

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Adult Social Care
Date:	20 July 2016
Title:	Deregistration of Learning Disability Residential Care Homes
Reference:	7576
Report From:	Director of Adults' Health and Care

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1. Executive Summary

- 1.1. The purpose of this paper is to seek approval for the implementation of a bespoke procurement solution 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.
- 1.2. This paper is also to seek permission to spend an initial maximum sum through the bespoke procurement solution in order to expedite individual deregistration processes thereunder.

2. Contextual information

- 2.1. Hampshire Adult Services' current external spend on residential and nursing care for people with a learning disability is £53 million per annum. The department places a relatively heavy reliance on the use of residential placements for adults with a learning disability, more so than peer authorities. This reliance has increased in recent years due to a lack of suitable alternative accommodation and support options. This is particularly the case for young adults leaving education placements for whom residential care may not be the desired or most enabling option but may in fact be the only suitable and available option.
- 2.2. Service users in residential care have considerably fewer rights and less access to benefits than those in supported accommodation. Care home residents have no security of tenure in their accommodation 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 is considerably more enabling and supportive of independence than even high quality residential care.

- 2.3. The County Council recognises that not only is heavy reliance on residential care anathema to the aim to maximise the independence of service users but also does not support the promises made by the County Council in the Learning Disability Plan.
- 2.4. In addition to the above, Adult Services is tasked with delivering approximately £43 million of efficiency savings as part of the Transformation to 2017 programme. Residential care, in addition to being less enabling, is known to be more expensive than community based accommodation and support models such as supported living due to the inclusion of hotel and management costs. The County Council has identified a large scale reduction in residential care placements in favour of such community based accommodation and support models as a key driver in achieving Transformation to 2017 efficiencies and beyond. Accordingly the County Council is seeking to reduce the number of purchased residential placements by 65% by 2020.
- 2.5. In order to achieve this goal the County Council is actively working with provider organisations to identify opportunities for developing a range of supported accommodation opportunities. This has resulted in the identification of a number of providers of residential care in the county who are interested in deregistering care homes and transforming them into supported living schemes.

3. Deregistration Approach

- 3.1. Deregistration is the process by which a residential care provider transforms a residential care home into a supported living 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 s/he also gains the right to choose who supports them and should not be required to use a particular provider just because they are living in a particular property.
- 3.2. 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. Discussions with several providers have identified that providers require retention of their existing care and support business for a minimum period of three years in order to make deregistration financially viable. However, it has been further identified that longer periods would encourage more providers, particularly smaller

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. It also allows them to adjust to the change from being resident in a home to being a tenant in supported living accommodation and possible future change of care and support provider over a period of time rather than all at once, thus lessening any potentially negative impact on service users.

- 3.3. The County Council's primary method for the purchase of care and support in a supported accommodation setting is via the Shared Living and Learning Disability Support Framework ("the Framework") 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 capable of deregistering a residential home the market for this type of requirement is different to that which is capable of delivering comparatively straight forward requirements under the Framework 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 sought to join the Framework as its focus is the provision of support in the home and community, not residential care which was expressly excluded. It would therefore be inappropriate to now use the Framework for requirements which are so closely linked to the current provision of residential care.
- 3.4. This Report proposes the County Council establishes and implements a bespoke procurement vehicle under the Light Touch Regulations (LTR) which would facilitate partnership working between the County Council and deregistering providers and allow for the award of care and support contracts following deregistration to the existing provider. This vehicle, which would be known as the Hampshire Deregistration Partnership Register (HDPR), would be 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 the home and realise savings in the care contract. The HDPR would close for a brief period 4 weeks after it initially opens for applications to allow for the development of a master timeline HDPR would remain open for new homes to be registered for the course of its lifetime.
- 3.5. 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.

- 3.6. Contracts awarded under the HDPR would be conditional on the provider providing satisfactory evidence of deregistration 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.
- 3.7. 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 a period of 4+2 years with the County Council reserving the right to terminate during that time.
- 3.8. It is recognised that 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 the Framework by way of a mini competition process in accordance with its terms and conditions.

4. Finance

- 4.1. In order to expedite deregistration processes once the HDPR is in place permission is sought for an initial approval to spend of £98.5 million. This spend represents the total current spend on residential care with those homes where the Council is already aware providers are willing to deregister, less an initial 5% saving, on the basis of 3+2+2 years care and support contracts. This should be considered a maximum spend limit as it is anticipated that actual spend would be below this level. The spend limit of £98.5 million is within the department's existing approved budget and therefore does not represent new spend. The proposal, within this report, is to use these same resources to meet client needs through domiciliary care and support in the newly deregistered supported living schemes rather than through the existing arrangements for residential care.
- 4.2. The contract length of 3+2+2 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.
- 4.3. The HDPR would allow for a total spend of up to £115 million during its lifetime, covering the aforementioned initial spend limit and making provision for additional homes which may register in the future. Should there be such a desire to continue using HDPR once the initial spend limit of £98.5 million has been reached further spend approvals would be sought.
- 4.4. The price payable by the County Council under each contract under the HDPR would be determined by applying the hourly rates set out in the Framework to the specific circumstances of the contract. In exceptional

circumstances it may be necessary to pay an increased sum. The range of hourly rates under the Framework is:

	Full Range
Days and Waking Nights	£14.00 - £16.50 per hour
Sleep Ins	£35 - £60 per night

4.4 The County Council would retain the option to review these rates, to take account of any factors, (local or national) that may affect changes in practice or costs relating to the service provided. This option is already available under the Framework and similar provisions allowing for rate reviews entirely at the County Council's discretion would be included in both the HDPR Terms of Inclusion and the terms and conditions on which the care and support contracts would be let.

5. Performance

- 5.1. The care contracts awarded as part of the deregistration process would be based on the same terms and conditions as call off contracts awarded under the Framework. This ensures that in terms of KPIs and performance measures they would be in line with existing contracts for supported living schemes already awarded under the Framework. 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.
- 5.2. Utilisation of the Framework call off terms and conditions also means that deregistered scheme would be required to introduce Electronic Care Monitoring. This is not currently widely used in residential care schemes but is mandated for supported living schemes. This would allow for payment against delivered hours rather than commissioned hours and is expected to yield additional savings of up to 5% on top of those made as a result of the deregistration process itself.

6. Consultation and Equalities

- 6.1. The deregistration project is aligned with the County Council as part of the development of the 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.
- 6.2. 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.

- 6.3. 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. While it is not appropriate to commence these individual consultations until there is certainty that a particular scheme is suitable to be deregistered care management colleagues have already begun to raise awareness of the possibility generally with service users and families.
- 6.4. An Equality Impact Assessment was carried out on 7th October 2015 and then updated in May 2016 which 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.

7. Risk Assessment and Legal Considerations

- 7.1. Please refer to Exempt Appendix D.

8. Future direction

- 8.1. 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.
- 8.2. The County Council may wish to open the HDPR for use by other care groups such as Mental Health and Physical Disabilities in order to achieve similar deregistration goals for those care groups. The HDPR would include options to this effect which may be taken up at the County Council's discretion if and when it is considered appropriate to do so. The lifetime spend limit for the HDPR of £115m includes any future work with people who have Mental Health condition and/or Physical Disabilities. However, further reports would be brought requesting approval to spend in respect of these services.

9. Recommendation

- 9.1. That the Executive Member for Adult Social Care give approval for
- 9.1.1. the implementation of a bespoke procurement vehicle for the facilitation of deregistration and subsequent award of care and support contracts with a lifetime spend limit of £115 million and a lifespan of 4+2 years; and
 - 9.1.2. permission to spend up to £98.5 million on contracts for the provision of care and support in a supported accommodation setting developed through the deregistration of residential care homes, funded by the repurposing of existing residential care spend. Contracts would be for a maximum length of 3+2+2 years determined on a case by case basis.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	Yes
Maximising well-being:	Yes
Enhancing our quality of place:	Yes

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.)

Document

Location

None

IMPACT ASSESSMENTS:

1. Equality Duty

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 under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

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

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

Equalities Impact Assessment:

An EIA was completed on 7th October 2015 and updated in May 2016 for the deregistration project. The conclusions of that assessment were that the project may have the following levels of impact on the following groups:

Impact Level	Identified Groups	Commentary
HIGH	<ul style="list-style-type: none"> • Individuals with a learning disability 	Impact would be limited to those individuals living in a property at the time it deregisters. The total number of service users likely to be affected is 260. The gravity of the impact would be managed through extensive consultation with the individuals affected prior to the deregistration taking place.
MEDIUM	<ul style="list-style-type: none"> • Poverty 	This is expected to be a positive impact. Individuals living in residential care are generally

		less well off than they would be in supported living accommodation as in the latter they have access to a much wider range of benefits.
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Impact on Crime and Disorder:

The County Council has a legal obligation under Section 7 of the Crime and Disorder Act 1998 to consider the impact of all decisions it makes on the prevention of crime. The proposal in this report aims to improve the safety of vulnerable Hampshire residents and reduce the risk of crime occurring.

Climate Change:

1.1.4. How does what is being proposed impact on our carbon footprint / energy consumption?

No impact has been identified.

1.1.5. How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

No impact has been identified.

DETAILED OVERVIEW OF PROCESS

1 Background

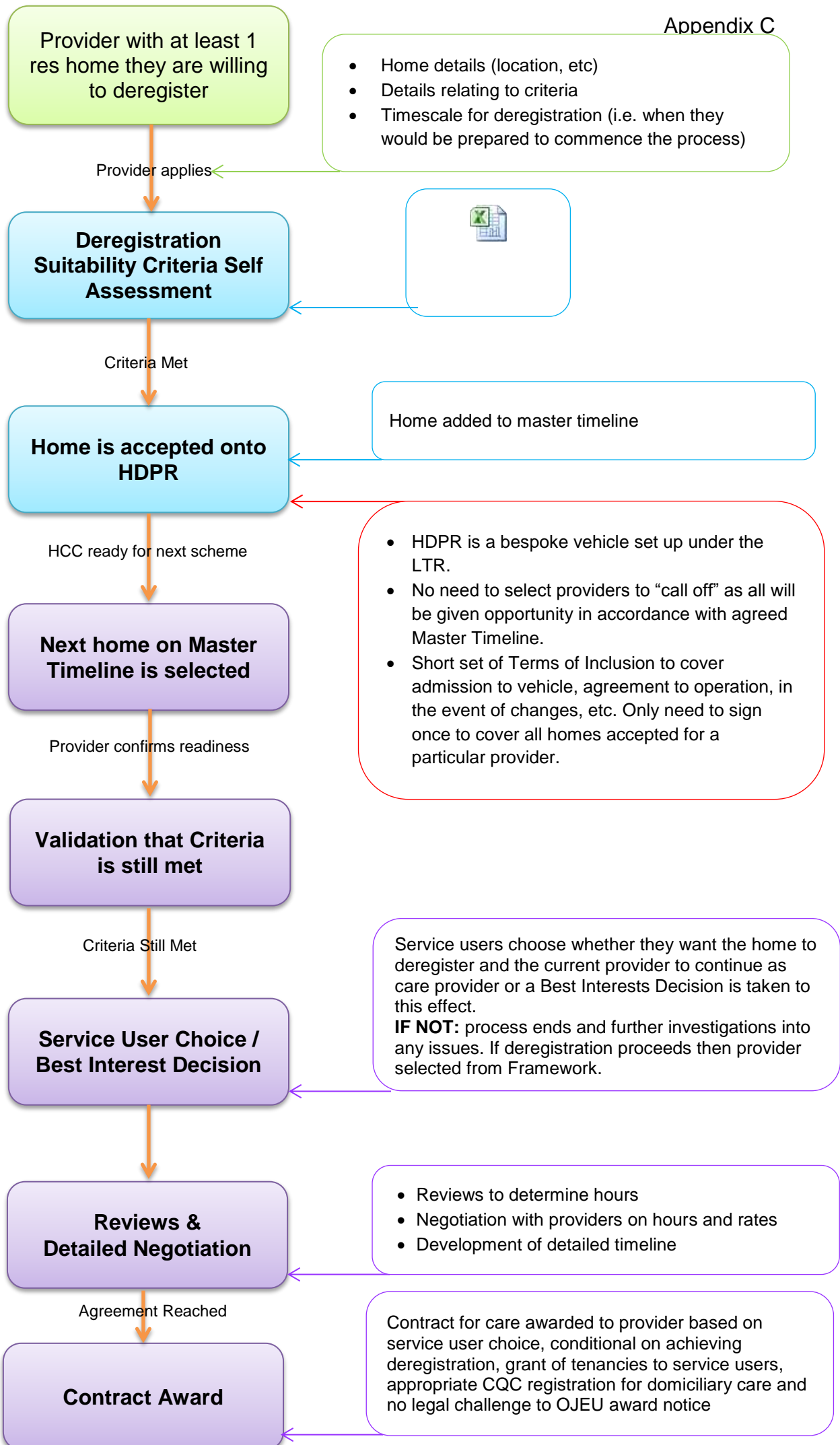
- 1.1 The proposed approach is to develop a bespoke procurement vehicle in accordance with the Public Contracts Regulations 2015 (the Regulations) Light Touch Regime (LTR) specifically designed for the purpose of establishing and developing partnerships with providers in residential care in Hampshire in order to deregister their care homes and convert them to supported living schemes. 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 bespoke vehicle would be called the **Hampshire Deregistration Partnership Register** (HDPR).

2 The Approach

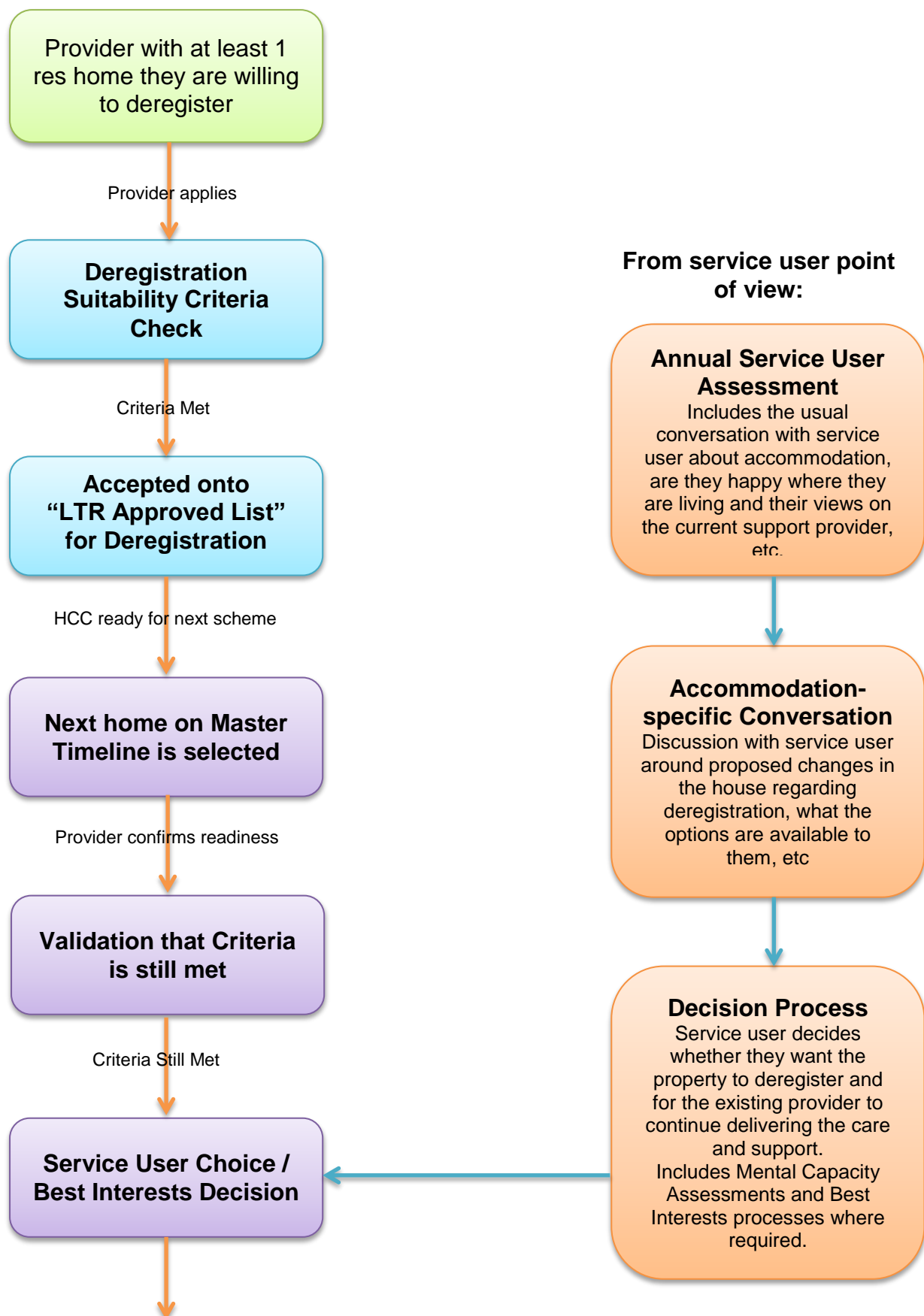
- 2.1 The LTR allows the development, implementation and use of bespoke procurement vehicles which do not need to conform to the detailed procedural rules of the standard procedures set out in the Public Procurement Regulations 2015 when certain types of services are being procured, including care and support services.
- 2.2 Under this approach, the proposed bespoke procurement vehicle is a

hybrid of a framework and dynamic purchasing system under the Regulations. It is likely that 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 in OJEU 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 Treaty principles of transparency and equal treatment;
 - 2.2.4 conduct of the procurement in conformance with the information provided in the OJEU 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 how the HDPR would operate and the process which would be followed in order to deregister residential homes signed up to it.



2.4 The flowchart below sets out the basic process from a service user’s point of view and how this links in with the overall operation of the HDPR:



- 2.5 The service user process set out in the orange boxes above would take place concurrently with the more formal provider-based process under the HDPR.
- 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 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

CQC	Does the provider already have the relevant CQC registration to provide domiciliary care at the property? <i>If not:</i> Does the provider undertake to obtain the relevant registration prior to deregistration?	Yes
Safeguarding & History	Are there any current or historic safeguarding issues with the residential service?	No <i>(but see below)</i>
	Are there any current or historic quality issues with the residential service?	No <i>(but see below)</i>
	<i>If "Yes" to either:</i> Is there certainty that these issues will not put the future service at risk?	If the provider has answered Yes to either of the above questions 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 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.