

# North Yorkshire Council

## Executive

4 February 2025

### Ethical Decision Making in Adult Social Care

#### Report of the Corporate Director Richard Webb

#### 1.0 PURPOSE OF REPORT

1.1 To review the current Ethical Decision-Making framework that is in place within Adult Social Care and consider the recommendations for its future use.

#### 2.0 BACKGROUND

2.1 At the outset of the pandemic, the Government introduced the Coronavirus Act 2020 which, in certain circumstances, allowed Councils to introduce Care Act Easements. NYCC (as it was at the time) Executive approved a local contingency scheme for Care Act Easements which was never required to be implemented. In Easter 2021, the Government retired the Easements. However, in response to pressures from Omicron infections, the impact on the Council's workforce and that of the wider care sector and the economy, an Ethical Decision-Making Framework was developed and agreed at Executive on January 11<sup>th</sup> 2022.

2.2 It is important to note that this Framework did not relieve the Council's duties under the Care Act 2014, however it did allow services to manage risk and prioritise more effectively where necessary and gave colleagues in Adult Social Care the opportunity to discuss and record decisions as part of a more formal framework. The Care Act Easements were retired by the Government in Easter 2021 and therefore the Council did not have that option and could only apply permissible flexibilities under the Act.

2.3 The current Adult Social Care Ethical Decision-Making Framework considers four levels of risk which were managed as part of already established governance processes as well as new more dynamic groups which were established to ensure timely decision-making:

1. **Operational** – individual person decisions.
2. **Tactical** – multiple people, multi-agency involvement.
3. **Strategic** – responding to market and service issues.
4. **System** - where decisions will have wider system implications or where system solutions might be required to make safe.

#### 3.0 CURRENT SITUATION

3.1 The Ethical Decision-Making Framework is now due for review as its purpose for supporting challenges arising from the Covid pandemic as now passed.

Across the last year, the Ethical Decision Making Framework has been used for the purpose of decision making on 12 occasions, 7 of which were in NYC's in-house provider services relating to situations where respite provision has been used for people in need of a longer term placement, 3 for Quality and Service Continuity in relation to the revocation of sponsorship

licences for care providers and 2 for decisions directly relating to individuals' care and support needs.

The focus of the decision-making has fundamental links to the tactical level within the governance structure and the decision making has been made (and noted) within the regular Health and Adult Service Huddle (which takes place every other weekday) with the key decision makers being members of Health and Adult Services Leadership Team. The 2 decisions relating to a people's care and support were operational decisions but were shared at Health and Adult Services Huddle with advice given around the use of adult social care legislation, predominantly the Care Act and Mental Capacity Act, to support decision making in these cases.

3.2 It is now necessary to make a decision around the ongoing use of the Ethical Decision-Making Framework.

Following the review of the use of the Ethical Decision-Making Framework across the last year, the proposal is that the Ethical Decision Making Framework is stepped down as a framework for decision-making for an individual at an operational level. Operational decision making is supported by current legislation in terms of the use of the Care Act, Mental Capacity Act and the Human Rights Act.

In terms of the use of the Ethical Decision-Making Framework for tactical, strategic and system decisions, the Framework still serves a purpose to enable transparent and robust decision making where they may be wider risk for people and/or the organisation. The use of the framework will primarily focus on Care Provider Services and the Quality and Service Continuity team.

#### **4.0 CONSULTATION UNDERTAKEN AND RESPONSES**

4.1 A consultation was completed using a number of staff focus groups in 2023/24 and involved colleagues from across Adult Social Care as well as corporate colleagues including Legal and Insurance Services. There has been further discussion with key colleagues within Health and Adult Services subsequently around the use of the Ethical Decision-Making Framework and these processes have reinforced the proposals set out in this report..

4.2 Adult Social Care colleagues who have used the Framework, have found it incredibly valuable for a number of reasons including:

- Improved record keeping particularly for Strategic & Tactical level decisions.
- Prompting a much wider debate and discussion in terms of managing any risks associated with difficult decisions without causing any unnecessary delays.
- Providing a framework for a much more detailed analysis of the potential risks associated with the different options considered.
- Providing a robust governance and review process regarding difficult decisions.

4.3 In terms of benefits for people who use services, the Framework has prompted improved communications with people during difficult times in services e.g. temporary reduction in service offers ie respite provision and care provider failure. It also ensures that decisions are robustly reviewed within agreed timescales.

4.4 There is general agreement that for both strategic and tactical level decisions there was far more added value in terms of improved record keeping, greater opportunity for debate, greater ability to escalate and to ultimately share and reduce the risks associated with such difficult decisions.

## **5.0 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 The alternative option considered was to remove the use of the Ethical Decision-Making Framework entirely and revert back to decision making processes in place before the Covid pandemic.

This is appropriate for decisions being made about an individual at an operational level due to the legislative framework, case recording mechanisms and escalation routes already in place for these.

In terms of the tactical, strategic and system decision making, it is agreed that the structure of the Ethical Decision-Making Framework provides robustness and transparency that is required based on the challenges now being faced within adult social care.

## **6.0 FINANCIAL IMPLICATIONS**

- 6.1 There are no financial implications for the direct use of the Ethical Decision-Making Framework. However, it does support decisions where there may be a financial impact for the Council such as closures of care settings. The framework enables a robust and transparent evidence base for cost implications linked to decision making.

## **7.0 LEGAL IMPLICATIONS**

- 7.1 In accordance with public law principles, public bodies must act lawfully, rationally, fairly and compatibly with a person's human rights. If a public body fails to act in a lawful, reasonable or rational way, decisions it makes or actions it takes can be challenged by way of an application for judicial review.

The use of the Ethical Decision-Making framework is therefore a mechanism whereby the Council can seek to ensure that the process for making decisions and subsequent action taken is as robust and transparent as possible therefore reducing the risk of successful challenge against the Council. The Council will be in a better position to defend a challenge if it can evidence that its decision-making process is thorough and fair.

## **8.0 EQUALITIES IMPLICATIONS**

- 8.1 The use of the Ethical Decision-Making framework for tactical, strategic and system level enables transparent and robust decision making and ensures that any equality issues are considered as part of this. The use of the framework drives a consistent approach to decision making which reduces the risk of inequalities across services and differing approaches to resolving challenges.

## **9.0 CLIMATE CHANGE IMPLICATIONS**

- 9.1 There are no climate change implications.

## **10.0 RISK MANAGEMENT IMPLICATIONS**

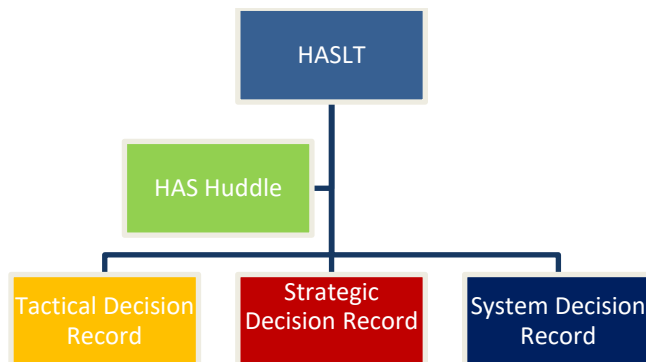
- 10.1 As discussed above, the Ethical Decision-Making Framework supports risk management in a transparent and robust way, providing an evidence base for decision making.

## **11.0 REASONS FOR RECOMMENDATIONS**

- 11.1 Having reviewed the use of the Ethical Decision-Making Framework across the last 12 months, it is evidenced that its use is primarily for Care Provider Services and Quality and

Service Continuity purposes, therefore there is benefit in the framework remaining in use at tactical, strategy and system level. Where the requests were made for decisions about individuals, the advice/recommendations were to use the current adult social care legal frameworks to support decision making. Therefore, this rationale supports the recommendations below.

11.2 The governance to support would be as follows:-



## 12.0 RECOMMENDATION(S)

- i) Remove decision making for individuals from the Ethical Decision-Making Framework
- ii) Retain the Ethical Decision-Making Framework for decision making at a tactical, strategic and system level to primarily support Care Provider Services and Quality and Service Continuity decision making

Richard Webb  
Corporate Director – Health and Adult Services  
County Hall  
Northallerton  
January 2025

Report Author – Karen Gullon Assistant Director Adult Social Care