

**ADULT AND COMMUNITY SERVICES MODERNISATION PROGRAMME – UPDATE ON
TRANSFER OF IN-HOUSE SERVICE PROVISION TO SHAW HEALTHCARE**

**Joint Report of the Executive Director of Adult & Community Services and the Acting
Executive Director of Finance, IT and Trading**

**Please note that the following recommendations are subject to consideration and
determination by the Executive (and confirmation under the provisions of the Council's
Constitution) before taking effect.**

**This paper updates progress on negotiations to externalise Older People's Residential Care
Services. Executive approved the externalisation of these services by tender to the open
market in April 2006 (SS/06/14).**

Executive is recommended to:

i. Note that:

- There is a very high risk that in the current economic climate, Shaw Healthcare (Shaw) cannot obtain funding for the outline agreement reported to Members in July 2008 (ACS/08/17).
- The development and operating costs of the Extra care Flats currently proposed by Shaw do not offer Value for Money to the Authority at present.
- In order for Shaw to obtain funding a re-profiling of phase 1 (by introducing a greater proportion of contract income) would be needed.
- The re-profiling of phase 1 (as described above) would increase the risk of not delivering phases 2 and 3 with Shaw.
- Whichever option is chosen there will be a need for financial re-evaluation and a further report to the Executive.

ii. Agree that:

- Working with Shaw on the development of a single phase offers the best combination of maintaining the pace of strategic development and also securing the project outcomes as originally envisaged.
- The Council enter negotiations with Shaw for a modified single phase plan in line with Option 4 (set out in section 5 of this report).
- The single phase plan will not include extra care housing (Option 3) unless there is a very significant improvement in value for money demonstrated by Shaw's proposals.
- An extensive local consultation process be commenced to consider options for the development of our residential homes to best meet the needs of the local population; the consultation to conclude by April 2009 (See section 5.10 of this Report).

- Following evaluation of options for each site, and consideration by Executive, the remaining homes be re-tendered.

1 BACKGROUND

- 1.1** A joint report was submitted and endorsed by Executive in June 2004 which stated the aim of the Social Services Modernisation Programme being to provide the best possible service to the public in the context of the national agenda for social care. The programme promotes independence and maintains the quality of life for service users through improved choice and flexibility of provision.
- 1.2** The County Council has consulted extensively with service users, carers and other groups to inform the development of this strategy and continues to consult and communicate with all stake holders, whilst responding to the rapidly-changing environment in which social care services are delivered. The 'Our Devon' Survey of a sample of Devon residents identified care of older people and supporting them to retain their independence and quality of life as the top priority for the County Council.
- 1.3** The Modernisation Programme is based upon Best Value Reviews of all of our services. The message from those reviews has been strong and consistent, that is to:
 - support independence and well-being
 - support choice and giving people a say in the services they receive
 - provide high quality care to people with high levels of need
 - provide services in local communities closer to people's homes

2 CONTEXT

- 2.1** A report was presented to and approved by Executive on 11 April 2006 (SS/06/14) outlining the need to expedite the ACS Modernisation programme to meet the growing demographic demands for older people in Devon.
- 2.2** A key element of this Modernisation Programme was that we commission services and cease direct provision of residential and domiciliary care services.
- 2.3** The recommendation was to tender to the open market our present in-house Residential and Domiciliary Care services. This process commenced October 2006 and closed in January 2007 with an interim report to Executive on 20 March 2007.
- 2.4** A full report was submitted to Executive covering the outcome of the tender process on 29 May 2007, recommending that Shaw Healthcare be awarded preferred supplier status for Older People's Residential and Domiciliary Care services.

- 2.5 Detailed negotiations commenced regarding the transfer of Older People's Residential and Domiciliary Care services provision to this potential provider. This work has been supported by independent expert consultants, namely, Grant Thornton (finance) and Sharpe Pritchard (legal) as agreed by Executive.
- 2.6 An update report on progress in negotiating with Shaw Healthcare was presented to the Executive on the 29th July 2008 (ACS/08/17). On the basis of this report, the Executive decided to reject Shaw Healthcare's tender submission in respect of domiciliary services. In respect of residential services, the report noted risks including those in relation to the funding of the project (by Shaw Healthcare), but recommended that negotiations continue. The executive agreed to this and accepted the outline agreement reached by that point subject to further investigation and evaluation being considered.
- 2.7 A Modernisation Programme Progress Update (ACS/08/20) was given to the Executive on 16th October 2008, which noted the worsening in the financial environment and that Shaw Healthcare had engaged a firm of corporate financiers to advise them in obtaining funding.

3 SHAW PROPOSAL

- 3.1 From May 2007 onwards, Shaw and the Council have developed proposals to achieve the objectives set out above through a 30-year service delivery contract. Within this outline agreement were proposals to develop the sites and services for all homes which have a viable future. Where viability was in question, then negotiations would be held with all interested parties and stakeholders to consider options such as community enterprises, usage for health facilities, and joint housing developments.
- 3.2 The development proposals also included three major development sites where the ambition was to jointly develop Extra Care Housing with District and City Council colleagues. Extra Care Housing offers older people the opportunity to rent or buy a purpose built flat, where the provision of care and support appropriate to individual need is provided on-site - this will become a direct alternative to residential care for many. As part of this it was proposed that where appropriate, District /City Councils would transfer land into the scheme to enhance its benefits and provide a significant stock of affordable Extra Care Housing flats for rental.
- 3.3 As part of the development, and in keeping with the strategic intent to outsource services, staff would transfer to a Shaw company (known by the temporary title of Existco) and then as each development phase took place these staff would transfer to three new companies (known with the temporary titles of Newco1, 2, and 3 corresponding to the phases of the project).
- 3.4 As indicated in previous reports, in the early years of the proposed agreement, the "Existco" phase would incur higher costs for the Council, outweighed by financial benefits from year 5 to year 30 of the service contract.
- 3.5 Outsourcing arrangements such as this one are governed by the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and the Code of Practice on Workforce Matters in Local Authority Service Contracts. The TUPE regulations ensure that staff carrying out the service prior to transfer have their employment rights transferred on the same terms and conditions. The Code of Practice aims to ensure that new joiners to an outsourced workforce are employed on terms and conditions which are broadly comparable to those enjoyed by the existing staff.
- 3.6 Various restrictions on the use of the land proposed to transfer to Shaw would be imposed to protect the future use of these assets

- 3.7** District/City Councils would need to be assured that rentals are affordable, service charges reasonable and that the overall scheme offers value for money. In addition to this, the principle of the land transfers (by DCC as well as by District / City Councils) would have to be approved by the Secretary of State.
- 3.8** In addition to land transfers, the County Council considered the need to provide a capital injection of £15m to be phased into the project as Extra Care units come on stream together with approximately £9m of revenue funding support in order to ensure that rentals for extra care flats are affordable.

4 CONCERNS ARISING FROM NEGOTIATIONS

Financial and Funding Concerns

- 4.1** As the financial position in the UK (and globally) has weakened, especially from the summer of 2008 onwards, concern has risen about Shaw's ability to secure the finance required for this deal. Shaw were asked to provide assurance that they could secure sufficient funding.
- 4.2** Shaw approached a firm of corporate financiers, to advise them on securing such funds. Following their initial meetings, Shaw informed DCC that they would like to see if it was possible to change the structure of the first phase of development so that it included a greater proportion of contracted income and consequently a smaller proportion of market based income.
- 4.3** Changing the composition of phase 1 in this way serves to reduce the risk to financiers because it is backed by secure income from a local authority.
- 4.4** In a meeting between our officers, Shaw's negotiation team and their financial advisers, two matters became clear:
- The existing structure of the first phase was not fundable in the current climate;
 - The first phase would require at least 70% contract income to be likely to be fundable.
- 4.5** As a consequence of the above it was clear to officers that:
- The deal as developed in negotiations with Shaw and described in the July 2008 report to the Executive was not fundable;
 - Re-phasing the deal (to accommodate 70% contract income) has considerable risk consequences for phases 2 and 3. To reprofile the current proposals in this way would reduce the proportion of contract income in the later phases to a very small amount, thus increasing the risk that these phases could not be funded.

Value for Money Concerns : Extra Care Housing

- 4.6** As noted in the July 2008 report to the Executive, the Council has been prepared to consider a capital injection (£15m) and a revenue subsidy (of up to £9m in current prices) to ensure that Extra Care rentals (for 230 flats) were affordable.
- 4.7** Shaw's financial models have changed as assumptions have changed but the requirement for this capital and revenue subsidy increased to a point where it now stands at £33m (in current prices and paid as lump sum injections). This subsidy is directly related to the cost of provision

of Extra Care Housing and keeping rentals affordable.

- 4.8** The subsidy requirement is now far greater than had been envisaged in earlier reports to the Executive.
- 4.9** The Value for Money position has been reviewed in two ways: by examining Shaw's financial models to determine the costs to build and fund a 230 flat development, and; by external benchmarking against similar schemes.
- 4.10** A benchmarking review indicated that 230 flats could probably be provided for less than £25m (albeit with a different funding model as the comparators were Registered Social Landlords).
- 4.11** From our own review of Shaw's financial models we have not been able to substantiate a subsidy requirement any greater than £25m. This point has not been fully accepted by Shaw and so remains an issue for further discussion.
- 4.12** Officers were also concerned that the Service Charges for Extra Care flats were significantly higher than benchmarked costs from other providers. These costs are charged to tenants directly and therefore do not form part of the Council's costs, however DCC and District/City Councils have to be assured that service charges are reasonable and that they are not carrying costs which would normally be covered by rental payments, as this would negate the affordable rent test that will be applied.
- 4.13** Therefore officers are recommending that under Shaw's current proposals
- Extra care flats as currently modelled do not offer value for money by a significant margin.
 - Service charges are not "reasonable"
- 4.14** It may be possible for Shaw to review and reduce its subsidy requirement to a level which the Council could countenance.

Value for Money Concerns: Costs for Management of Transferred Homes and Staff

- 4.15** Clearly value for money is concerned with both benefits and costs.
- 4.16** The model proposed by Shaw offers a number of significant benefits to the Council including the following:
- Devon's contractual liability for beds would reduce from the current 662 (in-house beds) to 360 (the number of beds and extra care units that Devon would be contractually obliged to purchase from Shaw Healthcare for the lifetime of the contract) – thus reducing DCC's exposure to potential over-purchase and under occupancy which is a feature of current services. It would free up resources currently tied up with in-house residential care to be invested in the most appropriate way and in the most appropriate places to meet the needs of older people in Devon
 - The programme would replace out-dated and increasingly inappropriate Local Authority residential homes by new-build, fit-for-future-purpose developments
 - The proposals would increase the provision of care in short supply in Devon:
 - Short-term care (including respite and intermediate care services)
 - Provision for the Elderly Mentally Infirm
 - Nursing care and complex needs care

- The externalisation of a significant volume of direct services provision, including a staff group of approximately 1,150 people will bring about savings in Directorate and Corporate support service costs
- The benefit of market based sales and income which would help support the entire development.
- Significant cost savings accrue as more efficient service models are introduced and capital investments help lower running costs.

4.17 However the Shaw model has several important risks associated with the transfer of homes in the early “Existco” phase:

- Initial running cost to DCC is greater as Shaw’s management fees and associated costs are in addition to the current running costs;
- Under the current proposals any delay to developments would not only increase the early high costs of the proposal, but would also delay its financial and service benefits
- A failure to fund later phases (as opposed to a delay) would mean the transfer back to DCC of homes affected, perhaps in several years’ time. This could mean (in respect of homes in these later phases) incurring high management costs in the early years without reaping any of the financial, strategic and service benefits that come from development.

5 Conclusions and Options for The Way Forward

Conclusions

5.1 The key conclusions from the recent negotiations with Shaw are as follows:

- The development plan as outlined in the July 2008 report to the Executive is not fundable and cannot be recommended to proceed in that form;
- Extra Care Flats for rental do not demonstrate value for money at present;
- Re-profiling phase 1 would be necessary to allow Shaw to obtain funding;
- Re-profiling phase 1 would increase the risks of not delivering phases 2 and 3 with Shaw unless the Council was willing to make a far higher contractual income commitment to Shaw across all phases.

Options

5.2 The following options have been considered in preparing this report.

5.3 Option 1 : Withdraw and re-tender in parcels.

This option is to withdraw from the negotiations with Shaw and to re-tender the project as a range of smaller “parcels” of developments. This would spread development risks for the Council and allow greater competition and although there would be an initial delay for the re-tendering exercise the overall development programme could be accelerated because the developments could take place in parallel rather than in series.

5.4 Option 2 : Full Shaw re-profiled

The original option project as outlined in the July 2008 report to the Executive but with phase 1 re-profiled so that it contains 70% contract income. Value for money from Extra Care Housing developments would need to be demonstrated for this option to proceed. This option allows the development to be completed within the current stated timescales and would most closely match current public and staff expectations. However, the fundability of phases 2 and 3 is made more uncertain. We cannot be confident that Shaw Healthcare would obtain funding for these phases, which could result in either undue delay or a risk of homes reverting to the Council if phases 2 and 3 do not go ahead.

Under option 2 the current proposal would be expected to obtain, and homes would transfer under the "Existco" arrangement.

5.5 Option 3 : Partial Shaw (Re-profiled phase 1 only, and re-tender for phase 2 and 3)

This option includes Extra Care flats on the assumption that Shaw can demonstrate value for money on their revised costings. Otherwise this option is the same as option 4..

5.6 Option 4: Partial Shaw no ECH (Re-profiled phase 1 only, and re-tender for phase 2 and 3 but no ECH flats).

This option is as option 3 but excludes the Extra Care housing if it fails to deliver Value for Money. In this option about 4 or 5 homes would be developed by Shaw taking a maximum of 130 contract beds into a single phase, making up the balance with 50 to 60 market beds to permit 70% contract income and giving a total development of up to 190 beds. Officers and Shaw are considering the benefits and disadvantages of operating the Existco model in this option. For the homes concerned, this option is likely to be faster than option 1 while achieving the remaining benefits of that option.

- 5.7** The Executive is recommended to require negotiations to proceed with Shaw Healthcare on the basis of option 4 or option 3 only if there is a very significant improvement in value for money demonstrated by Shaw's proposals in relation to Extra Care Housing.
- 5.8** Whichever option proceeds there are significant changes and therefore a need for financial re-evaluation to be presented in a future report to the Executive. This will follow the development process described below and submission of costs.
- 5.9** Under options 2, 3 and 4, there remain outstanding matters to be resolved by negotiation with Shaw.

Development Process

- 5.10** The re-phasing of the scheme has important implications for the project. It means that some homes that were considered suitable for phase 1 may now not be and others that were identified as suitable for phase 2 and 3 are better suited for phase 1. Before going out to tender, we would establish local groups (including community representatives) to discuss development options and this work would be undertaken between now and spring of next year. As well as the public, staff, residents and their families we would also continue to work with District and City Councils, Devon Primary Care Trust and other stakeholders in developing proposals.

- 5.11** In proceeding with the preferred option, subject to the decision of the Executive, there are a number of issues that will now need to be addressed and these include:
- 5.12** Timeframes and Stakeholder Concerns. These proposals would delay Shaw development timetable by some 4 to 6 months. Such a delay will give rise to some associated issues which include:
- Staff concerns: Staff has anticipated transfer to a new employer in February of 2009. This will now not take place and this will create feelings of uncertainty and perhaps unease within the staff group. We are working hard to minimise the impact of this through a co-ordinated communications plan.
 - Resident concerns: Residents and their families may be disappointed at the delays and concerned that the development may be seriously delayed. We are working hard to ensure that these concerns are addressed through the co-ordinated communications plan.
- 5.13** A decision to rephrase the programme and perhaps to retender parts of it must be seen in the light of the most rapid and large scale changes to global financial markets in living memory. Indeed it is ever more important that the council is seen to be protecting tax payers from risk, and securing improved value for money while at the same time finding ways to keep strategic change and the associated service improvements moving ahead.
- 5.14** Re-tendering Arrangements. The re-tendering exercise for the remaining phase (or batches) will take a little time to go through the necessary procurement steps (perhaps some 6 to 9 months). However much has been learned in this process and we anticipate the new process operating quite efficiently from both our and the prospective bidders' points of view. There is the potential to shorten the implementation timetable by widening number of partners and parallel track developments.
- 5.15** Cost Management: As part of the agreed changes to the deal during its early negotiation Shaw secured indemnity from certain disbursements relating to professional reports on individual sites. These costs have been managed by Shaw and DCC and are within the anticipated range. They are payable in the New Year.

Next Steps

- 5.16** Subject to the Executive's decision it is expected that the following processes will proceed
- Negotiations will continue with Shaw during the early part of the New Year to conclude on the feasibility of pursuing Option 4, or any other option determined by the Executive.
 - The details of the composition of phases or batches whether for a contract with Shaw Healthcare or for re-tender will be developed through the consultation exercise described and should be completed in the spring.
 - If the Executive requires negotiations with Shaw to continue but these do not demonstrate value for money or are otherwise not successful, a future report would recommend that remaining homes with a viable future be offered in whole, or in batches, for tender.
 - If a single phase Shaw option is decided on, the remaining homes will be offered for tender following consultation on development plans.

- Continued consultation is a priority with our staff, residents and families, and with partners including District and City Councils and Devon Primary Care Trust.

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Electoral Divisions: All

National Assistance Act 1948
NHS & Community Care Act 1990

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Background Paper	Date	File Ref
Report to Executive Modernisation Programme	June 2004	SS/04/11
Report to Executive Vision for the Future of Social Care for Adults in England	19 April 2005	SS/05/17
Independence Well-being and Choice Department of Health	March 2005	
Report to Executive Social Care for Adults in England	12 July 2005	SS/05/21
Report to Executive- Annual report on Modernisation Programme	20 Dec 2005	SS/05/36
Living Well in later life CSCI, Audit and Healthcare Commissions	March 2006	
Securing Good Care for Older People King's Fund	March 2006	
Report to Executive- ACS Options Appraisal for Directly Provided Services	11 April 2006	SS/06/14
Report to Executive- ACS – Progress Report on Modernisation of residential and domiciliary care services	19 June 2006	SS/06/21
Report to Executive- ACS – Progress Report on Externalisation of residential and domiciliary care services	5 Sept 2006	SS/06/27
Report to Executive- ACS – Externalisation Update	20 March 2007	ACS/07/03
Report to Executive- ACS – Modernisation – Externalisation final proposals	29 May 2007	ACS/07/06
Report to Executive- ACS Modernisation Programme – Shaw Healthcare Update	27 November 2007	ACS/07/12
Report to Executive – ACS – The Transfer of DCC Care Services to Shaw Healthcare	10 January 2008	ACS/07/14

Report to Executive- ACS - Modernisation - Update of contract negotiations with Shaw Healthcare	29 July 2008	ACS/08/17
Report to Executive – ACS – Modernisation Programme: Progress update	16 October 2008	ACS/08/20