

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Adult Services and Public Health
Date:	20 October 2022
Title:	Deregistration of Younger Adults Residential Care Homes – Renewal of the Hampshire Deregistration Partnership Register
Report From:	Director of Adults' Health and Care
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Purpose of this report

1. The purpose of this paper is to seek approval to re-procure the Hampshire Deregistration Partnership Register (HDPR), a bespoke procurement solution procured under the Public Contracts Regulations 2015 Light Touch Regime ('LTR') to facilitate Hampshire County Council working with residential care providers to effect, the deregistration of residential care homes for younger adults and to provide for the award of care and support contracts.
2. This paper is also to seek permission for maximum spend under the HDPR.

Recommendations

3. That the Executive Member for Adult Services and Public Health approve:
 - a) the re-procurement of a bespoke procurement vehicle for the facilitation of deregistration or re-provision of Younger Adults Residential Care with a maximum duration of 8 years on a 4+4 years basis.
 - b) the spend of up to £200 million under the procurement vehicle for care and support contracts with a maximum term of 10 years on an initial period of 5 years plus options with flexibility for yearly extensions or multiples up to a maximum of five years (10 years in total).

Executive Summary

4. This report sets out:
 - the context of the HDPR
 - links to the transformation agenda

- how de-registration works and suggest opportunities for improving the options and outcomes for de-registration
- the procurement process
- the financial implications of the HDPR

Contextual information

5. Deregistration of residential care homes is an option available to all providers of residential care subject to the approval of the Care Quality Commission (CQC). The HDPR is a means by which the County Council can ask registered care homeowners if they are interested in deregistering those care homes and may wish to enter into a care and support contract with the County Council to continue providing the care and support as 'supported accommodation' once the home is deregistered. Any regulated care activity subsequently required would then be provided under a domiciliary (home) care registration with the CQC.
6. To date 10 residential care homes have been deregistered through the previous HDPR. There have been some challenges which have impacted on the programme including engagement from landlords, provider resource issues, the Care Quality Commission process for de-registration and impact of the pandemic. There remains an appetite from providers to engage in deregistration of care homes. Having reviewed the current arrangements there are some changes that could be made that it is felt would assist the process and improve the outcome.
7. Hampshire Adult Services' current external spend on residential and nursing care for younger adults is £67 million per annum (Learning Disability - £47 million, Physical Disability - £11 million and Mental Health £9 million). The department has been working for the past 7 years to reduce the number of younger adults with eligible care needs living in residential care with some success. However, there remains a significant population, particularly of people with a learning disability, living in residential care.
8. Service users in residential care have fewer accommodation rights and less access to benefits than those in supported accommodation. Care home residents have no security of tenure in their accommodation (most are subject to 28 days' notice) and are entitled only to a relatively small amount of money for themselves each week. Conversely, service users who reside in supported accommodation hold tenancies and have access to a range of housing and other benefits, allowing them increased independence in the management of their own homes and finances. This model has scope to be more enabling and supportive of independence than residential care.
9. There is still a significant population of people, particularly with learning disabilities, living in small scale community-based homes which are registered as residential care but could operate as supported accommodation giving the service users the opportunities described above. A proportion of these properties are not fit for the future. A change of model can provide the opportunity for re-development of these Services.

Transformation Agenda

10. In addition to the above, the Younger Adults Directorate is tasked with delivering approximately £22.5 millions of savings as part of the Savings Programme 2023 (SP23). Residential care, in addition to being less enabling, can be more expensive than community-based accommodation and support models such as supported accommodation due to the inclusion of hotel and management costs (the overheads associated with running a building and operating a business). The County Council has identified reduction in residential care placements in favour of such community-based accommodation and support models as a key driver in achieving these savings. This element of the Savings Programme has delivered in line with expected contributions over the savings programmes since 2017.
11. Deregistration has been a relatively small part of this for the reasons stated above. A lot of the properties originally identified to be part of this process therefore remain as residential care homes and as such there remains a latent opportunity for further efficiencies. Re-procuring the HDPR and improving the offer would encourage more providers to come forward to support deregistration.
12. A key change for the new HDPR would be to increase the care and support services contract length in line with contracts being offered under the procurement framework for younger adults supported accommodation (Hampshire Accommodation Development and Support Options Model (HADSOM)) which is up to 10 years on a 5 + up to 5 more basis. This increases the attractiveness of the offer and provides more certainty and security for providers, particularly if they are carrying out works on or replacing a property. This also gives greater assurance to service users and their families at a time where they would experience significant change.
13. Another key change is to expand the scope of the deregistration scheme to allow for the closure of the residential home and the re-provision of the property on a more or less like for like basis where there is an opportunity to improve the quality of accommodation. This could include replacing a 4-bedroom 2 storey house with one shared bathroom, with a 4-bedroom bungalow with ensuite bathrooms for example or replacing a 3-bedroom shared house and a 4-bedroom shared house with a block of 8 individual one-bedroom flats.
14. The County Council recognises there is a continued need for residential care in some circumstances and will be developing a Residential Care Strategy for Younger Adults over the coming months. Encouraging the deregistration of services that do not need to be residential care will be integral to this strategy and approach.

Deregistration Approach

15. Deregistration is the process by which a residential care provider transforms a residential care home into a supported accommodation model. This involves terminating the property's registration with Care Quality Commission as a residential home, the separation of landlord and care

functions and the provision of tenancies to service users so that the property may be properly classified as their home rather than simply the address at which they reside. This in turn gives service users security of tenure in their accommodation and access to a much wider range of benefits in order to cover housing and living costs previously included in the residential placement fee. The separation of the landlord and care functions is a key element of deregistration as once a service user gains tenancy rights they have the right to remain in their home even if the care provider changes.

16. The decision to deregister a residential care home rests entirely with the provider and in order for providers to consider deregistering their homes they must ensure it is financially viable. Providers who have de-registered to date have been accepting of a contract for up to 7 years. A longer period may encourage more providers, particularly larger organisations, to undertake deregistration. Additionally, retention of the care business by the current provider allows for continuity of service for those service users involved in deregistration.
17. The intention of the new HDPR would be to expand the scope of opportunity for residential homes to be re-provided in alternative and improved settings as well as being deregistered in the traditional way. This approach is required as a proportion of the properties that would be in scope for deregistration older properties and are not fit for the future needs of existing residents or future residents. This re-provision opportunity would be restricted to ensure that providers were not able to unfairly increase the scope of their business and would require the closure of the residential establishment from which they were decanting. It is recognised that service users and particularly their families find change difficult and find changes less challenging if they continue to be supported by individuals and organisations with which they are familiar. The County Council would work with Providers to ensure any new properties were an improvement.
18. The County Council's primary method for the purchase of care and support in a supported accommodation setting is via the Hampshire Accommodation Development and Support Options Model (HADSOM) which provides for the award of care contracts following a mini competition process. This procurement method presupposes that support is being procured for an existing supported living scheme or one which is entirely brand new rather than a requirement which has arisen following a deregistration. Given that only the existing provider is able to deregister a residential home the market for this type of requirement is different to that which is capable of delivering comparatively straight forward requirements under HADSOM in that it requires the provider not only to be able to deliver domiciliary care but also to have a residential home which they are willing to deregister in the first place. Therefore, it is appropriate that a separate procurement process be employed for this differing requirement and market. Furthermore, not all residential care providers (who are also Domiciliary Care providers) sought to join HADSOM as its focus is the provision of support in the home and community, not residential care which was expressly excluded.

19. This report proposes the County Council re-procures the bespoke procurement vehicle under the Light Touch Regulations (LTR) which facilitates partnership working between the County Council and deregistering providers and allows for the award of care and support contracts following deregistration to the existing provider. This Hampshire Deregistration Partnership Register (HDPR) is a hybrid with features from the framework and dynamic purchasing system vehicles under the Public Contracts Regulations 2015. Providers would apply for their homes to be registered on the HDPR and, providing the home meets the selection criteria, the County Council would then be able to work with that provider to deregister or close and re-provide the home or a cluster of homes, realise savings in the care contract and provide the benefits to service users described
20. The LTR permits authorities to take in to account any relevant considerations including the specific needs of different categories of service users and the involvement and empowerment of service users. This enables service user choice to form part of the award criteria and would be taken into account in conditions for awarding contracts under the HDPR. The HDPR would include provisions for arrangements for situations where service users are able to make the decisions and where Best Interest decisions are required for service users who lack the relevant mental capacity to make the decision.
21. Contracts awarded under the HDPR would be conditional on the provider providing satisfactory evidence of deregistration or closure of their residential care home and the provider being registered with the Care Quality Commission to provide domiciliary care (care in people's own homes), upon evidence that the service users have been granted tenancies and appropriate confirmation of service user wishes or Best Interest decisions in respect of continuing to receive care and support from their existing provider.
22. A full description of how the HDPR would operate, including timescales for its implementation, is provided at Appendix C. It is proposed that the HDPR remain in place for an initial period of 4 years with an option to extend for up to a further 4 years, giving a maximum potential term of eight years with the County Council reserving the right to terminate during that time.
23. There may be rare instances where a provider wishes to deregister a residential home but does not wish to retain the care business following deregistration. In these exceptional cases the HDPR would not be the appropriate route to manage the deregistration. Instead, the care contract would be called off from HADSOM by way of a mini competition process in accordance with its terms and conditions.

Finance

24. Approval to re-purpose spend of £200 million is sought. This spend represents about 1/6 of the total current spend on residential care. This should be considered a maximum spend limit as it is anticipated that actual spend would be below this level. The spend limit of £200 million is within the department's existing approved budget and therefore does not represent new spend. The request is not for new spend but for the re-purposing of

existing spend from the residential care budget to the supported living budget with finance moving with the same service users as de-registrstion progresses. This would facilitate a move from more expensive residential care costs to lower supported living costs of care for individuals.

25. The care and support contract length of 10 years stated above would be the maximum length for any contract awarded under the HDPR. However, contracts of this length would not automatically be awarded, and the length of each contract would be determined on a case-by-case basis.
26. The price payable by the County Council under each contract under the HDPR would be determined by benchmarking rates requested by providers with other local contracts and any other contracts held by that provider. Consideration would also be given to the specific circumstances of the contract.

Performance

27. The support and care contracts awarded as part of the deregistration process would be based on substantially the same terms and conditions as call off contracts awarded under HADSOM. This ensures that in terms of KPIs and performance measures they would be in line with existing contracts for supported accommodation schemes already awarded under HADSOM. This means consistency across all such schemes. It also means that both providers and operational staff are clear on the aims, objectives and requirements of the services and the provider may be more easily held to account for poor performance.
28. Utilisation of terms similar to the HADSOM call off terms and conditions also means that deregistered scheme would be paid using the Provider Payment Generator (PPG) system.

Legal

29. Legal Advice is contained in exempt appendix 1.

Consultation and Equalities

30. The deregistration project is aligned with the County Council as part of the development of the Learning Disability (LD) Plan, in particular the "The Right Place to Live" section which is concerned with services users having appropriate accommodation options. The Plan makes it clear that service users would prefer increased independence and security of tenure in their accommodation and supported living fulfils this need more effectively than residential care is able to.
31. Development of the LD Plan was primarily driven by service users themselves through the LD Partnership Board and Local Implementation Group network working with the County Council as well as a range of stakeholders including a range of provider organisations. An integral part of developing the LD Plan included extensive consultation with all parties involved and the primary driving force behind the Plan was service users

themselves via the LD Partnership Board and the Local Implementation Group network. It is therefore correct to say that consultation on the need for additional supported living accommodation rather than residential care has already taken place both with service users and providers.

32. While broad consultation has taken place as part of the development of the LD Plan it would also be necessary to undertake individual consultations with the service users and their families residing in schemes to be deregistered or re-provided.
33. An Equality Impact Assessment was carried out on for this report in September 2022. It identified that the deregistration project is likely to have a high impact on individuals with a learning disability based on the fact that this would represent a significant change to the basis on which they reside in their accommodation. The overall impact would be positive for those individuals affected as ultimately, they would have more property rights, increased access to benefits and more independence. However, it is accepted that some service users may initially feel unsettled by the changes. The impact would be limited to those individuals who are residing at a property at the time it deregisters and would not extend to those living or receiving services elsewhere.

Climate Impact Assessment

34. Hampshire County Council utilises two decision-making tools to assess the carbon emissions and resilience of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.
35. The aim of the HDPR is to encourage the de-registration of registered care homes to supported accommodation environments. This re-purposing of existing buildings would reduce the requirement for new supported living buildings and related environmental impacts. As existing registered care homes, the change to supported living would not ordinarily lead to a requirement for significant numbers of additional care workers and therefore there would be minimal impacts in regard to road traffic in local areas. Site selection for de-registration would also explicitly consider local transport links to ensure that service users have access to the community thereby also supporting sustainable models of transport for staff.
36. Any new building developments undertaken in relation to the HDPR would be subject to usual environmental assessments and controls.

Future direction

37. Prior to their future expiry, all care contracts awarded under the HDPR would be retendered in accordance with Contract Standing Orders and legislation in force at that time. This would be appropriately timed to ensure continuity of service for the service users.

Conclusion

38. Re-procuring the Hampshire De-registration Partnership Register would enable the County Council to continue to support this approach to improving outcomes for Younger Adults with disabilities. It supports the progress towards reducing the number of adults with disabilities living in residential care homes and increase the number living in supported living. Enabling a broader range of options for supporting the de-registration through changing provision would increase the amount of better-quality accommodation available for younger adults with disabilities.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

Other Significant Links

Links to previous Member decisions:	
Deregistration of Learning Disability Residential Care Homes	<u>Date</u> July 2016

Section 100 D - Local Government Act 1972 - background documents	
The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)	
<u>Document</u>	<u>Location</u>
None	

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

1.1 The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

1.2 Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

2.1 EIA has been updated

Identified Groups: People with disabilities

Impact Level: High

The Hampshire Deregistration Partnership Register is aimed at enabling individuals, predominantly with learning disabilities, but could also apply to other groups of Service Users with a disability, to have the opportunity to hold their own tenancy for the accommodation they live in. In residential care individuals have fewer rights to their accommodation and can be given 28 days' notice by the owner of the care home. The process of deregistration enables the care home to become Supported Accommodation. Each individual would cease to be a resident of a care home and would become a tenant of the property with all the rights that

this confers. Individuals would also have access to the full range of Benefits to which they are entitled and therefore would have more income that they can choose how to spend.

Identified Groups: Marriage and Civil Partnerships

Impact Level: Medium

Individuals currently living in residential care may face more challenges regarding having relationships and getting married. The deregistration of the care home and the resultant change in status of the individuals once they have a tenancy may afford individuals greater opportunities for marriage or civil partnerships

Identified Groups: Race

Impact Level:

For individuals currently living on registered care who have particular needs related to their race, the deregistration of the care home would result in the individual having more choice and control over their life and therefore would have greater flexibility and increased choice to meet their cultural needs.

Identified Groups: Poverty

Impact Level: Medium

Individuals living in residential care homes only have access to a small weekly allowance and their PIP mobility allowance. Once a Care Home has deregistered individuals are entitled to the full range of Benefits to which they are entitled.

Identified Groups: Religion

Impact Level: Medium

For individuals currently living on registered care who have particular needs related to their religion or belief, the deregistration of the care home would result in the individual having more choice and control over their life and therefore would have greater flexibility and increased choice to meet their spiritual needs

DETAILED OVERVIEW OF PROCESS

1 Background

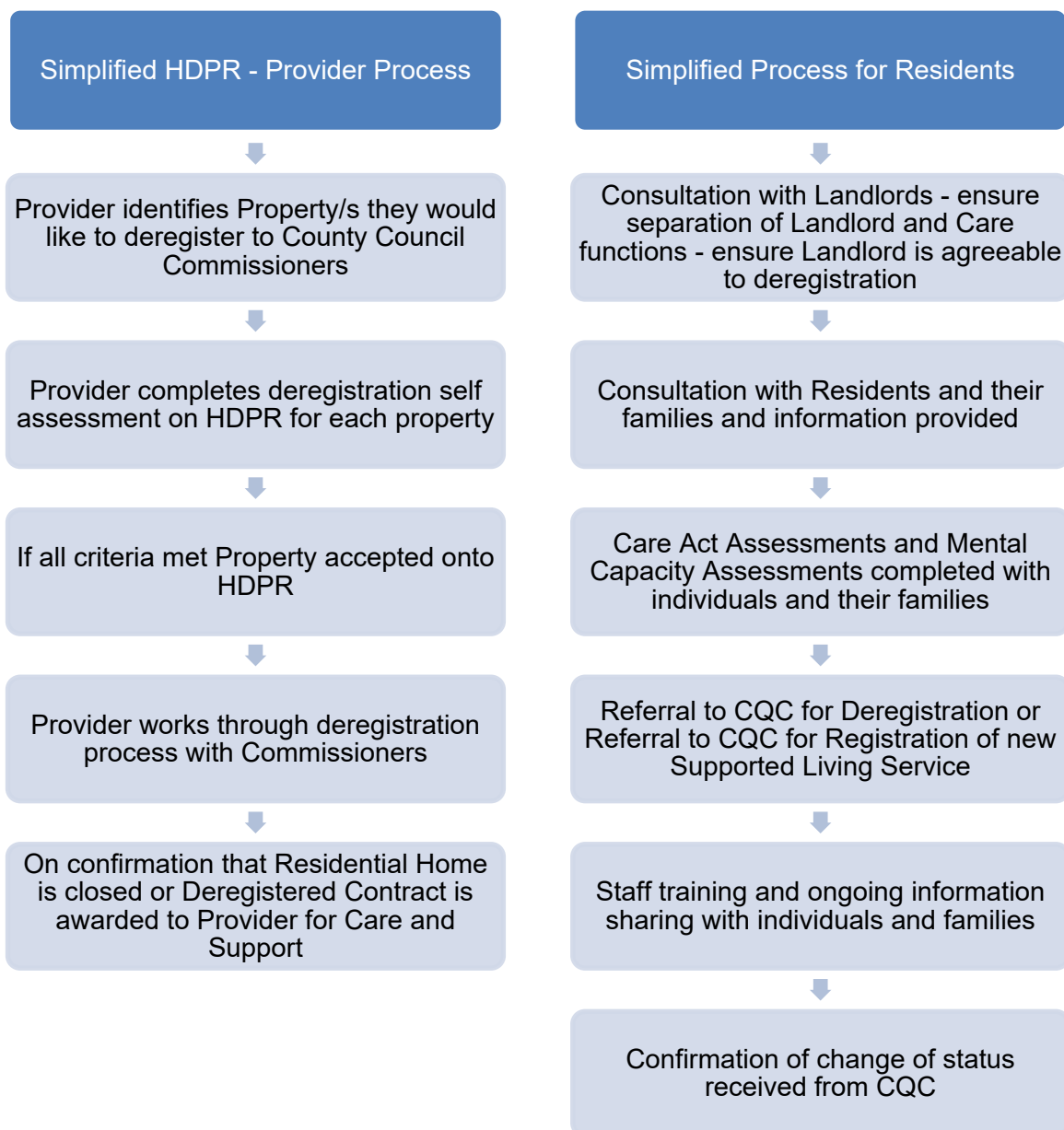
- 1.1 The proposed approach is to re-procure the current Hampshire Deregistration Partnership Register, a bespoke procurement vehicle specifically designed for the purpose of establishing and developing partnerships with providers in residential care in Hampshire in order to deregister their care homes and convert them to supported living schemes, in accordance with the Public Contracts Regulations 2015 (the Regulations) Light Touch Regime (LTR). Supported living is widely recognised as a more beneficial model for service users than residential care.
- 1.2 The County Council recognises that while it is the purchaser of care and support on behalf of service users, the decision to deregister is solely within the purview of the provider but that it is beneficial to the provider, the County Council and the service users involved for both organisations to work together during the deregistration process. This allows the County Council to ensure that the resulting supported living service is sufficient to meet the needs of the service users and provides value for money.
- 1.3 The County Council also recognises that it is not in providers' interests to deregister a service if they would subsequently lose the care and support work. This makes the process financially disadvantageous to the provider and would result in very few providers being willing to deregister their properties. Furthermore, it is important for service users to experience the minimum disruption to their service during the deregistration process in order to minimise anxiety. Therefore, it is key to this process that the residential care provider retains the care and support work following deregistration.
- 1.4 For these reasons, the bespoke procurement vehicle is one designed to allow the County Council to work with providers in order to deregister their properties and retain the care and support work once deregistration is complete.
- 1.5 The replacement vehicle would continue to be called the Hampshire Deregistration Partnership Register (HDPR).

2 The Approach

- 2.1 The LTR allows the development, implementation and use of bespoke procurement vehicles which do not need to conform to the detailed procedural rules of the standard procedures set out in the Public Procurement Regulations 2015 when certain types of services are being procured, including care and support services.
- 2.2 Under this approach, the proposed bespoke procurement vehicle would continue to be a hybrid of a framework and dynamic purchasing system under the Regulations. The contract value would be over the light touch

threshold which would require the following mandatory requirements to be followed:

- 2.2.1 the opportunity is advertised by way of a contract notice on the Find a Tender service or a call for competition by way of a prior information notice;
 - 2.2.2 the publication of a contract award notice following the award of providers to the HDPR;
 - 2.2.3 compliance with the principles of transparency and equal treatment;
 - 2.2.4 conduct of the procurement in conformance with the information provided in the Find a Tender contract notice or prior information notice; and
 - 2.2.5 the time limits for providers to respond to adverts and tenders must be reasonable and proportionate.
- 2.3 In relation to the award of contracts, the LTR permits authorities to take in to account any relevant considerations including the specific needs of different categories of service users and the involvement and empowerment of service users. This enables service user choice to form part of the award criteria under such a bespoke procurement vehicle. On this basis care and support contracts have the potential to be awarded directly to deregistering providers.
- 2.4 The flowchart on the following page illustrates a simplified process of how the HDPR would operate and the process which would be followed in order to deregister residential homes signed up to it.



- 2.5 The key features that result from this process are that Consultation is key with all partners; the assessment of the Mental Capacity of the residents to understand the de-registration, sign a tenancy and make a decision about who provides their care; that the Landlord is signed up and is separate from the Care Provider. If any resident lacks capacity to make a decision about who provides their care a best interest decision would be made but would always involve a third party who is independent from the Care Provider or the County Council
- 2.6 In essence the HDPR would operate as an inclusive list with all providers who sign homes up to it being given the opportunity to work with the County Council in order to deregister or re-provide their properties and be awarded a care and support contract thereafter.
- 2.7 The HDPR would not operate a competitive procedure to select which home or homes to work with next but rather this would be governed by a master timeline which sets out which home(s) would be approached when and is developed in consultation with providers to ensure the process is fair and transparent.

3 Criteria

- 3.1 The table below sets out the criteria homes must meet in order to be accepted onto the HDPR:

Category	Criteria	Required to Pass
Home Info	Number of Placements	5 places or less
	Occupancy	80% or more
	Number of HCC residents and residents funded by partnership authorities ¹	80% or more HCC and partnership authority residents
Property Info	<i>If the provider owns the property:</i> Is there a plan in place to separate the landlord and care provider functions	Yes
	<i>If the provider does not own the property:</i> Is the landlord supportive of the proposed deregistration?	Yes
	<i>If the provider does not own the property:</i> Does the landlord guarantee to issue tenancies to the service users	Yes
	Is the property fit for purpose now and in the future?	Yes/No

	<p><i>If no, then:</i></p> <p>Is the provider willing and able to source an alternative provision or to work with the Council to secure an alternative provision to replace the unfit property?</p>	Yes
	<p>Does the provider guarantee that the residential care home will be de-commissioned and will not be re-used by them as a residential care home now and in the future?</p>	Yes
	<p>Does the provider accept that any re-provision opportunity will replace the current provision with no greater increase in capacity than 10%?</p>	Yes
	<p>Will the provider guarantee to take responsibility for supporting service users to move to the new provision and supporting their families through the transition?</p>	Yes
CQC	<p>Does the provider already have the relevant CQC registration to provide domiciliary care at the property?</p> <p><i>If not:</i></p> <p>Does the provider undertake to obtain the relevant registration prior to deregistration?</p>	Yes
Safeguarding & History	<p>Are there any current or historic safeguarding issues with the residential service?</p>	No <i>(But see below)</i>
	<p>Are there any current or historic quality issues with the residential service?</p>	No <i>(But see below)</i>
	<p><i>If "Yes" to either:</i></p>	If the provider has answered Yes to either of the above questions,

	Is there certainty that these issues will not put the future service at risk?	then they must answer No to this question
Service Users	In the provider's opinion, are the service users suited to living together?	Yes
	In the provider's opinion, are the service users happy to continue living together?	Yes
Rates	Does the provider undertake to adhere to the specified rate ranges and signify their agreement that higher rates may only be agreed in exceptional circumstances where there is clear evidence to support this?	Yes

¹ The County Council currently has partnership arrangements with Southampton City Council, HIOW ICB and Surrey County Council and for the purposes of deregistration would treat service users funded by these authorities as if they were HCC service users.

- 3.2 The County Council reserves the right to amend the criteria as it deems appropriate during the life of the HDPR. This may include for example taking account of new partnership arrangements with other authorities, reducing the requirements around occupancy or increasing the maximum number of placements within a home. Any such changes would be made only in order to increase the number of homes the County Council is able to work with and would be made public at the earliest opportunity.