UKHCA report

Version 1.0, August 2018

A risk-register for state-funded homecare

Prepared for UKHCA member organisations by Colin Angel, Policy and Campaigns Director, UKHCA

United Kingdom Homecare Association
Sutton Business Centre,
Restmor Way,
Wallington SM6 7AH

Telephone: 020 8661 8188
E-mail: policy@ukhca.co.uk
Website: www.ukhca.co.uk

Company registered in England
Company registration number: 03083104

Table of contents

Introduction

The stability of the state-funded homecare sector has been the subject of increasing concern for Government, councils, statutory regulators and the national media.

There are a variety of reasons why the sector is particularly vulnerable, and UKHCA has designed a research project to identify and prioritise the highest risks to the financial failure of provider organisations, or the risk to planned withdrawal from the provider market.

The views of homecare providers operating from 522 locations in the UK have been used to produce a 'risk register' for state-funded homecare services. These are supplemented by the views of providers from a further 282 locations who supply wholly or mainly to state-funded services. The methodology to identify and prioritise the risks is described in Appendix 1. .

The report includes brief descriptions from providers responding to this survey about the impact that these decisions have on their businesses and the local market. We accompany those findings with recommendations to councils, the NHS and providers. These are summarised on page 6ff.

While there are certainly other factors which affect market stability, we make no apology for focussing this work on actions which are largely within the control of local authority and NHS purchasers. This enables us to provide a more specific range of recommendations which can be adopted at a local level, where there is sufficient commitment to do so.

We encourage statutory sector commissioners to consider these findings carefully, and take action on those areas which may place their own local markets at unacceptable levels of risk.

Colin Angel, Policy Director
United Kingdom Homecare Association

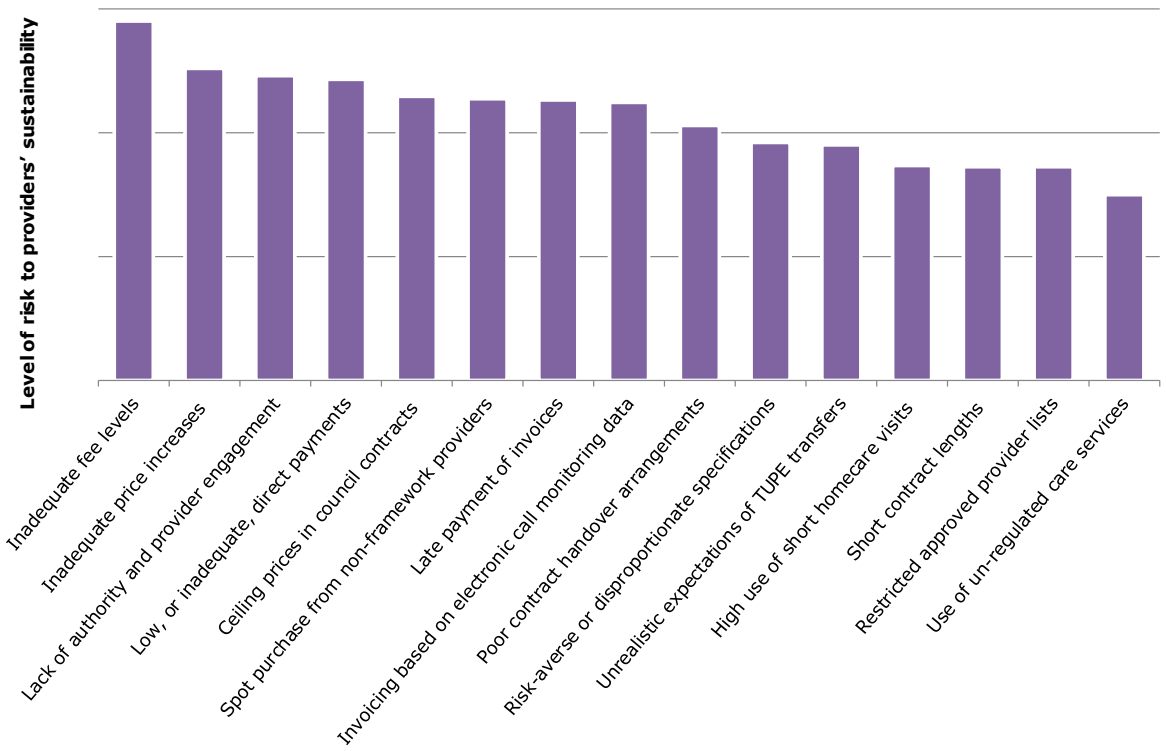
The Risk Register

This section summarises the risks to the stability of the state-funded homecare market. The list is presented in a prioritised order.

Prioritised risk register for state-funded homecare

1. Inadequate fee levels
2. Inadequate price increases
3. Lack of authority and provider engagement
4. Low, or inadequate, direct payments
5. Ceiling prices in council contracts
6. Spot purchase from non-framework providers
7. Late payment of invoices
8. Invoicing based on electronic call monitoring data
9. Poor contract handover arrangements
10. Risk-averse or disproportionate specifications
11. Unrealistic expectations of TUPE transfers
12. High use of short homecare visits
13. Short contract lengths
14. Restricted approved provider lists
15. Use of un-regulated care services

The relative risk rating between the issues is shown in the following chart:



The body of this report presents each of the commissioning or procurement practices prioritised in the order of the risk rating we calculated. Each of these sections provides:

- A chart to illustrate the relative risk of the practice described;
- A brief explanation of the issue and the potential risks for providers;
- Selected comments from providers in their response to the survey;
- Brief recommendations by UKHCA for statutory sector commissioners and homecare providers to consider, in order to mitigate the identified risks.

Summary of recommendations

Each of the items on our prioritised risk register, below, is accompanied by a series of recommendations, which we reproduce here.

1. Inadequate fee levels

Recommendation 1. Fees paid to homecare providers should cover providers' legal obligations, their legitimate business costs and provide a financially viable profit or surplus. It is particularly important to ensure that the prices which councils determine during procurement exercises are likely to be sustainable. As a minimum, councils could compare the prices they intend to pay with UKHCA's Minimum Price for Homecare.

Recommendation 2. Councils which have not already done so should undertake open and transparent cost of care exercises with their homecare providers in order to ensure that they understand the likely costs of care in the local area.

Recommendation 3. Councils which do not currently pay fees which meet the full costs of care should assess the potential risks to the stability of their local market and the authority's ability to meet their own statutory obligations to meet the care and support needs of their citizens.

Recommendation 4. Homecare providers should understand their current costs and the point where their services would become unsustainable. Providers should not tender for, or accept, contracts or packages of care which will affect the viability or quality of their services.

2. Inadequate fee increases

Recommendation 5. Contracts for homecare let by authorities should contain explicit reference to how price increases will be determined during the life of each contract.

Recommendation 6. Price increase mechanisms in homecare contracts should be equitable and cover legitimate increases in providers' total costs, rather than (for example) just the providers' direct costs. Contracts should also contain provisions for exceptional cost increases, including those which arise from new or amended statutory obligations.

Recommendation 7. Price increase mechanisms which are established at the sole discretion of the authority should be avoided. Where procurement exercises require providers to state a single price to be held over the life of the contract, particular diligence should be used to ensure that the prices accepted will not increase the risk of provider withdrawal or financial failure.

Recommendation 8. Providers intending to bid for contracts should review the price increase mechanisms in the contract, to assess the potential risks to which they expose themselves. Providers should reassure themselves that the fees they receive will be sustainable for the life of the contract, including any extensions specified.

3. Lack of meaningful engagement between an authority and local providers

Recommendation 9. Authorities, in consultation with their local providers, should determine the criteria to evaluate the effectiveness of their engagement and then test whether existing arrangements for engagement are effective and meet the needs of both parties, even where those needs may be at variance.

Recommendation 10. Authorities and providers should consider the range of skills and level of authority needed in order to undertake effective relationship management and strategic engagement with the market.

4. Service users with low, or inadequate, direct payments

Recommendation 11. Authorities should consider whether the allocation of funding for personal budgets administered as a direct payment are sufficient to enable people to exercise reasonable choice of the type of provider who will meet their care needs, including their ability to choose a regulated care service, if they wish to.

5. Maximum prices imposed in council contracts

Recommendation 12. Invitations to tender for homecare contracts should not constrain bids by specifying (or implying) a maximum price, to avoid distorting competition, or excluding providers from submitting commercially viable bids.

Recommendation 13. Where authorities intend to set a maximum or indicative price for homecare services, the rate should be evidence-based and

set above the minimum costs which providers reasonably require to deliver the service required in the local area (see also Recommendation 1).

6. Spot purchase from non-framework providers

Recommendation 14. Framework agreements with homecare providers should be designed to ensure that any commercial constraints placed on successful providers still enable them to attract and retain the necessary pool of workers to deliver the services required at a rate which is financially sustainable.

Recommendation 15. Framework agreements for homecare services should be structured in a way which means that the likelihood of the authority needing to purchase the required services from non-framework providers is an exception.

Recommendation 16. Framework agreements which have demonstrably failed to secure the required homecare services from successful providers should be reviewed in a timely manner and action taken to ensure that they operate as intended.

7. Late payment of invoices

Recommendation 17. Authorities should commit to prompt payment of non-disputed invoices to independent and voluntary sector homecare providers, and have arrangements in place for the prompt resolution of disputed invoices.

Recommendation 18. Authorities should set payment terms which are at least consistent with Public Contracts Regulations 2015 and the accompanying statutory guidance.

Recommendation 19. To reduce the risk of otherwise avoidable financial failures in the local homecare market, authorities should consider whether they should have contingency arrangements in place to support providers whose cash-flow has been adversely affected by the authority's payment history.

8. Invoicing based on electronic call monitoring data

Recommendation 20. Where electronic call monitoring data is used to generate invoices for homecare services, any rounding of the number of minutes of care should be fair and equitable.

Recommendation 21. The hourly rates used to calculate invoices using electronic call monitoring data covers homecare providers' costs. This hourly

rate is likely to be higher than the equivalent rate for care funded according to the length of a visit, as commissioned.

9. Poor contract handover arrangements

Recommendation 22. Timescales to mobilise new homecare contracts should be planned in proportion to: the impact of any changes that can reasonably be anticipated; an assessment of the ability of incoming providers to recruit new staff; and the time that affected employers need to manage the transfer of staff affected by TUPE regulations (see also Recommendation 28 and Recommendation 30).

Recommendation 23. When planning the award criteria for homecare contracts, consideration should be given to minimising disruption to the continuity of care and support for people who use services and members of the existing workforce.

Recommendation 24. Attempts to make the mobilisation of re-procured homecare contracts occur on a single day should be avoided, in order to minimise the extremely high levels of disruption.

10. Risk-averse or disproportionate contract specifications

Recommendation 25. Contract terms should be equitable and share risk appropriately between providers and the contracting authority.

Recommendation 26. Authorities should take reasonable steps to design contracts and specifications collaboratively with providers in advance of the procurement process, in order to identify and address disproportionate requirements and unintended consequences.

Recommendation 27. Authorities considering introducing a contractual requirement that careworkers receive guaranteed hours contracts should reassure themselves that the prices the authority will pay cover providers' legitimate costs, including the employers' obligation to meet the wages and associated on-costs of the workers who will be paid whether they are providing care services or not (ie. the costs of careworkers' 'down-time' is funded).

11. Unrealistic expectations of TUPE transfers

Recommendation 28. Authorities undertaking procurement exercises where the TUPE Regulations are likely to apply should form realistic expectations of the

extent to which workers will (or will not) exercise their right to transfer under the Regulations. The likely attrition rate of workers from the sector should be included in such calculations.

Recommendation 29. Authorities should commit to being actively involved in assisting existing providers and prospective tenderers to obtain anonymised employee information to assist in the preparation of tenders.

Recommendation 30. Authorities should include a requirement in contracts that providers will (a) supply anonymised employee information at the reasonable request of the authority, and (b) will provide "transferees" with full "Employee Liability Information" in compliance with the Transfer of Undertaking (Protection of Employment) Regulations 2006, as amended.

Recommendation 31. Homecare providers, even where not required to do so under the terms of their contract, should cooperate with the reasonable requests of authorities over the supply of anonymised employee information as part of procurement exercises.

12. High use of short homecare visits

Recommendation 32. Where homecare visits are commissioned by reference to tasks undertaken in a specified amount of time, the length of the visit should be in proportion to the likely time needed to provide effective, safe and dignified care and support.

Recommendation 33. Authorities should be responsive to requests to review the length of time allotted to provide homecare to an individual. Reasonable requests to increase the time allocated, should be resolved in a timely manner and increases in time allocated should not unreasonably withheld.

Recommendation 34. Authorities which have not already done so should make a commitment to commission the duration of homecare visits in a way which is consistent with NICE Guideline 21.

Recommendation 35. Authorities using a high proportion of short homecare visits should recognise the increased proportion of travel time (and costs) in relation to the length of the visit.

Recommendation 36. Homecare providers should be willing to challenge - and where appropriate refuse to accept – requests to provide care and support which cannot be realistically delivered within the planned time.

13. Short contract lengths

Recommendation 37. The duration of contracts for homecare services should be determined by reference to the relevant factors, including (but not limited to): the ability to attract a sufficient number of providers able to deliver care at the desired standard; the changing needs and expectations of the local population; the ability to manage any anticipated risks associated with the quality and stability of the local homecare market; and the investment associated with initial contract mobilisation.

14. Restricted 'approved provider' lists

Recommendation 38. Authorities should review their use of 'approved provider lists' to ensure that people using homecare, including those funding their own care have a genuine choose a provider. Such reviews should be conducting in conjunction with local citizens and providers operating in the local market.

Recommendation 39. Authorities should consider whether non-selective listings of providers, such as those made available on-line by statutory regulators, are a suitable alternative to more restrictive 'approved provider lists'.

Recommendation 40. Where they are used, 'approved provider lists' should remain open (either continuously, or on a regular basis) to enable providers in the local area which meet the necessary criteria to join, should they wish to.

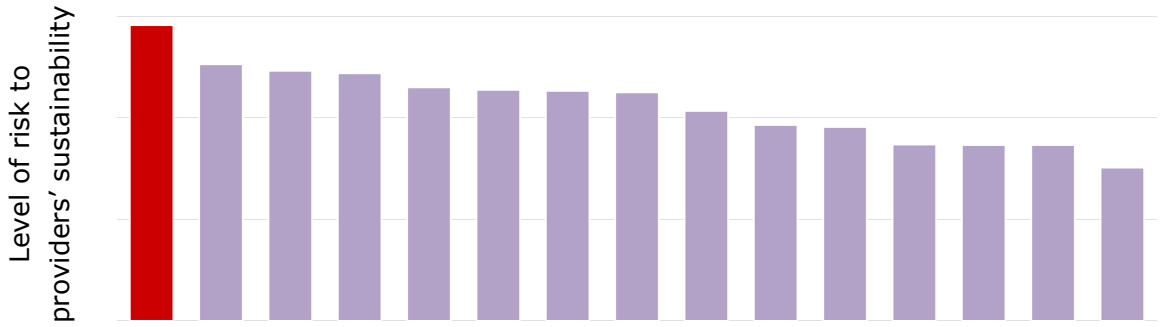
15. Use of un-regulated care services

Recommendation 41. Authorities considering encouraging the development of un-regulated care services should form a balanced view of the associated risks and benefits for people with care and support needs, and the likely impact on the capacity of the local provider market and workforce.

Recommendation 42. Practices which could reasonably be seen as exploiting providers in the regulated care market as a source of free or low-cost training should be avoided.

The risks in priority order, with recommendations

1. Inadequate fee levels



Inadequate fee levels were rated the highest risk factor for the sustainability of homecare providers undertaking state-funded care.

The risks to providers' sustainability

The fees which councils and other purchasers pay for homecare services may be insufficient to meet the costs of delivering the service at a sustainable level, including rates which:

a. are incompatible with the National Minimum Wage Regulations;

b. do not enable employers to set wage rates which compete with comparable business sectors;

c. do not cover providers' operating costs; or

d. do not provide a commercially viable EBITDA margin, or adequate net profit/surplus to be sustainable.

The adequacy of fees paid by councils has been the subject of a number of major reports by UKHCA, which compare the average price that councils pay with UKHCA's calculation of the Minimum Price for Homecare services.[1],[2]

---

[1] See: UKHCA (2016) The Homecare Deficit 2016. URL: www.ukhca.co.uk/rates. At the time of publication (August 2018), UKHCA is preparing an updated version of this report, using

Views from providers

Of all the comments submitted with answers to this question in our survey, the following illustrates the views which are no doubt held by many of the respondents:

> "Pensions increased. Wages have increased. Running costs increased. Fees remain unchanged. You don't need to be a mathematician to work out the consequences!" *Owner, single-site, South East of England*

Providers described the consequences of financial pressures they face within the local state-funded market in terms of the risks to quality and the likelihood of market exits:

> "The upward pressure of staff salaries and the downward pressure from council fees mean quality will suffer and recruitment, which is already difficult, will become an acute problem. We have already made significant cuts to our central and management costs; further savings will impact upon the quality of support and training we can offer our staff and the quality of the service we offer. Staff turnover will increase and the risk of not covering visits will increase dramatically." *Owner, single-site, West Midlands*

> "This issue, if unchecked, will cause overall business failure - the only mitigating options left available to us (given we have exhausted all others) is a widespread exit from most of the councils we supply to and a substantial reduction in the size of our organisation." *Owner of a business covering 19 locations*

> "We have received an increase from our council, but it does not cover the extra costs of providing a quality service or meet the stringent key performance indicators that we have to answer to under our contracts. Competition for staff is so high in our area that we need to pay considerably above the Minimum Wage, which cuts down on money left for all other aspects of provision of good services, so something will have to give." *Owner, single-site, South East of England*

Other providers commented on the impact of low fees on the workforce and providers' ability to recruit and retain workers:

---

information obtained from councils under Freedom of Information legislation about the prices paid for homecare in April 2018.

[2] See: Angel, C (2018) A Minimum Price for Homecare, Version 5.1. URL: www.ukhca.co.uk/downloads.aspx?ID=434.

> "With the recent cost increases and insufficient uplifts from our purchasers we aren't able to pay staff at the level that will retain and attract new applicants. We will also have to consider what new clients we will offer a service to." *Registered Manager, branch, 2 locations*

> "In our local area high employment means it is very difficult to recruit. We cannot pay enough to attract new people to the sector. We are competing with a very big local employer known to pay extremely well." *Owner, single-site, South West of England*

Some providers are re-focussing their services on people who fund their own care:

> "We are losing money each time we provide council-funded or continuing health care. We are therefore, now trying to focus on building our private business." *Head office manager, covering five locations*

> "We are withdrawing from all NHS funded home care. High acuity care in an urban setting is purchased at an unrealistic rate. We are moving to private clients. I have also had to consider suing CCGs who have not paid bills on time." *Owner, covering four locations in England*

A number of franchise providers explained why they focus their services on people who fund their own care:

> "Our exposure to council work is limited since it just does not make economic sense with our fully-costed fee exceeding what the local councils are prepared to pay." *Franchisee, 4 locations*

> "We don't currently supply to the local authority as the rate they pay is far too low for me to operate a safe and caring business. I would have to call cram, cut visits short, etc and reduce quality of care, which I am not prepared to do." *Franchisee, North East of England*

The lack of confidence that commissioners understood the cost of care, or were willing to pay sustainable fees without compulsion, was registered in some comments:

> "The fee levels set by commissioners do not reflect the day-to-day operations of a business. Commissioners only seem to be concerned with 'direct staff costs' and have no interest in any other costs, which is particularly apparent when tendering for services." *Owner, head office, three locations*

> "There needs to be statutory enforcement on councils and CCGs to ensure that their funding levels for care services for every service user are at least at the benchmark rate recommended by UKHCA, with Councils and CCGs in London having to fund at higher rates than this benchmark rate." *Franchisee, Greater London*

> "We get paid less for managing an entire supported living package than if we sent a careworker to deliver older people's homecare. The council refuses to acknowledge that we are essentially subsidising part of the service." *Owner, single-site, East of England*

This voluntary sector provider rated the probability of inadequate fees from its council as 'high' and explained why they continued to support some council-funded care:

> "As a charity there is some funded care we need to take on to meet the objectives of the charity - caring for local people in need in a rural area. However, 60% of our income is from private work." *Registered Manager, voluntary organisation, South West of England*

The survey included views from providers operating in the devolved administrations, including:

> "Local authorities have consistently failed to meet the increase in NMW, ignored pay differentials, pension costs, travel time and changes to regulation and registration in Wales." *Owner, single-site, Wales*

> "Underfunding is forcing us to move away from care funded by the local authority. Their commissioning process simply passes the risk down the supply chain and they are not transparent about how they arrive at their fee rates." *Owner, single-site, Scotland*

> "I am in the process of reducing the number of care packages I supply to the Health and Social Care Trust." *Franchisee, Northern Ireland*

> "Local and central government are failing to recognise that providers do not have funds left to offer pay increases to supervisory staff, which would assist in retaining staff at that level. It is essential that there are enough people within the service to ensure full compliance, supervision, appraisals and specialist training of field staff." *Registered Manager, Scotland*

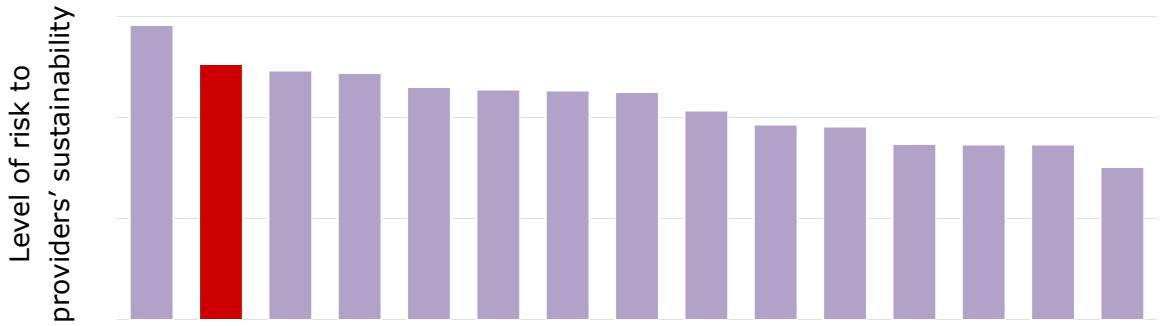
Recommendation 1. Fees paid to homecare providers should cover providers' legal obligations, their legitimate business costs and provide a financially viable profit or surplus. It is particularly important to ensure that the prices which councils determine during procurement exercises are likely to be sustainable. As a minimum, councils could compare the prices they intend to pay with UKHCA's Minimum Price for Homecare.

Recommendation 2. Councils which have not already done so should undertake open and transparent cost of care exercises with their homecare providers in order to ensure that they understand the likely costs of care in the local area.

Recommendation 3. Councils which do not currently pay fees which meet the full costs of care should assess the potential risks to the stability of their local market and the authority's ability to meet their own statutory obligations to meet the care and support needs of their citizens.

Recommendation 4. Homecare providers should understand their current costs and the point where their services would become unsustainable. Providers should not tender for, or accept, contracts or packages of care which will affect the viability or quality of their services.

2. Inadequate fee increases



Given that low contract prices scored highest in providers' assessment of risks to the state funded care market, it is perhaps unsurprising that inadequate price increases during the life of a contract appears as the second-highest risk in the survey data.

The risks to providers' sustainability

UKHCA notes that many contracts now require providers to quote a single fee for the life of the contract. Other contracts may offer price increases which:

a. are zero, or below inflation;

b. do not recognise newly arising costs;

c. appear to be calculated on an arbitrary basis;

d. are not confirmed in a timely manner.

Inadequate fee increases during the life of a contract are likely to increase market stability over time, and compound matters where the initial price determined was inadequate. As a number of providers' comments in the survey illustrate, inadequate price increases are likely to exacerbate withdrawal from the state-funded market.

Views from providers

Some providers noted the actions they were taking to withdraw from the state-funded market as a result of inadequate fee increases:

> "We have received, on average, less than half the amount needed to cover our increasing costs. This has been repeated for several years already. We have started a plan to not only withdraw from contracts which are already unviable, but we are also exiting contracts where we predict problems over the next two years, rather than wait for the inevitable. We will be more in control and avoid a continuous state of handing back contracts, which undermines other priorities." *Owner covering 19 locations*

The protracted nature of some of these inadequate increases is evidenced by some of these comments:

> "We have been operating on the same fee rates since 2012 despite several requests for an increase." *Owner, single-site, East of England*

> "Contracts we have held have not seen an uplift for the last three to five years. During this time costs increase. The only way you can guarantee you can safely cover your costs is to tender a very high hourly rate, but then you won't win a contract." *Owner covering two government regions*

Indeed the consequence of contracts requiring a fixed fee for the life of the contract, or where a contract does not guarantee reasonable increases, are illustrated in the following:

> "We won't tender for work that has 'whole life' pricing within it." *Owner with four locations in England*

UKHCA frequently hears of rate increases which are based on the costs of changes to statutory wage increases, without recognising other cost pressures:

> "The National Living Wage increased this year by 33 pence per hour, but our local authority increased prices by 32 pence. The additional costs of National Insurance, pensions, the apprenticeship levy, unsocial hours payments and the need for pay differentials were all ignored." *Owner, with three locations in England*

> "The fee increase we have been offered this year is 1%, however inflation and living wage increases has added 5.4% to our costs." *Registered Manager, South West of England*

"Our local authority has just offered us a 40p per hour increase. However, to receive this uplift we have to agree to pay the Scottish Living Wage. Agreeing to the uplift would actually cost us 60p per hour, and we have refused it." *Owner, Scotland*

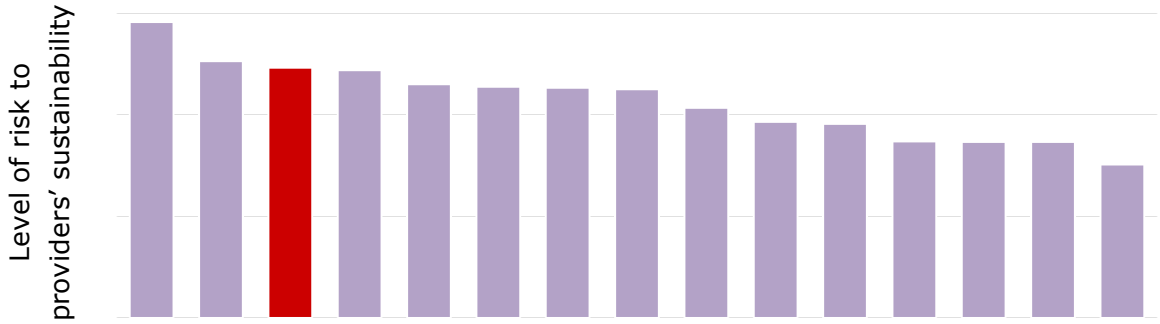
Recommendation 5. Contracts for homecare let by authorities should contain explicit reference to how price increases will be determined during the life of each contract.

Recommendation 6. Price increase mechanisms in homecare contracts should be equitable and cover legitimate increases in providers' total costs, rather than (for example) just the providers' direct costs. Contracts should also contain provisions for exceptional cost increases, including those which arise from new or amended statutory obligations.

Recommendation 7. Price increase mechanisms which are established at the sole discretion of the authority should be avoided. Where procurement exercises require providers to state a single price to be held over the life of the contract, particular diligence should be used to ensure that the prices accepted will not increase the risk of provider withdrawal or financial failure.

Recommendation 8. Providers intending to bid for contracts should review the price increase mechanisms in the contract, to assess the potential risks to which they expose themselves. Providers should reassure themselves that the fees they receive will be sustainable for the life of the contract, including any extensions specified.

3. Lack of meaningful engagement between an authority and local providers



Inadequate engagement between authorities and its providers was rated the third-highest risk affecting providers' viability in the survey.

The risks to providers' sustainability

Councils do not always engage well with local provider markets. Where this happens it can often be characterised by at least one of the following:

a. Not engaging regularly (or at all) with local provider fora;

b. Engaging with providers, but not sending officers of a sufficiently senior level to be able to respond to providers' questions or resolve issues raised;

c. Failing to engage with providers willing to offer innovative solutions to existing problems, or to offer new models of care.

A sense of a lack of meaningful engagement is one which providers regularly describe to UKCHA. On many occasions providers say there is a lack of opportunities to engage over matters which affect the commercial viability of the local market, or that providers are not sufficiently involved in designing contract specifications or procurement activities.

Views from providers

Comments from providers suggested a disappointment with the engagement which did take place:

> "We have never attended a consultation event that has actually consulted with providers prior to decisions being made. Consultation exercises are mostly a tick box process where we have no actual influence over events or decisions, especially matters that have a financial impact. Local authorities talk about anything under the sun except things that will actually make a difference, or cost money." *Owner, head office, 3 locations*

> "Senior officers of LAs are far too removed from the reality and the gravity of the situation in the sector." *Owner, single-site, Wales*

A number of care providers discussed engagement which they believed amounted to little more than 'going through the motions':

> "Even when authorities engage they have tunnel vision to their own problems - so meetings are largely just to say they have engaged with their providers!" *Registered Manager, South East of England*

> "This year I have already had to go to a tender workshop for 5 hours that was just a tick box exercise to say we are working in partnership. There were lots of PostIt notes, but they were not talking about real issues." *Owner, head office, 5 locations*

> "Even when senior people engage - they have no money and sole purpose is for them to convince providers that 'it's their way or no way'." *Owner, single-site, East of England*

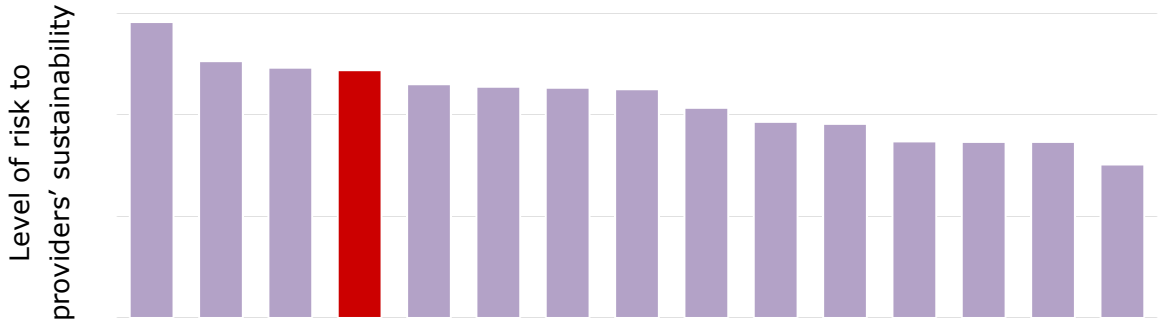
A lack of effective engagement is unlikely to be one-sided, and may illustrate a lack of confidence across the entire sector:

> "There are 115 providers in the county, but forums were held last summer where all providers were invited, but just the same seven turned up for the five sessions run through the summer." *Registered Manager, branch, South West of England*

Recommendation 9. Authorities, in consultation with their local providers, should determine the criteria to evaluate the effectiveness of their engagement and then test whether existing arrangements for engagement are effective and meet the needs of both parties, even where those needs may be at variance.

Recommendation 10. Authorities and providers should consider the range of skills and level of authority needed in order to undertake effective relationship management and strategic engagement with the market.

4. Service users with low, or inadequate, direct payments



Low or inadequate direct payments was ranked the fourth-highest risk to the market.[3]

The risks to providers' sustainability

A personal budget issued as a "direct payment" may be insufficient to meet the person's assessed needs; and/or it may set at an amount which prevents the recipient from purchasing care services from a regulated provider, even if the person would have preferred to do this.

A number of providers responding to our survey were experiencing losses while supporting people who wished to use their direct payment to buy a regulated care service, or were having to turn people away if they were unable to fund the difference between their direct payment and the providers' costs.

Although not explicitly tested in our survey, UKHCA is also aware of a number of authorities who attempt to constrain their contracted providers into delivering a regulated care service for people in receipt of a direct payment at a price below which the council itself buys care. Some examples that UKHCA's member organisations have described appear to us as a threat of withdrawal of council-funded business, unless the provider agrees to deliver services to direct payment recipients at commercially non-viable rates.

---

[3] The sample size for this question was slightly smaller than others in the survey. An error in the on-line form was identified and corrected in the first 12 hours of the survey going live. Incomplete answers from during this time were omitted from the final analysis, leaving a sample of responses from 138 providers, covering 474 locations for this question.

Views from providers

It was notable from a number of replies that many regulated providers were regularly having to ask people using direct payments to 'top-up' their care to providers' actual charge rate, or to turn prospective customers away if they were unwilling or unable to do so.

> "We charge our clients the difference in the amount charged and the amount received from the Council. We can only do this to clients that can afford our charges. It is heart-breaking." *Owner, single-site, South East of England*

> "Our council does not give someone a sufficient payment to allow them choice. The service user can only afford to go to a cheap rate or they have to top-up if they want to go to the provider of their choice. Direct payments does *not* equal choice." *Franchisee, Yorkshire and The Humber*

Some providers commented on direct payment rates which would not cover the costs of regulated homecare services:

> "Councils need to be realistic and not set the limit too low. Providers still have to pay wages, National Insurance, pensions etc. To be honest, rates are so low that I can't offer a service to people using a direct payment." *Franchisor, 30 locations*

> "Local authorities seem to inhabit a parallel world where care can be provided with no reference to the cost of actually getting a carer to the front door of a service user, and travel time is zero, and the Minimum Wages is enough for careworkers to live on." *Owner, head office, three locations*

> "Our local Council still funds Direct Payments for people receiving care services since 2008 at £12.10 per hour, which is totally inadequate." *Franchisee, Greater London*

A number of providers believe that direct payments were funded at a level which effectively forced people to employ unregulated personal assistants:

> "This is a problem that is going to be getting bigger. Direct Payments should be funded at a rate that allows the recipient to choose to use an agency if they wish - but more and more people are being pushed into employing staff directly. We also provide direct payment support services and have noticed an increase in issues with people who employ their own staff, even though they didn't really want to." *Owner, single-site, West Midlands*

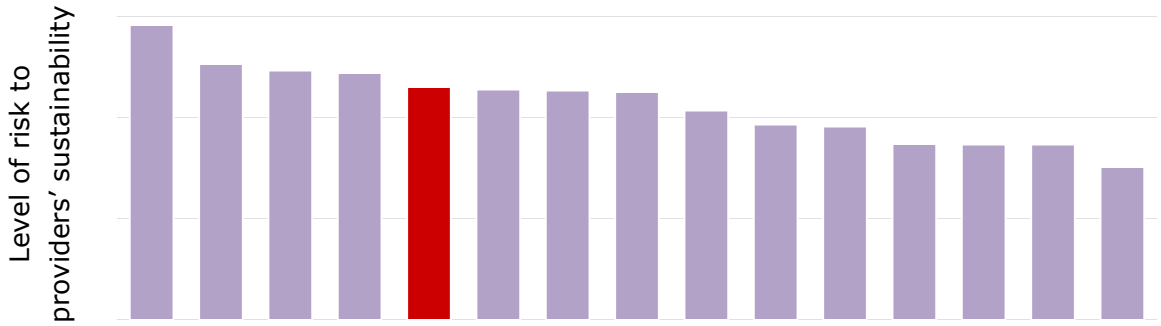
Some providers who had been willing to offer services to people in receipt of direct payments made financial losses because they were unwilling to leave people without support:

> "We have lost clients in the past because of low direct payments. We have had to spend time supporting the client to find alternative provision and because we are rural often we have to take a financial hit until the client could find a cheaper provider." *Registered Manager, single-site, East Midlands*

> "We were unsuccessful in gaining a place on a new framework tendered by the council. Many of our service users will transfer onto direct payments later this year to stay with our company, but with budgets based on council's new price for care. We will need to work closely with these clients in order to help them maintain their services whilst keeping them 'in budget'." *Registered Manager, single-site, North West of England*

Recommendation 11. Authorities should consider whether the allocation of funding for personal budgets administered as a direct payment are sufficient to enable people to exercise reasonable choice of the type of provider who will meet their care needs, including their ability to choose a regulated care service, if they wish to.

5. Maximum prices imposed in council contracts



It is not uncommon for public sector contracts to specify a maximum or "ceiling" price. This is a practice which is likely to artificially constrain the prices paid for care, and was ranked the fifth-highest risk to market stability by providers responding to the survey.

The risks to providers' sustainability

Invitations to tender for contracts with local councils may attempt a range of cost-control measures including:

a. Specifying a maximum price above which bids will be rejected;

b. Encouraging providers to bid well below a specified price in order to secure volume purchase;

c. Giving an inappropriate weighting to low price compared to quality.

While we have no doubt that maximum or guide prices are expressed in invitations to tender in order to set a fair expectation of the prices the council is willing to pay for care, UKHCA believes that these measures have associated risks of deterring bids from high-quality providers, or encouraging providers to participate in a race to the bottom on price.

Views from providers

The practice of artificially constraining the prices that providers can bid in tender exercises appears to be widespread and would appear to artificially constrain the bids which councils receive:

> "The maximum price stated in invitations to tender often has no rational basis, or the methodology is flawed. The impact is that either providers don't bid, or they are too scared not to, even though it will often lead to provider failure further down the line." *Owner, head office, 19 locations*

> "Every contract we have been involved in for the last 3 years has a 'ceiling' price quoted. This artificially constrains quality of care delivered and hampers a diverse market place. Ceiling prices tend to favour larger organisations rather than those dedicated to the area and the people within their borough." *Owner, single-site, Greater London*

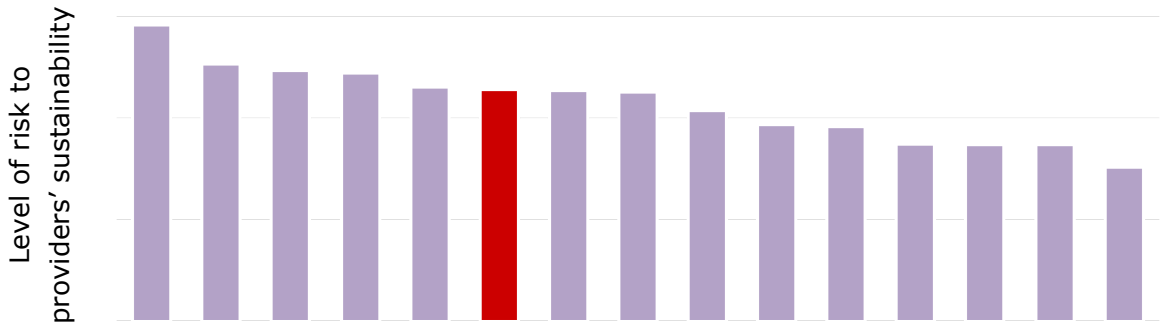
There was some evidence that even where a maximum price was not set in the invitation to tender there were other methods in use to constrain providers' prices further:

> "In a recent contract the price was set at the rate agreed with lead provider (who has economies of scale and also gets first choice of work). Alice in Wonderland economics then uses this price for 2nd choice providers who are offered any overflow work (which is generally harder, more complex, and less attractive), but without the benefit of volume demand." *Owner, single-site, covering 2 government regions*

Recommendation 12. Invitations to tender for homecare contracts should not constrain bids by specifying (or implying) a maximum price, to avoid distorting competition, or excluding providers from submitting commercially viable bids.

Recommendation 13. Where authorities intend to set a maximum or indicative price for homecare services, the rate should be evidence-based and set above the minimum costs which providers reasonably require to deliver the service required in the local area (see also Recommendation 1).

6. Spot purchase from non-framework providers



Spot purchase from non-framework providers was ranked as the sixth-highest risk to the state-funded market. This was slightly surprising, given that our sample contained organisations which appeared to be either framework or non-framework providers in their local area.

The risks to providers' sustainability

Framework agreements are generally designed to enable councils to purchase a significant proportion of their total homecare requirements from providers who have been though a vetting procedure to join the framework.

Although framework contracts generally offer no guarantee that the authority will purchase a specific volume of service from providers on the framework, a number of these agreements require the provider to have agreed to deliver services at or below a pre-determined price.

Despite a framework being in place, councils may also purchase services from providers who are not part of the framework, and often do so at a higher rate than they pay their contracted providers, or on contractual terms which are less restrictive than placed on the framework providers.

The reasons for such spot purchasing are varied, but include providers on the framework being unable or unwilling to take-on some of the services required. Spot-purchase from non-framework providers can be an indication that the framework is not operating well.

Purchase from non-framework providers can also be the start of a self-defeating situation in the local market where providers who remain on a framework are significantly disadvantaged, compared to those who wait for work on a 'spot' basis.

Views from providers

Providers' comments in the survey focused on the apparently self-defeating nature of the frameworks they had experienced:

> "This happens in numerous cases, and is an outcome of commissioning services at too low a rate, where providers are then forced to pay just NLW. The impact usually is the contracted providers can't recruit or retain careworkers, and the council is forced to source 'off contract', at much higher rates. It becomes a self-fulfilling prophecy." *Owner, with 19 locations*

> "This is something that we have seen fail in the past. The council has put so many financial constraints on its framework providers and there are just not enough providers on the framework to provide all the care needed. Inevitably spot purchases are used with providers outside the framework. This then causes the vicious cycle of prices going up as we all compete for staff." *Registered Manager, single-site, South West of England*

> "One of our local councils recently re-tendered its homeware contract, to remove all non-framework providers, and those with spot contracts. Six months later the successful framework providers still cannot mobilise the blocks they have been awarded. The remaining urgent hours have, once again, been given to off-framework companies, at much higher rates than framework providers receive. This totally defeats the tendering exercise and we are now locked in on lower rates than off-framework companies, which the council assured all bidders would be eradicated." *Owner, single-site, West Midlands*

Providers are also realising that because framework agreements do not require providers to accept work, it can be better to hold out for a higher price on a spot-basis:

> "Even though we are on the framework, we are only taking work if we can get a spot price. The volume providers cannot do all the work at low prices so the council continues to use spot purchase." *Owner, single-site, South East of England*

A provider, only willing to take-on spot contracts, explained their organisation's rationale:

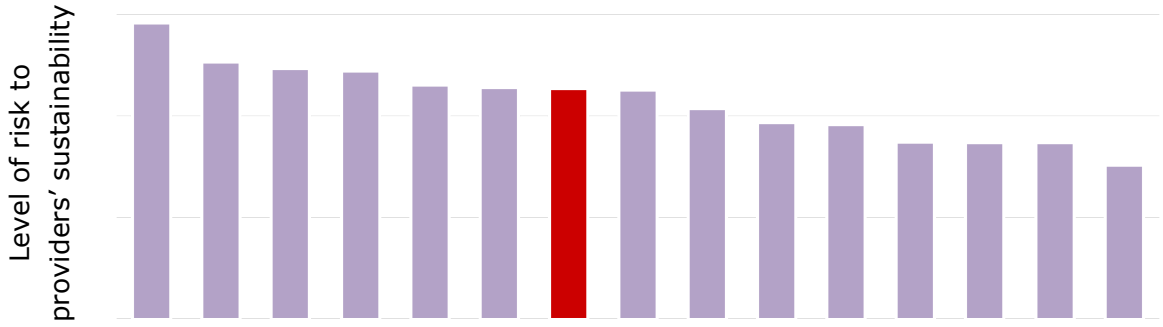
> "We only work with our council on a spot contract basis. We could not work within a low cost framework agreement without running a high risk of insolvency." *Owner, single-site, South East of England*

Recommendation 14. Framework agreements with homecare providers should be designed to ensure that any commercial constraints placed on successful providers still enable them to attract and retain the necessary pool of workers to deliver the services required at a rate which is financially sustainable.

Recommendation 15. Framework agreements for homecare services should be structured in a way which means that the likelihood of the authority needing to purchase the required services from non-framework providers is an exception.

Recommendation 16. Framework agreements which have demonstrably failed to secure the required homecare services from successful providers should be reviewed in a timely manner and action taken to ensure that they operate as intended.

7. Late payment of invoices



Late payment of invoices was the seventh-highest risk to the stability of state-funded homecare markets.

The risks to providers' sustainability

Providers' cash-flow can be adversely impacted by invoicing procedures which include the late payment of undisputed invoices and/or slow or onerous dispute resolution procedures.

Views from providers

The impact of late of payment invoices is illustrated by the following providers' comments:

> "I have already had one situation this year where a late payment by the council meant staff could only be paid 50% of wages on pay day." *Owner, West Midlands*

> "The council pay on a 30 day basis. They will quite often leave any queries until the 28th day, so the 30 days starts again and you do not get paid for 60 days. Councils not paying in time affects our cash flow, as we still have to pay staff and other expenses on time." *Registered Manager, South West of England*

> "We are a charity. A CCG owed us over £500,000 and we used our solicitors to threaten legal action. The CCG paid us on the very last day before the action began." *Owner, head office, 4 locations*

Sometimes problems with invoices appear to be a simple lack of communication, but this can lead to extreme situations for providers:

> "We already invoice 4-6 weeks in arrears. Recently there have been changes to who and where we invoice, but we weren't informed; they just stopped paying us. At one point the company was owed over £300,000, which nearly finished us." *Owner, covering 2 government regions*

Larger providers are usually able to spread the risk of late payments by some of their public sector customers. However, some smaller providers have to incur personal liabilities in order to maintain services:

> "We have been in the situation where, because the council's systems were not working, we were unable to pay care workers' wages and I had to use my personal funds." *Owner, Greater London*

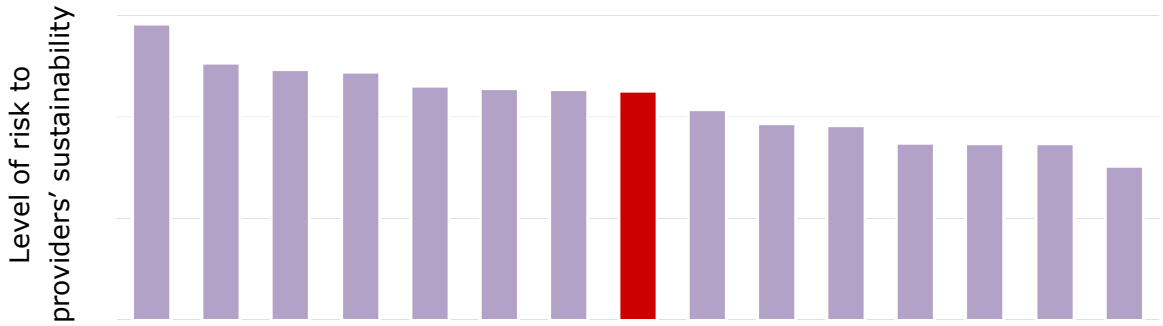
> "In order to set up my business I had to secure a £30k bank loan. Less than £10k of this was for start-up equipment, etc. The rest was purely for cash flow due to the late payment of CHC funding." *Owner, single-site, North East of England*

Recommendation 17. Authorities should commit to prompt payment of non-disputed invoices to independent and voluntary sector homecare providers, and have arrangements in place for the prompt resolution of disputed invoices.

Recommendation 18. Authorities should set payment terms which are at least consistent with Public Contracts Regulations 2015 and the accompanying statutory guidance.

Recommendation 19. To reduce the risk of otherwise avoidable financial failures in the local homecare market, authorities should consider whether they should have contingency arrangements in place to support providers whose cash-flow has been adversely affected by the authority's payment history.

8. Invoicing based on electronic call monitoring data



Invoicing according to electronic call monitoring data was the eighth-highest risk in our survey results. Because electronic monitoring is not a requirement in many authorities' homecare contracts that this issue might have significantly more impact in some authorities than it does in our national findings.

The risks to providers' sustainability

The use of 'electronic call monitoring' (ECM) systems in homecare is a contentious subject.

ECM has positive benefits because it can act as a quality assurance tool; it can provide early safety warnings for workers and the people they support; and create accurate invoices at lower costs than manual systems. However, in many homecare providers' experience ECM is generally introduced by councils with a view to reduce the amounts spent on individual packages of care.

Where an ECM system is in use, data about careworkers' arrival and departure times are usually used to calculate the fees paid according to the minutes of care delivered in proportion to the hourly rate agreed.

There is nothing intrinsically wrong with using ECM to generate invoices. However:

a. The hourly rate used to calculate payments to providers must produce a sustainable service which covers the providers' costs, including careworkers' travel time and travel costs.

b. As providers responses to the survey suggest, rules applied by their councils as to how the fee is calculated, particularly where the number of minutes is rounded up or down to a specified time band, usually operate to the council's

financial advantage (and the provider's disadvantage) and can produce delays in invoice payment.

Views from providers

In theory, invoicing according to the length of the visit delivered should be fair, as experienced by this provider, who said:

> "We already operate an electronic visit monitoring system. This generally helps provide evidence of visits for increasing as well as decreasing." *Registered Manager, for a small multi-branch operator*

However, this is a rare experience for many providers, who often find that the way that invoices are calculated is stacked to their council's financial advantage:

> "We are paid in bandings of 15 mins with a 7 min allowance. If a 30-minute call only lasts 23 minutes we receive the fee for 15 mins of care. If a visit is cancelled by the user, we receive nothing. Staff who think they have a full working shift can find that three calls lasting 1.5 hours has become 45 minutes. We still have to pay the travel time and on costs. Whilst we feel that while ECM is a good quality-monitoring tool, it is a major negative for recruitment and pay." *Owner, single-site, South East of England*

> "24% of present visits are just 15 min calls. Because the ECM system is banded to 15 mins we also often only get paid for 15 mins if a 30 minute call lasts 23 mins. This is causing constant concerns for us and our staff who we have to pay according to the contact time they spend with clients." *Owner, single-site, South East of England*

> "We are already losing staff because of this, even if the careworker has clocked-out 1 second earlier we get penalised! How fair is that? Also if the worker stays longer because the service user is slow that morning we don't get paid for the extra time." *Owner, East Midlands*

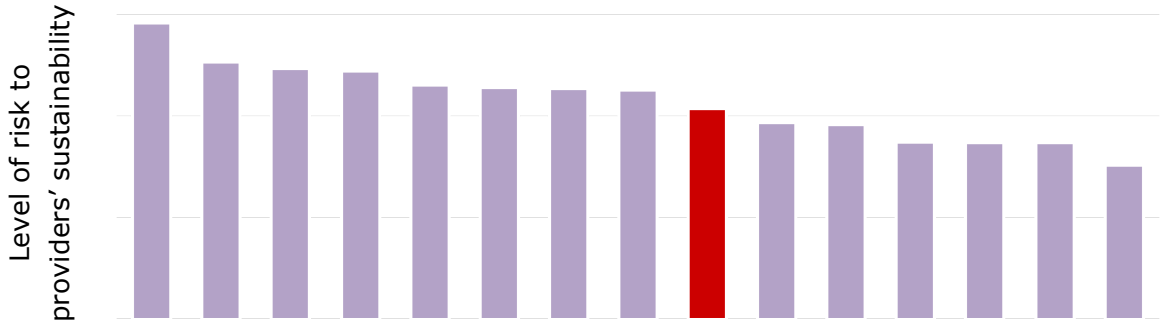
A number of providers have started to regard the use of ECM to generate invoices as highly unattractive:

> "Our local council have just gone onto minute by minute billing and we are not likely to continue the service due to this." *Registered Manager, Yorkshire and The Humber*

Recommendation 20. Where electronic call monitoring data is used to generate invoices for homecare services, any rounding of the number of minutes of care should be fair and equitable.

Recommendation 21. The hourly rates used to calculate invoices using electronic call monitoring data covers homecare providers' costs. This hourly rate is likely to be higher than the equivalent rate for care funded according to the length of a visit, as commissioned.

9. Poor contract handover arrangements



Poor contract handover arrangements as the ninth-highest contribution to market instability. As most contracts last longer than a year, this risk to individual markets will be greater at some times than others.

The risks to providers' sustainability

Local services can be severely destabilised at the point where contracts are allocated to incoming providers. Particular risks include:

a. Mobilisation periods which are too short;

b. Large-scale handovers all occurring on the same date;

c. Expecting incoming providers to operate at full capacity from the contract implementation date.

We find this particular problem worrying, as there are few situations where a rapid or disorganised hand-over could not have been avoided by more careful planning and discussion with incoming and out-going providers in advance.

Views from providers

> "We have lots of example of ridiculous lead-in times (3 weeks in a contract currently being tendered). There is little consideration of the impact of multiple (often dozens) of providers transferring to new providers, with complete geographical reorganisation - the chaos this causes is often not predicted, despite providers warning of the risks."
> *Owner, head office, 19 locations*

"I experienced this in 2015. The process was abysmal, not fully thought through. Clients were bullied into accepting the new providers and were not being given proper information about Direct Payments. An experience I will not subject my business to ever again." *Franchisee, South East of England*

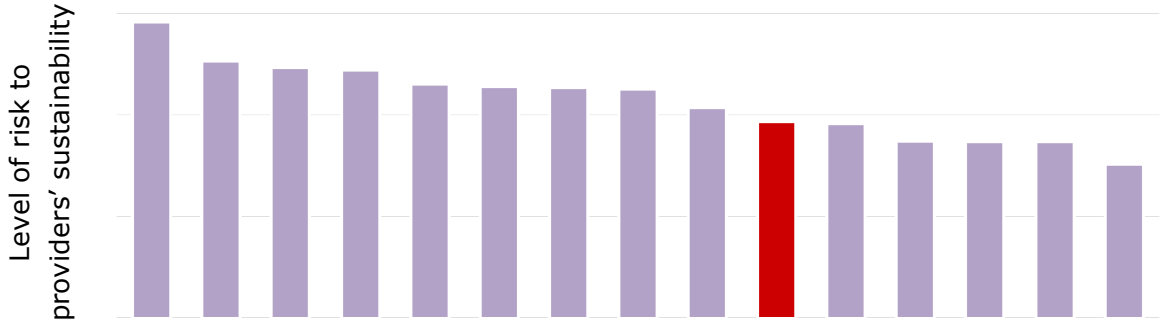
"We experienced this already with a council contract awarded 2017. The handover was appalling. Letters were sent to our service users advising them they would be transferring to a new provider on a certain date, which did not happen. It was left to providers to tell service users and their families about the council's mistake. This caused a great deal of unrest to our staff and service users, some of whom were terrified they would be left without care. As a result of the mess we lost over 300 hours of care when workers left our employment, and we had to hand back work as part of our emergency contingency planning. This has impacted on our costs and cash flow and has caused unnecessary stress and anxiety for service users. Out of the remaining service users left, none have actually transferred to the incoming providers." *Owner, single-site, West Midlands*

Recommendation 22. Timescales to mobilise new homecare contracts should be planned in proportion to: the impact of any changes that can reasonably be anticipated; an assessment of the ability of incoming providers to recruit new staff; and the time that affected employers need to manage the transfer of staff affected by TUPE regulations (see also Recommendation 28 and Recommendation 30).

Recommendation 23. When planning the award criteria for homecare contracts, consideration should be given to minimising disruption to the continuity of care and support for people who use services and members of the existing workforce.

Recommendation 24. Attempts to make the mobilisation of re-procured homecare contracts occur on a single day should be avoided, in order to minimise the extremely high levels of disruption.

10. Risk-averse or disproportionate contract specifications



Risk-averse or disproportionate contract specifications was ranked tenth in order of risk to the state-funded homecare market.

The risks to providers' sustainability

Contract specifications may add disproportionate costs for the provider without achieving significant benefit for people who use the service. Many contracts take a risk-avoidance approach without recognising the associated costs of the requirements they place on providers (eg. Guaranteed hours contracts).

Views from providers

The general frustration with what – in the providers' views - were disproportionate or unnecessary requirements in contracts were expressed in these comments:

> "There are a number of contracts that contain unrealistic specifications. The most onerous are typically unenforceable. However, there is often a disconnect between the terms of the contract and the maximum price the council has stated it will pay, especially around the requirements of Unison's Ethical Care Charter. Responding to an Invitation to Tender is fraught with difficulty, as one tends to bid knowing that the terms of the contract are unlikely to be achievable." *Head office manager, at a business with 14 locations*

> "Commissioners are consuming more and more care-manager time on simple administration and queries which are an exercise in paperwork. This reduces the time that they can spend on organising efficient and quality care." *Owner, single-site, Greater London*

> "Local Authorities are increasing this type of requirement. It is a very one-sided approach to commissioning. Whilst they talk about partnership working and helping providers grow, the reality is that it only happens where there is a clear benefit to the local authority." *Owner, single-site, West Midlands*

Duplication of effort expressed by a provider in Wales:

> "Councils are seeking to cover themselves by imposing all kinds of unnecessary requirements. One particular problem is councils carrying out their own inspections and gold-plating what's in the Regulations. Also extra training requirements being imposed which are unnecessary and sometimes even counterproductive." *Owner, single-site, Wales*

In relation to the use of guaranteed hours' contracts, providers' comments included:

> "We as a business have moved to offer various types of contracts to all workers. We have found those on zero hours did not want to move to contracted work contracts when offered. Some did but most did not." *Owner, single-site, South West of England*

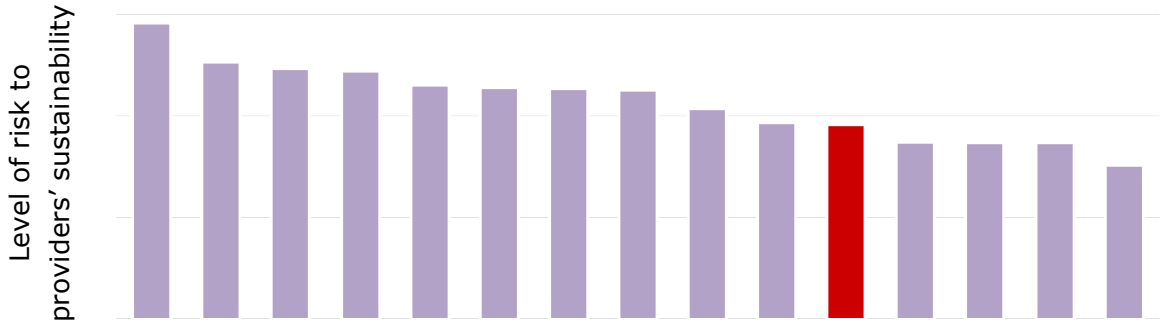
> "Since local authorities do not guarantee hours to providers it is not reasonable to expect providers to guarantee hours to care workers." *Owner, head office, 3 locations*

Recommendation 25. Contract terms should be equitable and share risk appropriately between providers and the contracting authority.

Recommendation 26. Authorities should take reasonable steps to design contracts and specifications collaboratively with providers in advance of the procurement process, in order to identify and address disproportionate requirements and unintended consequences.

Recommendation 27. Authorities considering introducing a contractual requirement that careworkers receive guaranteed hours contracts should reassure themselves that the prices the authority will pay cover providers' legitimate costs, including the employers' obligation to meet the wages and associated on-costs of the workers who will be paid whether they are providing care services or not (ie. the costs of careworkers' 'down-time' is funded).

11. Unrealistic expectations of TUPE transfers



Unrealistic expectations of TUPE Transfers was the eleventh-highest risk identified in the survey. As with poor handover arrangements (section 9) this risk is likely to be experienced at the end of one contract and the beginning of its successor.

The risks to providers' sustainability

Councils may adopt unrealistic expectations as to the operation of TUPE transfers[4] at the end of a contract life. Particular areas of difficulty can relate (but are not limited) to:

a. Not providing anonymised employee liability data with the invitation to tender, so that prospective tenderers are unable to establish the potential liabilities to which they might be exposed;

b. Councils underestimating the complexity of establishing which workers have a right to transfer under TUPE;

c. Councils failing to recognise the likely level of attrition from the existing workforce at the point of a TUPE Transfer.

[4] TUPE stands for the "Transfer of Undertaking (Protection of Employment) Regulations. When TUPE applies the employees' jobs usually transfer over to the new company; their employment terms and conditions transfer and their continuity of employment is maintained. In practice TUPE transfers can be complex to implement, and because the Regulations create a *right* for employees to transfer to the new company, but not an *obligation* to transfer, it can be difficult to predict which employees will and won't transfer.

Views from providers

Providers' comment illustrate their experience of the issues highlighted above:

> "In our experience, councils have completely unrealistic expectations in relation to TUPE. It is often assumed that 80%-95% of staff will TUPE, therefore, contracts, and blocks are awarded on this basis, which causes numerous issues long term when this does not materialise. We were actually penalised on a recent tender because we planned for approximately 20% to 25% of staff to transfer, as we didn't want to base a mobilisation plan on unrealistic figures and we lost valuable points for that answer. Since the contract was awarded, the optimistic figures have not materialised, and some of the block providers are at crisis point." *Owner, single-site, West Midlands*

> "Our council thought that when commissioning with a few big providers, the staff from smaller providers would freely TUPE over. This did not happen, as staff were more than happy with their current employer. All it did was put extra pressure on the smaller providers financially who lost packages of care to larger providers. I have known companies go bust because of this." *Registered Manager, single-site, South West of England*

> "We have numerous examples of councils which fail to coordinate provision of TUPE information (citing that it is not for them to get involved), then wondering why the transfer of staff didn't happen. A recent example led to transfer of just 2% of the required workforce across a whole county, and widespread disruption of services that were transferred." *Owner, head office, 19 locations*

> "We have had this situation. A large amount of management time was put into a TUPE transfer, but the actual numbers never materialised. Roughly 25% of the staff expected to transfer actually did so." *Owner, single-site, Greater London*

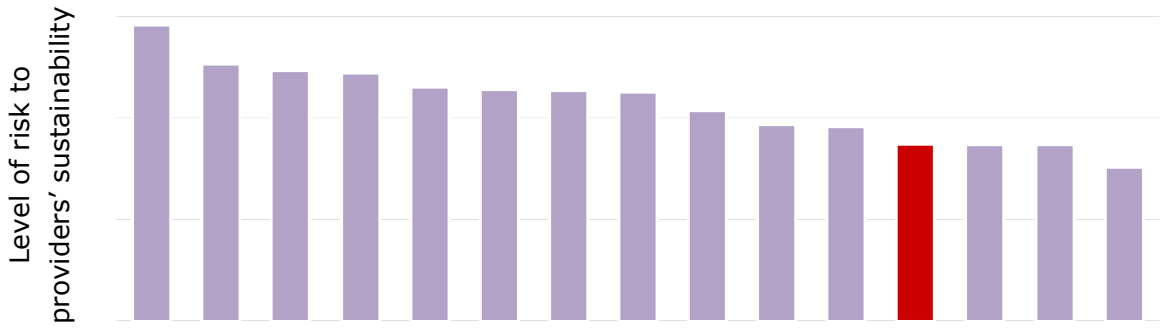
Recommendation 28. Authorities undertaking procurement exercises where the TUPE Regulations are likely to apply should form realistic expectations of the extent to which workers will (or will not) exercise their right to transfer under the Regulations. The likely attrition rate of workers from the sector should be included in such calculations.

Recommendation 29. Authorities should commit to being actively involved in assisting existing providers and prospective tenderers to obtain anonymised employee information to assist in the preparation of tenders.

Recommendation 30. Authorities should include a requirement in contracts that providers will (a) supply anonymised employee information at the reasonable request of the authority, and (b) will provide "transferees" with full "Employee Liability Information" in compliance with the Transfer of Undertaking (Protection of Employment) Regulations 2006, as amended.

Recommendation 31. Homecare providers, even where not required to do so under the terms of their contract, should cooperate with the reasonable requests of authorities over the supply of anonymised employee information as part of procurement exercises.

12. High use of short homecare visits



The high use of short homecare visits was cited as the twelfth-highest risk to state-funded homecare. Data obtained by UKHCA suggests that the extent of this risk varies by authority, with many councils and CCGs adopting a deliberate policy of commissioning homecare visits in accordance with published guidance. However, the data also suggests that a number of authorities have commissioning patterns which are inconsistent with acknowledged best practice.

The risks to providers' sustainability

Commissioning a high proportion of short homecare visits has the potential to create rushed and undignified care. They also increase careworkers' travel costs disproportionately to the 'contact time' (which is generally used by councils to calculate the fee paid to the provider).

NICE Guideline 21 makes recommendations about restricting the use of visits of 30 minutes or shorter to specific circumstances.[5]

[5] See: https://www.nice.org.uk/guidance/ng21/chapter/Recommendations#delivering-home-care. NICE guidance applies to England, and while it is not statutory guidance, is widely acknowledged to represent evidence-based best practice.

Views from providers

In their free-text comments to the survey, a significant number of providers said that they already refused to take on services of less than 30 minutes or one hour, or only did so in exceptional circumstances. This was particularly (but not exclusively) the case with providers specialising in services to people who fund their own care:

> "We will not take on calls of less than 1 hour, so councils will not agree to use our services. On several occasions we have lost clients because council have preferred a lower cost provider more than continuity of care. It was very upsetting for the clients, who had established relationships and trust with our care team." *Franchisee, West Midlands*

> "Short duration calls are very risky for our clients, most of whom have complicated medication needs. Some clients have up to 10 tablets to take at a single visit and obviously if they have to be given from individually packed boxes then this takes more time. This is something that is often not considered when commissioners consider how much time is available for a visit." *Owner, single-site, South West of England*

A number also commented on careworkers' reactions to the presence of short visits on their experience of work.

> "Care staff are already refusing these visits on their rota. They in fact use this not to turn up for work or to cancel their duties." *Owner, East of England*

Recommendation 32. Where homecare visits are commissioned by reference to tasks undertaken in a specified amount of time, the length of the visit should be in proportion to the likely time needed to provide effective, safe and dignified care and support.

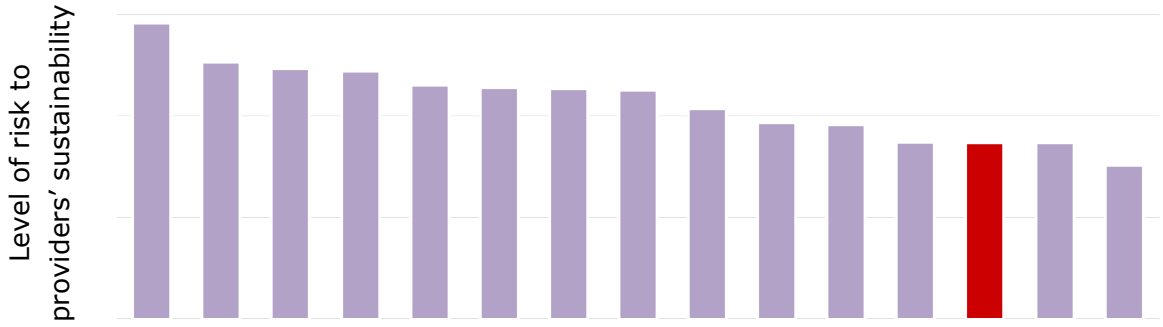
Recommendation 33. Authorities should be responsive to requests to review the length of time allotted to provide homecare to an individual. Reasonable requests to increase the time allocated, should be resolved in a timely manner and increases in time allocated should not unreasonably withheld.

Recommendation 34. Authorities which have not already done so should make a commitment to commission the duration of homecare visits in a way which is consistent with NICE Guideline 21.

Recommendation 35. Authorities using a high proportion of short homecare visits should recognise the increased proportion of travel time (and costs) in relation to the length of the visit.

Recommendation 36. Homecare providers should be willing to challenge - and where appropriate refuse to accept – requests to provide care and support which cannot be realistically delivered within the planned time.

13. Short contract lengths



The length of contracts for homecare services were the thirteenth highest risk to market stability. Providers responding to the survey expressed a variety of views about the desirable length of a contract to provide state-funded care.

The risks to providers' sustainability

Councils generally let contracts for a period of three years, with the possibility of a maximum extension of two one-year terms. This relatively short-term contract may not provide sufficient incentives for providers to innovate and/or invest in the long-term future of the service.

Conversely, the risks to providers from a contract where the terms and conditions are commercially unattractive are somewhat mitigated by a short contract length, particularly if the contract does not give the provider the ability to terminate the contractual agreement during the life of the contract.

UKHCA's view is that contracts should be commercially viable and offered for a sufficient duration to provide a stable local state-funded care market and to encourage investment and development in services.

Views from providers

Comments from providers illustrated the tensions between contract length and the viability of the terms offered:

> "We feel that three to five years is more than adequate for a contract. It enables councils to remove providers at the end of a term who are not suitable. Also, if the current contract is not working, they are able to invite new tenders before it comes to a close. Longer contracts may put off potential bidders, as they would be locked in to potentially obsolete and low rates nearer the end of a very long contract. It also shuts the market out to new companies, or those looking to grow and develop their business for sustainability into new areas." *Owner, single-site, West Midlands*

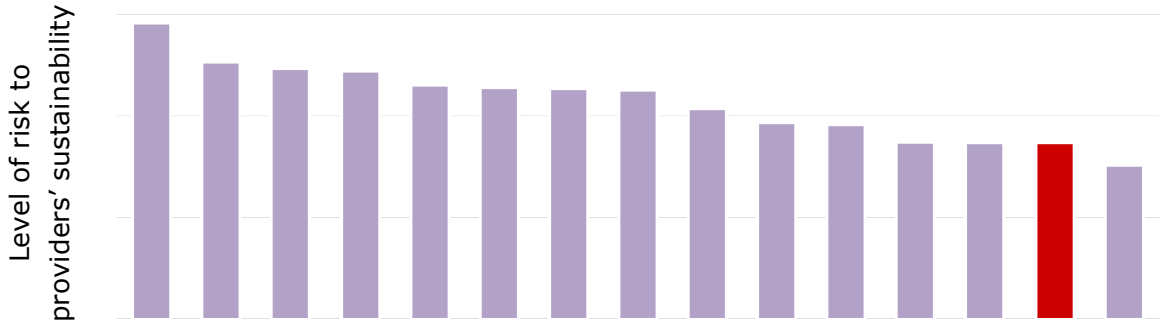
> "We already do not rely on contract length as any guide. Even longer term contracts are so poorly funded that investment is impossible, and failure of the contract often leads to early re-procurement. Conversely, other councils are frequently extending contracts well beyond their allowable term (even past extensions) due to their inability to plan a re-procurement, or because they are restructuring their teams, or because they know they can keep providers locked into low rates. Many know that going back out to market will lead to a price increase." *Owner, head office, 19 locations*

This provider's comment illustrates that contract terms need to be reliable and mutually agreeable for them to be beneficial to the sector as a whole:

> "Even within a five year framework local authorities often have clauses that state words to the effect that 'notwithstanding anything in the contract we can do as we like'. This undermines confidence in the actual security of the contract." *Owner, head office, 3 locations*

Recommendation 37. The duration of contracts for homecare services should be determined by reference to the relevant factors, including (but not limited to): the ability to attract a sufficient number of providers able to deliver care at the desired standard; the changing needs and expectations of the local population; the ability to manage any anticipated risks associated with the quality and stability of the local homecare market; and the investment associated with initial contract mobilisation.

14. Restricted 'approved provider' lists



Restricted approved provider lists was the fourteenth of the fifteen risks identified in our survey of providers to the state-funded market. Views on this issue were also sought from providers who mainly or exclusively deliver to people who fund their own care and support.

The risks to providers' sustainability

Councils may provide members of the public with a selective list of providers in their local area. There may be specific criteria which prevent regulated care services from joining the list, or the list may be described as closed to new applications.

Such lists may inadvertently (or deliberately) constrain people's choice of provider, because the list does not reflect the totality of the market. This is a particular issue for people in receipt of a direct payment or people who will purchase their care privately because their assets are above financial eligibility criteria.

Views from providers

There was considerable mistrust of the motivations behind 'approved provider lists' from some providers responding:

> "Social workers in our council intimidate and manipulate people looking for care into choosing companies with the lowest fees, often poor quality services." *Franchisee, covering 2 government regions*

Providers who were not able to join an approved list generally believed that it had an impact on their businesses:

"Prospective clients are expressly informed by some case managers not to use us because we are too expensive. Most of the time service users are not informed about our service, despite the fact we are the only provider rated as 'Outstanding' in our county." *Franchisee, South East of England*

"We have had difficulty forming relationships with our local authority, which has advised they are not taking on new providers. This closes down many avenues for us meaning we are provider with capacity that is not being utilised to meet need." *Registered Manager, franchisee, Wales*

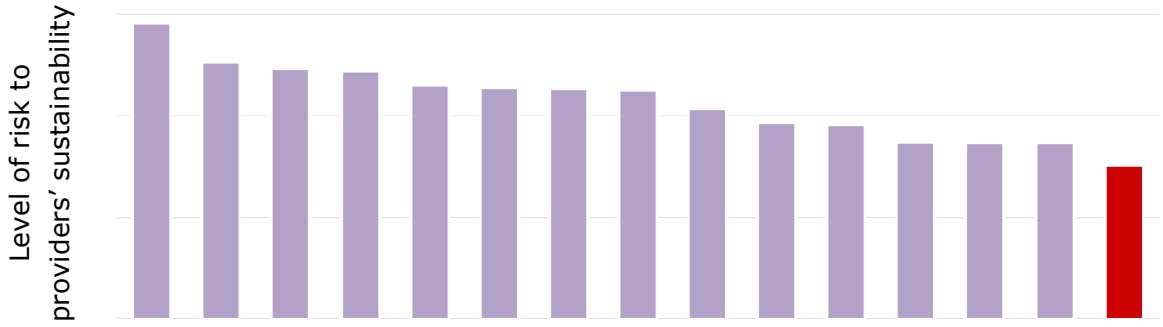
"We have been a preferred provider of the local council since the list began in 2000. Because we have not been accepted onto the new framework, our details will not be supplied to anyone enquiring about care in our area." *Registered Manager, single-site, North West of England*

Recommendation 38. Authorities should review their use of 'approved provider lists' to ensure that people using homecare, including those funding their own care have a genuine choose a provider. Such reviews should be conducting in conjunction with local citizens and providers operating in the local market.

Recommendation 39. Authorities should consider whether non-selective listings of providers, such as those made available on-line by statutory regulators, are a suitable alternative to more restrictive 'approved provider lists'.

Recommendation 40. Where they are used, 'approved provider lists' should remain open (either continuously, or on a regular basis) to enable providers in the local area which meet the necessary criteria to join, should they wish to.

15. Use of un-regulated care services



Although our survey of providers suggested that the use of un-regulated care services was ranked fifteenth in order of priority, the views of providers operating in areas where this was happening extensively were noticeable.

The risks to providers' sustainability

A number of authorities are considering new models of care which appear to offer cost savings. UKHCA believes that a number of these services appear to be less costly because the business model attempts to exploit gaps in care service regulation or employment law.

The use of unregulated models of care may result in vulnerability for the person with care and support needs and / or the worker supporting them. Because of this there may be additional risks for authorities.

Views from providers

Comments from providers were particularly vocal over councils' attempts to substitute regulated care with un-regulated personal assistants. While there is definitely a place for personal assistants within the range of care and support options available to people, there is a strong sense that regulated care providers were picking-up the costs of workforce training to develop a local market of 'micro-providers' for the local area.

> "The Local Authority is actively encouraging service users to use micro-providers and regulated providers are losing staff who are becoming micro-providers and who are poaching clients. This is currently a massive issue in our area." *Owner, single-site, South West of England*

"We have already been hit with staff leaving us to work as a micro provider for £12 hour with councils putting work out to them instead of us. Why should non framework providers be paid a higher rate – it's not a fair process, especially when we had put in all the excruciating work in completing the council's tender documents." *Head office manager, head office, 5 locations*

"Unregulated services are positively encouraged by our council, particularly un-regulated, self-employed carers. This makes a mockery of CQC registration and their remit. All care providers should be registered, regulated and have to abide by the same rules." *Franchisee, franchisee, 2 locations*

"My council is actively promoting micro-providers. Although I have not yet been adversely affected there are a number of providers that have lost staff and service users as people start to 'go out on their own'. I am seeing applications from personal assistants who want to work for me, but after further investigation they are only looking to start work to update their training before they leave to continue with their own business. I believe this is the single biggest threat to my business." *Owner, head office, 2 locations*

Recommendation 41. Authorities considering encouraging the development of un-regulated care services should form a balanced view of the associated risks and benefits for people with care and support needs, and the likely impact on the capacity of the local provider market and workforce.

Recommendation 42. Practices which could reasonably be seen as exploiting providers in the regulated care market as a source of free or low-cost training should be avoided.

Appendix 1. Methodology

Members of UKHCA's policy team devised a 'long list' of 28 commissioning and procurement practices which might adversely affect the commercial viability of homecare providers. This can be found in Appendix 2. .

To create an on-line survey which was not too onerous for homecare providers to complete, views from nine UKHCA member organisations were sought, to refine the 'long list' down to 15 issues included in the survey and to highlight any important issues which had been overlooked. This shortlisting meant that the survey covered those issues most likely to pose risks to providers' sustainability.

Invitations to complete the survey were sent to each of UKHCA's 2,200 member organisations and their responses were collected using SurveyMonkey™ over 19 days, between 18 April and 6 May 2018.

After data cleansing, 173 responses had been received from organisations currently trading either with councils or the NHS. Between them, these providers were operating 522 registered locations and these results form the basis of the Risk Register.

A further sample of 39 organisations which exclusively supply to the privately-purchased market was asked for views on the four commissioning practices of councils or the NHS which might also impact on their services. These responses represented a further 282 locations.

The survey asked providers to give numerical scores to the "likelihood" and "impact" of 15 different issues which might affect their business.

During the data analysis, each pair of numerical scores were multiplied together to produce the provider's individual risk scores for each of the 15 issues covered. These results for each issue were weighted by the number of locations that the provider operates and then combined to produce an overall picture of the relative risks for the sector.

These aggregated risk scores were ranked by descending level of the calculated risk for each of the 15 issues identified. Providers also had the opportunity to leave free-text comments for each pair of numerical scores. A selection of these comments is reproduced in this report.

Appendix 2. The 'long list' of issues

Members of UKHCA's policy team devised a 'long list' of 28 commissioning and procurement practices which might adversely affect homecare providers. Views were sought from representatives of nine UKHCA member organisations to refine this to a list of the 15 issues included in UKHCA's survey. The 'long list' contained the following items:

- Inadequate fee levels
- Inadequate contract price increases
- High use of short homecare visits
- Commissioning on a "Time and task" basis
- Low, or inadequate direct payments
- Late payment of invoices
- Invoicing based on electronic call monitoring data
- Rapid reductions in the number of contracted providers
- Low-volume purchase
- Restricted approved provider lists
- Inappropriate use of Electronic Procurement Systems
- Lack of engagement before invitations to tender are issued
- Burdensome tender processes
- Inequitable contract terms
- Risk-averse or disproportionate contract specifications
- Abandoned or postponed tender exercises
- Ceiling prices imposed in tender processes
- Spot purchase from non-framework providers
- Complex sub-contracting arrangements
- Short contract lengths
- Extension of a contract's life without price review
- Unrealistic expectations of TUPE transfers
- Poor contract handover arrangements
- Lack of meaningful engagement between an authority and its providers
- Duplication of regulatory inspection
- Councils bringing externalised services back in house
- Unfair competition from wholly council-owned subsidiaries
- Use of un-regulated care services