management will support staff in pursuing other employment opportunities within ASCH and across BCC both as an alternative to the rota contracts, or as an additional contract to increase hours.

6.4.9 Where staff do not accept a new rota/contract, they will be eligible for a redundancy payment and the support detailed in Appendix A (19a-19h).

## **6.5 Public Sector Equality Duty**

6.5.1 The initial assessment of the business case was undertaken in July 2018; it is recommended that this is refreshed once staff preferences have been received to assess the actual impact and final proposals.

## **7. Reasons for Decision(s):**

7.1 To improve outcomes for Birmingham Citizens. In particular, Older Adults who require support to regain their independence.

7.2 To deliver required workforce efficiency savings as agreed by Cabinet in setting the Council Plan and budget.

7.3 To reduce the future demand on Homecare services (and associated costs) within the wider context of strategic change in Birmingham, increasing financial pressures and shrinking resources.

7.4 Deliver the required improvements identified by the CQC Systems report in January 2018.

## **8 Background Documents**

8.1 Care Act 2014

8.2 List of Appendices accompanying this Report (if any):

Appx A - BCC final rota offer features

Appx B - Mitigation offer

Appx C - Chronology of key events

Appx D - Unison Demands

Appx E - Staffing data and indicative impact

Appx F. Indicative implementation timeline