

# BRIDGEND COUNTY BOROUGH COUNCIL

## REPORT TO CABINET

9 MARCH 2021

### REPORT OF THE CORPORATE DIRECTOR – SOCIAL SERVICES AND WELLBEING

#### CARE HOME SERVICES – FUNDING AND CONTRACTUAL ARRANGEMENTS

#### 1. Purpose of report

1.1 The purpose of this report is:

1.1.1 to provide Cabinet with the feedback received from care home providers in respect of the viability of establishing an openly procured flexible framework of care home providers, as approved by Cabinet in March 2020.

1.1.2 to seek approval to continue the waiver under Contract Procedure Rule 3.2.3, from the requirement to competitively tender the provision of residential and nursing care home services, based on this feedback received and the risks set out in the report.

1.1.3 to seek approval to enter into new contracts with existing residential and nursing care providers, and enter into contracts with any new providers identified by the Local Authority, for a contract period of up to six years.

1.1.4 to set out the fee-setting approach undertaken for the care home sector in 2021/22.

#### 2. Connection to corporate well-being objectives / other corporate priorities

2.1 This report assists in the achievement of the following corporate well-being objective/objectives under the **Well-being of Future Generations (Wales) Act 2015**:-

1. **Helping people and communities to be more healthy and resilient** - taking steps to reduce or prevent people from becoming vulnerable or dependent on the Council and its services. Supporting individuals and communities to build resilience, and enable them to develop solutions to have active, healthy and independent lives.

2. **Smarter use of resources** – ensure that all resources (financial, physical, ecological, human and technological) are used as effectively and efficiently as possible and support the creation of resources throughout the community that can help to deliver the Council's well-being objectives.

#### 3. Background

3.1 Part 9 of the Social Services and Well-being (Wales) Act 2014 (“the Act”) requires local authorities to make arrangements to promote co-operation with their relevant

partners and others, in relation to adults with needs for care and support, carers and children.

- 3.2 Section 144B of the Act requires local authorities to prepare and publish market stability reports, including an assessment of the sufficiency of care and support and of the stability of the market for regulated services within the local authority area.
- 3.3 Previously in February 2014, and subsequently in September 2016, Cabinet have approved waivers under Contract Procedure Rule (CPR) 3.2.3, from the requirement to competitively tender the provision of residential and nursing care home services.
- 3.4 The waivers were approved on the basis that the existing providers were the only tenderers who could technically provide such a service, due to statutory restrictions in respect of the Council's obligation to set appropriate fees, which means that there is no competitive market place available for these services. It remains to be the case that the Council sets fee levels and as a result there is no competitive market place available for these services.
- 3.5 The decisions made above were in keeping with the Care and Support (Choice of Accommodation) (Wales) Regulations 2015, which state that: Where -
  - (a) a local authority is going to meet needs under sections 35 to 38 of the Act by providing or arranging for the provision of care home accommodation in the United Kingdom;
  - (b) the person for whom the accommodation is to be provided expresses a preference for a particular care home; and
  - (c) the conditions in regulation 3 are met

The local authority must provide or arrange for the provision of the preferred accommodation in accordance with these Regulations. In essence, this means it is an individual's choice in respect of their where to live, and this is not (and cannot) be determined by the local authority so long as the conditions set out in regulation 3 are met. Regulation 3 provides that the preferred accommodation must meet the individuals assessed care and support needs, a place in the accommodation must be available and the provider of the accommodation must agree to provide the accommodation to the person on the local authority's terms.

- 3.6 In March 2020, a report was presented to Cabinet, where it was approved to:
  - Give approval to continue the waiver under Contract Procedure Rule 3.2.3, from the requirement to competitively tender the provision of residential and nursing care home services for a further one year period.
  - Note that, during that one year period, officers will monitor the effectiveness of the new regional contractual terms and conditions, and liaise with our existing accredited service providers and consider the viability of establishing an openly procured flexible framework of care home providers based on the terms and conditions of the regional contract and specification for a longer term duration.

#### **4. Current situation/proposal**

Care home contracts

- 4.1 BCBC currently has contracting arrangements with 19 older persons' residential and nursing care providers in the borough – with capacity in the region of 780 beds – and BCBC commissioning just under 50% of placements made within homes.
- 4.2 Contracting arrangements in place with residential and nursing care home providers are in the form of:
- Pre-placement Agreements – which is the overarching contract in place with the care home provider setting out contractual and service requirements and expectations
  - Individual Care Contracts (ICC's) – which are the individual spot-purchasing contracts when specific placements are made at a care home
- 4.3 Spot-purchasing is a process which allows the Local Authority to place an individual based on their level of need as and when they are required, rather than committing to block purchasing arrangements, which can tie the Local Authority to a certain number of placements at a fixed cost.
- 4.4 This practice is in keeping with all other Local Authority's social care arrangements for care homes across Wales, and has enabled the directorate to provide timely and flexible responses to a range of needs, as and when they are required.
- 4.5 There are also mechanisms in place to ensure the services that are commissioned meet the Local Authority's quality requirements (in the form of a well-established quality framework), and there are also strong contracting, monitoring and safeguarding procedures in place, in order to ensure that good quality care is provided and people are safeguarded.
- 4.6 The Welsh Government (WG) has recently published a White Paper consultation, entitled 'Rebalancing care and support; a consultation on improving social care arrangements and strengthening partnership working to better support people's well-being'. The consultation runs until April 2021, and it seeks views on proposals to introduce new legislation to improve arrangements for care and support and strengthen partnership working to achieve the vision set out in the Social Services and Well-being (Wales) Act 2014. Proposals include setting out a clear national framework to support services to be planned regionally and delivered locally, and for the strengthening of partnership arrangements. As such, there are still a range of unknowns about how we are to work with and commission the care home sector.
- 4.7 As approved by Cabinet in March 2020, officers have made contact with the 19 care home providers operating across BCBC in order to "consider the viability of establishing an openly procured flexible framework of care home providers" from a provider perspective.
- 4.8 A summary of the findings and feedback is shown below:
- 13 of the 19 care home providers responded to the request
  - 5 care home providers advised they might consider it – depending on how it worked
  - 2 care home providers advised they would go with the majority of opinion
  - 6 care home providers (amounting to 203 beds which is over 25% of total capacity) raised significant concerns at the suggestion of this approach

4.9 Feedback received from care home providers stated that they were extremely concerned at the timing and subject of the request, and significant concerns were also raised about following such a process.

4.10 There are a number of risks/issues associated with attempting to establish an openly procured flexible framework, which need to be considered against the risks of not carrying out a procurement exercise, which can be viewed in the risk assessment below:

Risk	Risk scores		Risk score comment
	Likelihood	Impact	
A risk of home and bed capacity being lost from the care home sector, that had less than 5% voids pre Covid, if do not tender	Likelihood	5	Feedback suggests at least 6 homes (accounting for over 25% of the market) may not tender, which would have a catastrophic and destabilizing impact on an already stretched and pressured sector – and would be a failure in our duty of maintaining a stable market
	Impact	4	
	<b>TOTAL</b>	<b>20</b>	
Safeguarding risks for individuals/ residents if a home was not to tender/get on the framework	Likelihood	5	Where residents have had to move to other care homes, this has resulted in a negative impact on an individual's physical and emotional wellbeing and in severe cases, can result in a death occurring earlier than would be expected
	Impact	4/	
	<b>TOTAL</b>	<b>20</b>	
Reputational risks associated with not listening to feedback from our care home providers, if BCBC do go to tender	Likelihood	4	Feedback from providers has been clear, and there are further risks as this is a process which goes against contracting practices across the whole of Wales, at a time when there is a commitment to work more effectively in partnership with our care sector providers
	Impact	3	
	<b>TOTAL</b>	<b>12</b>	
Risk of challenge from other care home providers who are not on the framework, if not tendered	Likelihood	1	The likelihood of challenge is minimal as no provider is excluded from entering the care home market, as long as the relevant accreditation checks are passed and quality criteria met. i.e. there is an open market where new capacity is encouraged/welcomed
	Impact	3	
	<b>TOTAL</b>	<b>3</b>	
Risk of compliance issues from regulators and/or audit agencies, if not tendered	Likelihood	1	The practice of not procuring care home services is common across all 22 Welsh LAs. There is also robust regulation of care homes and audits of care home services, none of which have identified any issues or concerns with contracting arrangements
	Impact	3	
	<b>TOTAL</b>	<b>3</b>	

**Note: Likelihood Score maximum 6, Impact Score maximum 4, Total Score maximum 24**

4.11 As mentioned in paragraph 4.6, WG has recently published a White Paper consultation which could have a significant bearing on how we work with our providers and commission services. The proposal is in keeping with the vision of the National Commissioning Board, which is to have a far greater focus on partnership working and quality, as per the extract below from the consultation document:

*We intend to develop a national framework for commissioning social care that will rebalance care and support. It will reduce complexity and ensure that quality is the key determinant of success in the social care market.*

- 4.12 Pending any new framework established following the White Paper consultation, the commissioning guidance currently in place continues to be WG's Guidance and Good Practice Commissioning Framework "Fulfilled Lives, Supportive Communities". The extract below is taken from Standard 7 of this WG Commissioning Framework:

*Social care commissioners will need to make judgements, based on their analysis of the existing market, about the most appropriate approaches to market development and procurement in their local area, including different contract forms, grants or in-house provision. Local authorities will need to ensure that council-wide financial regulations do not unnecessarily limit the capacity of social care commissioners to effect change in the local market due to overly bureaucratic or burdensome tendering processes.*

- 4.13 The care home sector is a heavily regulated area, where there have been significant pre-qualifying and quality requirements undertaken in order to register services with Care Inspectorate Wales under the Regulation and Inspection of Social Care (Wales) Act 2016. This is further demonstrated by annual inspections and of services and audits, which sit alongside BCBC's own quality framework monitoring arrangements.
- 4.14 Due to the balance of risks identified above which has the potential to have a major impact on market stability, we are seeking approval to waive the requirement to tender for these services on the same basis as the previously approved waivers and to enter into new contracts with existing care home providers for a period of 3 years (with the option to extend by a further 3 years).
- 4.15 Whilst the feedback above indicates the market should not be openly procured, there would be considerable risks to both the Council and the residents if the Council does not enter into new contracts with the current care home providers. Therefore, it is imperative that the Council has a contract in place with each provider, to enable the authority to continue to place residents in these homes, and ensure necessary quality and safeguarding requirements are met.
- 4.16 It is recognised that the needs of individuals are continually changing, and it is also recognised that the shape of the care home market can change at very short-notice. The service are working across the region on a Care Home action plan that will have a focus on developing the market to meet the needs of the population. Even though officers feel there is already a robust and responsive market in place across the county borough, officers would also wish to seek approval to enter into new contracts with any new residential and nursing care providers that may be required during this (up to) 6 year period, to be able to continue to have a robust market that meets need and demand.

#### Care Home Price Schedule – 2021/22

- 4.17 Alongside the review of the contract and specification undertaken in readiness for 2020/21, BCBC officers took the opportunity to review the care home price schedule – which details the rates paid to care homes for BCBC commissioned placements.

4.18 The review was timely as BCBC had seen an increase in the amount of Third Party Top-Up (additional costs) charges being levied by care homes, and there were also specific pressures and challenges in the nursing care home market, in particular for nursing EMI placements.

4.19 There is a considerable interest in respect of the cost of care and rates paid to care home providers, which has been reported in a document published by Care Forum Wales during 2020/21, entitled the “cheapskate awards story”. The document included a ‘league of shame’ table, as below, with BCBC’s rates highlighted in yellow showing how we compare to national averages and rates paid across Wales:

Region	LA	Res	Res EMI	Nursing	Nursing EMI	LA avg
C&V	Cardiff	737.89	793.48	730.08	786.99	<b>762.11</b>
Gwent	Torfaen	659.94	724.58	690.75	723.31	<b>699.65</b>
W Wales	Pembrokeshire	652.00	709.00	665.00	721.00	<b>686.75</b>
Gwent	Blaenau	612.00	702.00	674.00	716.00	<b>676.00</b>
Gwent	Monmouthshire	632.00	704.00	668.00	692.00	<b>674.00</b>
C&V	Vale of Glam	634.60	702.04	634.60	702.04	<b>668.32</b>
CTM	Rhondda CT	638.00	676.00	645.00	682.00	<b>660.25</b>
CTM	Merthyr	585.00	650.00	649.73	696.73	<b>645.37</b>
N Wales	Conwy	586.00	636.00	661.00	698.00	<b>645.25</b>
Gwent	Caerphilly	615.00	671.00	612.00	675.00	<b>643.25</b>
<b>CTM</b>	<b>Bridgend</b>	<b>612.00</b>	<b>653.00</b>	<b>632.00</b>	<b>673.00</b>	<b>642.50</b>
N Wales	Gwynedd	566.30	629.33	653.52	689.80	<b>634.74</b>
W Wales	Ceredigion	605.00	645.00	617.00	657.00	<b>631.00</b>
N Wales	Wrexham	585.72	609.91	634.10	670.38	<b>625.03</b>
N Wales	Anglesey	576.00	609.91	634.10	670.38	<b>622.60</b>
N Wales	Denbighshire	566.31	609.01	634.10	670.38	<b>619.95</b>
N Wales	Flintshire	583.44	607.53	624.37	660.53	<b>618.97</b>
W Wales	Carmarthenshire	594.39	626.52	575.56	663.40	<b>614.97</b>
Swansea Bay	Swansea	564.00	564.00	640.00	664.00	<b>608.00</b>
Swansea Bay	Neath PT	593.26	600.50	593.26	600.50	<b>596.88</b>
Powys	Powys	539.00	559.00	544.00	580.00	<b>555.50</b>
<b>Wales avg</b>		<b>606.56</b>	<b>651.51</b>	<b>638.67</b>	<b>680.59</b>	<b>644.34</b>

4.20 In keeping with the fee-setting methodology agreed with care home providers operating in BCBC, cost pressures analysis has been undertaken in January 2021 in order to determine an uplift amount that existing rates will be increased by, which considers financial pressures for care homes linked to legislative changes (such as National Living Wages (NLW) increases) and other inflationary factors. These calculations have determined a 1.62% increase linked to this cost pressures analysis.

4.21 In addition to the 1.62% increase identified above – which will be funded through agreed budget pressures and inflation provisions approved as part of the Medium Term Financial Strategy (MTFS) – the Social Services and Wellbeing directorate will also be using £250k of WG Workforce grant funding to supplement this increase during 2021/22, which will increase the uplift offer to 2.5% (rounded to 1d.p). It will be

made clear to providers that the extra £250k (equating to 0.86% of the uplift offer) is non-recurring, and must be used for staff/ workforce cost pressures.

4.22 This discretionary increase will enable care home providers to improve the terms and conditions of their frontline workforce. Further work will be undertaken in the next year to review the fee setting methodology for social care providers.

## **5. Effects on the policy framework and procedure rules**

5.1 Approval is being sought to waiver under the Council's Contract Procedure Rules, from the requirement to competitively tender for the provision of future residential care homes contracts under CPR 3.2.3.

## **6. Equalities Impact Assessment**

6.1 There are no equalities implications arising from this report, therefore an Equalities Impact Assessment is not required.

## **7. Well-being of Future Generations (Wales) Act 2015 implications**

7.1 Entering into contractual arrangements with care home providers for the duration of time requested (up to 6 years) supports the five ways of working under the Well-being of Future Generations (Wales) Act 2015, as follows:

- **Long Term** – entering into contractual arrangements with current (and potentially new) care home providers for a period of up to 6 years will provide assurances for care home providers, which in turn will have the benefit of a more stable and sustainable care home market
- **Prevention** – the vision within the directorate is to help and support people to continue to live as independently as possible within their environment, but care home services continue to be critical in order to meet the needs of citizens.
- **Integration** – service providers will continue to work with individuals and health colleagues (for nursing placements) to ensure quality of services provided, in accordance with the requirements of the residential quality framework.
- **Collaboration** – working collaboratively and in close partnership with key stakeholders is a key requirement of the care home contracts.
- **Involvement** – care home providers have been engaged with and their feedback has been used to help determine the proposal as set out in the recommendations.

## **8. Financial Implications**

8.1 In order to implement the new contract and the revised Price Schedule from 2021/22, there is a financial implication forecast to be in the region of £723k per annum.

8.2 The table below provides a breakdown of these additional costs, and also shows where it is intended for the additional cost to be met from.

<b>Cost implication</b>	<b>£ Amount</b>	<b>Met by</b>
Cost pressure linked to NLW increase	£429k	BCBC NLW budget pressure agreed in MTF5
Cost pressure linked to other inflationary costs	£44k	BCBC price inflation funding
One-off discretionary increase to move towards Real Living Wage	£250k	WG Social Care Workforce & Sustainability Pressures Grant 2021/22
<b>TOTAL</b>	<b>£723k</b>	

## **9. Recommendations**

### 9.1 Cabinet is asked to:

- note the feedback received from care home providers in respect of the viability of establishing an openly procured flexible framework of care home providers;
- give approval to continue the waiver under Contract Procedure Rule 3.2.3, from the requirement to competitively tender the provision of residential and nursing care home services;
- give approval to enter into new contracts with existing residential and nursing care providers, and enter into contracts with any new providers identified by the Local Authority, for a contract period of up to six years with an initial term of 3 years and option to extend for a further 3 years;
- note the fee-setting approach undertaken for the care home sector in 2021/22.

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**Background documents:** None