



CABINET – 28TH MARCH 2018

**SUBJECT: INTEGRATED COMMISSIONING AND SECTION 33 AGREEMENT
FOR CARE HOMES FOR OLDER PEOPLE IN GWENT REGION
(POOLED FUNDS)**

REPORT BY: DAVE STREET, CORPORATE DIRECTOR SOCIAL SERVICES

1. PURPOSE OF REPORT

- 1.1 To recommend the establishment of a regional pooled budget in relation to the exercise of care home accommodation functions (in this case care homes for older people) between Caerphilly County Council, and other Gwent Local Authorities (Blaenau Gwent County Borough Council, Monmouthshire County Borough Council, Newport City Council, Torfaen County Borough Council) and Aneurin Bevan University Health Board (ABUHB).
- 1.2 To advise Members on progress in developing other key elements required by Welsh Government guidance in support of the pooled budget arrangements, namely common contracts and developing an integrated approach to commissioning in the Gwent region.
- 1.3 To fulfil the statutory requirement on Local Authorities and Local Health Boards within the Social Services and Wellbeing (Wales) Act (2014) (SSWBA) which takes effect from April 2018

2. SUMMARY

- 2.1 Partnership and collaboration is a significant element within the SSWBA. Part 9 of the Act is where duties and expectations around partnership working are set out specifically.
- 2.2 Statutory guidance mandates the geographical footprint for regional partnership arrangements for social care and health. The Regional; Partnership Board (RPB), is established on a statutory basis and comprises ABUHB, 5 Local Authorities, 2 county voluntary service organisations and representatives of the regional citizen's panel and provider forum.

3. LINKS TO STRATEGY

3.1 Part 9 of the Social Services and Wellbeing (Wales) Act (2014)

3.2 Care Closer To Home Strategy

3.3 Well-being of Future Generations Act (Wales) 2015:

- *A Prosperous Wales*
- *A Resilient Wales*
- *A Healthier Wales*
- *A More Equal Wales*
- *A Wales of Cohesive Communities*
- *A Wales of Vibrant Culture and Thriving Welsh Language*
- *A Globally Responsible Wales*

3.4 More than just Words – Strategic Framework for Welsh Language Services in Health, Social Services and Social Care

4. THE REPORT

4.1 Development of arrangements to pool funds for care home arrangements between the 5 local authorities and ABUHB has been a major piece of work for the RPB since its inception. The legal requirement for these arrangements is set out in Section 62, Part 9 of the SSWBA. The establishment of a partnership agreement – known as a Section 33 Agreement - will enable integrated commissioning and pooled funds in relation to the exercise of care home accommodation functions. The aim is for this to be in place by April 2018, subject to approval by all partners to the agreement.

4.2 Supported by the National Commissioning Board (NCB) and Welsh Local Government Association (WLGA) the Gwent region has been the pilot area for Wales for developing a Model Partnership Agreement (MPA) for pooled budget arrangements for older people.

4.3 The scope of the agreement, and its design principles, were aligned to the draft priorities for older people contained in the Population Needs Assessment (PNA) and the draft Area Plan, both of which were recently approved by Caerphilly County Borough Council.

4.4 A national market analysis of the current size and scope of the care home sector in Wales was conducted in 2016 with a census undertaken at the same point in time across the country. This showed that in 2015/16 there were nearly 18,000 placements by local authorities and health boards, which included 4,877 placements of people funding their own care. There were 21,823 registered beds in care homes for older people on the census date and the combined local authority and health board spend was approximately £369 million. This *excludes* client contributions, third party payments and the fees paid by those individuals who fund their own care.

4.5 SSWBA Part 9 Statutory Guidance (Partnership Arrangements) that Regional Partnership Boards will be expected to develop written agreements concerning any formal partnership arrangements which involve a delegation of function

4.6 Regulations allow for the partners to enter arrangements for the establishment and

maintenance of a fund which is made up of contributions from the partners and out of which payments may be made towards expenditure incurred in the exercise of National Health Service functions or health-related (Local Authority) functions.

- 4.7 This is the 'pooled fund' and money from this fund may be used on purposes agreed between the partners (in this case to carry out the Care Home Accommodation Functions) in arranging care for Older People in Registered Homes. While the legislation suggests that the partnership agreement may cover all care home functions Welsh Government expect this to include care homes for older people (over 65) initially.
- 4.8 The Act envisages that this would be a single fund which removes the traditional health/social care division between partners, offering flexibility in the single fund's use according to locally agreed needs. However, in the Gwent region (and in other regions in Wales) the proposed approach adopted towards the 'mechanics' of the pooled fund arrangement is that at least in its initial stage, the fund **will not share financial risk nor introduce any potential cross-subsidy between the partners. Any changes to this approach will require further approval by all partners to the agreement.**

This approach has been deemed preferential after the completion of an options appraisal which is attached as Appendix 2.

- 4.9 Section 33 agreements require the establishment of a named 'pooled fund manager'. Consideration is currently being given to agreeing which of the six partners will assume this role. This will be the subject of a separate report once expressions of interest and recommendations from RPB are known.

Market Analysis of Care Homes for Older People in Gwent

- 4.10 The pooled fund represents one element of an integrated regional approach to the commissioning of care home provision. A market position statement and regional commissioning strategy is under development.
- 4.11 Initial market analysis, as at September 2017, shows there were a total of 95 care homes for older people in the Gwent region offering 3,363 beds. The total number of beds comprise 1,871 residential beds, including residential beds for people with dementia and 1,492 nursing beds, including nursing beds for people with dementia.
- 4.12 55 operators provide care homes in Gwent of which eight operate in more than one locality. 40 providers own and operate just one home. 52% of beds are provided by single home providers. 38 providers, operating 50 homes, are currently commissioned to provide Continuing Health Care Placements.
- 4.13 8 providers operate in more than one local authority area, three operating across Torfaen and Newport, two across Blaenau Gwent and Caerphilly, one across Newport and Blaenau Gwent, one across Torfaen and Caerphilly and one across Blaenau Gwent and Monmouthshire
- 4.14 In summary, there is a mixture of sole providers that own and operate one home, medium sized providers that own and operate more than one home and a number of national companies that operate care homes across the region.

- 4.15 Few homes are registered solely for residential, residential care for people with dementia, nursing or nursing care for people with dementia. Many homes offer a combination of beds, across all types of care e.g. dual registration for residential and nursing or dual residential and nursing care for people with dementia.

Current risks and challenges in the care home sector

- 4.17 One of the anticipated benefits to an integrated regional commissioning approach to care homes is a coherent, strategic approach which will support the sector in its medium and longer term business planning and mitigate the current risks the sector is experiencing.
- 4.18 The recruitment and retention of registered general nurses and registered mental health nurses is becoming particularly challenging as is the recruitment and retention of registered managers and care staff.
- 4.19 There is an increasing demand for care provision for older people with mental health conditions such as dementia, in both residential and nursing care homes, whilst there has been a decrease in demand for residential and nursing only provision.
- 4.20 Across the region, older people are being supported to remain as independent as possible in their own homes for as long as they are able to. As a consequence people entering a care home for older people, are now older and often require more complex care.
- 4.21 Bed vacancies do not necessarily align with need as vacancies are often not in the required category of care or in the locality of need. Despite efforts to realign the market to better reflect need, the market can be slow to respond. Providers are, of course, independent operators.
- 4.22 There is also evidence that the size, structure, age, layout and location of care homes across Gwent is having an impact on sustainability.
- 4.23 Rising cost pressures is another feature that threatens sustainability. It is anticipated that the incremental increases each year until 2020 in the National Living Wage, the growing costs of recruitment and retention, employee pension costs and other costs such as the purchase of equipment will continue to exert an upwards pressure on operating costs.
- 4.24 The Regulation & Inspection (Wales) Act 2016 becomes extant in April 2018. Care homes will be required to place a much greater emphasis upon the 'statement of purpose' as the driver for business focus and registration criteria. This is intended to bring a greater flexibility for operators as long as they can demonstrate the capacity and capability to deliver. Care home workers are also subject to registration from April 2018, although this will be phased in over several years. There is a need to plan for registration so it does not adversely impact on retention and recruitment.
- 4.25 As part of developing regional commissioning arrangements, work is being undertaken to ensure that common contractual terms and conditions and a shared approach to contract monitoring become operational alongside pooled budget arrangements.

Risks and Issues in Pooled Budget for Care Homes

- 4.26 There are risks and challenges that have been identified in relation to joint commissioning and pooled budgets for care home commissioning:
- effective management of a Section 33 Agreement so that there is timely and sufficient local management information.
 - ensuring partner budget management and reporting requirements are fully met. The size of the spend on this care provision means that this is vital.
 - engaging providers in revised commissioning arrangements in due time and without compromising current provision.
 - ensuring joint commissioning arrangements do not cut across individual commissioners care home fees setting arrangements (which are determined at organisational level and approved by each organisation)
- 4.27 In order to mitigate the risks, the development of a Section 33 Agreement for care home placements draws on the experience and learning from the regional pooled budget arrangements put in place for the Gwent Frailty Programme (refreshed in 2016) and the Gwent Wide Integrated Community Equipment Service (GWICES). It is also recognised that this Section 33 Agreement will be on a much larger scale than anything that has been undertaken previously. This is one of the key reasons that the pooled fund recommended does not include a financial risk sharing arrangement at this stage.

5. WELL-BEING OF FUTURE GENERATIONS

- 5.1 Residents of care homes for older people have high levels of care and support needs. Safeguarding is, therefore, fundamental to the commissioning of quality care provision with the right model of care and support to meet the needs of their residents. Sufficiency of the right type of care homes, delivered to sustainable business models, is critical in meeting the needs of our most vulnerable of our citizens.
- 5.2 Establishment of a pooled budget for care home placements for over 65's provides consistency of opportunity, access, contract arrangements and outcome monitoring assisting statutory bodies to meet those duties placed on them to promote wellbeing set out in both Wellbeing for Future Generations Act and the Social Services and Wellbeing Act. A Well-being of Future Generations Assessment is included as Appendix 1.
- 5.3 A single, combined regional approach to commissioning aims to ensure that there is equity of information provision, needs consideration and exercise of choice as to care home placement, with one common process.

6. EQUALITIES IMPLICATIONS

- 6.1 An EIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance. No potential for unlawful discrimination and/or low level or minor negative impact has been identified, therefore a full EIA has not been carried out.

- 6.2 A combined regional approach to commissioning proposed will have no impact on service provision and therefore no direct impact on any groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan.
- 6.3 The creation of an Integrated Commissioning and Section 33 Agreement for Care Homes for Older People in the Gwent Region will improve the service provision by ensuring the service delivery for all older people within the care homes system across Gwent is consistent.

7. FINANCIAL IMPLICATIONS

- 7.1 A resource mapping exercise has been undertaken to understand the value of the pooled fund. In summary, across the Gwent Partnership the spend forecasts indicate a potential pooled fund of £89 million – comprised of £20 million from service user contributions and 69 million from public funding (£32m ABUHB and £37m Local Authorities).
- 7.2 . Using Full Year Estimates this Funds in excess of 900,000 bed days:
- 109,000 long term bed days in LA owned Homes.
 - 11,000 short term and step up/step down bed days in LA owned Homes.
 - 600,000 Long term and short term Independent sector bed days (including FNC and step up/step down beds).
 - 200,000 Continuing Health Care bed days.
- 7.3 Specifically for Caerphilly CBC this means pooling our older persons care home budgets, including the six care homes owned and run by the local authority which, based on current figures for 2018/19, equates to a gross annual expenditure budget of £21,989,175 (excluding income from client contributions and partners). As already outlined earlier within the report, the proposed agreement is on a non risk sharing basis and as such Caerphilly will retain local decision making around our pooled budget contribution, including our own internal care homes.

8. PERSONNEL IMPLICATIONS

- 8.1 There are no direct Personnel implications.

9.0 CONSULTATIONS

- 9.1 As joint commissioning of care home placements and pooled budgets is a statutory requirement, consultation centres very much around 'how' work is done rather than 'why' it is done. Senior officers across local authorities and the Aneurin Bevan University Health Board (ABUHB) have been part of this process, and so has the regional provider forum (spanning a wide range of care providers) and the regional citizen panel.
- 9.2 In addition to the above, a focus group of care home providers that represent the care home sector has been established. This group has supported this process and has

co-produced the development of the regional contract. This is a significant development and sets the 'direction of travel' for joint working in the region, not only between commissioning partners, but also between commissioners and operators. It is envisaged that partners build on this to develop a market that is both flexible enough to meet fluctuating need and is sustainable for the longer term.

10. RECOMMENDATIONS

- 10.1 To approve the pooled budget arrangements for care home accommodation functions to be overseen by the Regional Partnership Board (RPB) and, in particular that the fund will not share financial risk nor introduce any potential cross-subsidy between the partners.
- 10.2 To agree that any changes to this approach will require further approval by all partners and further agreement by Cabinet.
- 10.3 To approve delegated powers to the Cabinet Member for Social Services & Wellbeing, as Caerphilly County Council member of the RPB, in the exercise of those functions, and consideration of any specific arrangements that need to be put in place to meet statutory duties at local and regional level.
- 10.4 To confirm the required key elements for these arrangements through development of a formal Partnership Agreement i.e a Section 33 agreement
- 10.5 To confirm resource implications for the local authority in relation to the pooled budget arrangements and oversight of the pooled budget agreements by the RPB.
- 10.6 To seek authority from Council for the Principal Solicitor to amend the Councils constitution to give effect to the delegation in 10.3.

11. REASONS FOR THE RECOMMENDATIONS

- 11.1 To ensure compliance with the requirements of Part 9 of the Social Services & Wellbeing Act

12. STATUTORY POWER

- 12.1 Part 9 of the Social Services and Wellbeing (Wales) Act (2014)

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Appendices:

- Appendix 1 Options Appraisal & Evaluative Methods
- Appendix 2 Wellbeing Assessment Template

OPTIONS APPRAISAL AND EVALUATIVE MEASURES

A range of options to meet statutory requirements of the SSWBA were developed for consideration by the RPB. Options ranged from the complex and high risk to the relatively simple and low risk.

The following outcomes have been developed and adopted against which each of the options were measured and evaluated:

- a. A consistent, timely equitable assessment and decision-making process which enables citizens to be supported in the right place at the right time by staff with the right skills.
- b. A consistent regional methodology is established for agreeing fee levels that improves transparency and efficiency for commissioners and care home providers, while recognising local difference and the autonomy of commissioners.
- c. A consistent, efficient and effective regional contract management and safeguarding system is established which could lead to process efficiencies for both commissioners and providers, as well as ensuring that the requirements of the regulatory bodies are met.
- d. A cross-stakeholder regional understanding of the care home market is reached leading to a market position that is responsive to population needs and is sustainable for the future.
- e. Use of scarce resources are maximised and value is added

The following risk factors have also been identified and a risk assessment matrix is set out below in the table below.

- Financial Risks
- Political and/or organisational acceptability
- Deliverability due to complexity of task
- Organisational capacity
- Market stability and volatility
- Workforce capacity at operational level
- Service users adversely affected

The following options were considered in detail by RPB:

- A Section 33 Agreement that encompasses all residential and nursing care homes for

older people over 65 years – full implementation in year 1.

- A Section 33 Agreement that encompasses all residential and nursing care homes for older people over 65 years (Consolidated Financial Statements (i.e. a pooled budget where contributions by each partner matches the costs committed by each partner) with a view to understanding the market so that the financial risks can be fully explored before committing to full implementation as recommended below).
- A pooled fund arrangements for all nursing homes registered for people with dementia
- Lead commissioning arrangement for commissioning and contracting functions is required as a stepped approach to enable and support section 33 arrangements

The findings of the option appraisal are set out in the tables below:






Option	No. Deliverable in year 1	Timescale proposed	Aggregated Risk Profile	Outcomes met
1. Pool all Care Home funds – full implementation in year 1	No	Year 3	30	a b c d e
2. Consolidated Financial Statements (i.e. a pooled budget where contributions by each partner matches the costs committed by each partner) with a view to understanding the market so that the financial risks can be fully explored before committing to any potential financial risk sharing in future years	Yes	Year 1	5	a b c d e
3. Dementia Nursing	No	Year 2	25	a b c d e
4. Commissioning & contract functions	Yes	Years 1-3	16	b c d e

RISK MATRIX 1 Low risk 5 significant risk

Risk Factor	Option 1	Option 2	Option 3	Option 4
	Pool all with risk	Virtual Pool years 1-3	Dementia nursing	Commissioning & Contracting
Financial	4	0	3	2
Acceptable	5	1	4	3
Deliverable	5	2	5	4
Capacity	5	2	4	3
Market	3	0	3	1
Workforce	5	0	4	3
Service Users	3	0	2	0
	30	5	25	16

Following extensive discussion, the RPB agreed to progress the development of a variation of option two - a non risk sharing Section 33 agreement for older people in residential and nursing care homes. This is essentially a pooled budget where the contributions by each partner match the costs they commit to for their population. This option enables a full assessment of the expenditure in the sector across the region.

WELL BEING ASSESSMENT TEMPLATE

Project Description (key aims): This is not a project – but outline of a statutory requirement under the Social Services and Wellbeing Act, which places a number of duties on local authorities and on statutory partners.	
Section 1) Complete the table below to assess how well you have applied the 5 ways of working.	
 Integration	<p>1. <i>How does your project/activity deliver economic, social, environmental & cultural outcomes together?</i></p> <p>Regional Partnership Boards, on local health board footprint, are a statutory requirement under the Social Services and Well-Being Act (Wales) 2014. This activity confirms that these requirements on partnership and collaboration are met and is set to ensure best use of available resources through pooling funds.</p>
 Long-term	<p>2. <i>How does your project/activity balance short-term need with the long-term and planning for the future?</i> <i>This link may help you with long term planning: http://www.wlga.gov.uk/sustainable-development/generation-2050-better-long-term-decision-making-l-a-resource-for-local-government</i></p> <p>The whole emphasis with RPB's, Joint statements of Strategic Intent, and joint service planning and commissioning of care home placements is geared to meeting known short term care provision needs and longer term forward planning in relation to projected needs, based on population growth for older people.</p>
 Prevention	<p>3. <i>How does your project / activity put resources into preventing problems occurring or getting worse?</i></p> <p>A pooled budget approach combines partner resources to take a holistic and consistent approach focused on citizen needs, so as to provide the right services at the right time and in the right place with the right providers and the right funding. It fits with strategic direction for health and social care.</p>
 Collaboration	<p>4. <i>How does your project / activity involve working together with partners (internal and external) to deliver well-being objectives?</i></p> <p>Regional Partnership Boards, and joint planning as to commissioning of care home placements, and pooling of funding to do this demonstrates better working together – spanning not just statutory partners but also third sector, citizen and service provider representatives.</p>
 Involvement	<p>5. <i>How does your project / activity involve stakeholders with an interest in achieving the well-being goals? How do those stakeholders reflect the diversity of the area?</i> <i>These links may help you think about involvement: National Principles for Public Engagement www.participationcymru.org.uk</i> <i>National Participation Standards for Children and Young People: http://www.childreninwales.org.uk/</i></p> <p>The required membership of Regional Partnership Boards does have a cross section of stakeholders, including third sector, citizen and carer representation. Joint</p>

	commissioning arrangements for care home placements allows for alignment of 'support' functions, such as information provision, available service funding, and commissioning experience to allow a common approach to outcomes, and a constant and equitable service offer across the Gwent region.
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Section 2) Assess how well your project / activity will result in multiple benefits for our communities and contribute to the national well-being goals (use Appendix 1 to help you).		
Description of the Well-being goals	How will your project / activity deliver benefits to our communities under the national well-being goals?	Is there anyway to maximise the benefits or minimise any negative impacts to our communities (and the contribution to the national well-being goals)?
<p>A prosperous Wales An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.</p>	Putting in place statutory joint commissioning and pooled budget arrangements is expected to allow for better joint use of resources across health and social care, including workforce support and development in a critical part of the care sector.	No negative impacts expected
<p>A resilient Wales A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).</p>	<i>No direct impact to biodiversity and ecological resilience, but jointly commissioning care home placements for older people across health and social care does allow for reduced environmental impact if there is a focus on the right care at the right time and in the right place – not least in aiding families to be close to where care support is arranged.</i>	No negative impacts expected.
<p>A healthier Wales A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.</p>	Joint commissioning arrangements for care homes, including consistency as to information provision, choice and assessment, are all measures to impact positively on overall health and wellbeing.	No negative impacts expected.
<p>A more equal Wales A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).</p>	The Social Services and Wellbeing Act links closely with preceding Disability and Equality legislation, and any new specific service developments (of care homes) will need to go through Equality Impact assessment (EIA), noting that care homes and	No negative impacts expected on statutory partners

	pooled arrangements, are focused to the older adult age group.	
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A Wales of cohesive communities Attractive, viable, safe and well-connected communities.	Regional Partnership Board arrangements, allied to joint statements of Strategic Intent, and planning for care closer to home, are all measures to allow for greater involvement of citizens in the planning and delivery of services to meet their wellbeing outcomes.	No negative impacts expected.
A Wales of vibrant culture and thriving Welsh language A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.	Publication of information in the public domain will need to comply with Welsh Language measures, in line with all other information developed by local authorities and local health boards	No negative impacts expected
A globally responsible Wales A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.	Regional Partnership Board arrangements, allied to joint statements of Strategic Intent, and planning for care closer to home, have strong potential to improve overall well being in the region, although the focus is on those citizens in need of care and support.	No negative impacts expected

Section 3) Will your project / activity affect people or groups of people with protected characteristics? Explain what will be done to maximise any positive impacts or minimise any negative impacts.			
Protected characteristics	Will your project / activity have any positive impacts on those with a protected characteristic?	Will your project / activity have any negative impacts on those with a protected characteristic?	Is there any way to maximise any positive impacts or minimise any negative impacts?
Age	Yes	No	Better integrated planning across health and social care
Disability	Yes	No	Better integrated planning across health and social care
Gender	Yes	No	Better integrated planning across health and social care
Gender reassignment	No	No	Planning is neutral – no change to expectations on statutory partners
Marriage and civil partnership	No	No	Planning is neutral – no change to expectations on statutory partners
Pregnancy and maternity	No	No	Planning is neutral – no change to expectations

			on statutory partners
Race	No	No	Planning is neutral – no change to expectations on statutory partners
Religion or Belief	No	No	Planning is neutral – no change to expectations

Sexual orientation	No	No	Planning is neutral – no change to expectations on statutory partners
Section 4) Identify decision meetings for project/ activity e.g. Cabinet, Council or delegated decisions taken by Executive Members and / or Chief Officers.			
Decisions are as set out in Cabinet report, to approve statutory arrangements under Social Services and Wellbeing Act, and high level priorities across Health and Social Care as set out in Joint statements of Strategic Intent			
Officer Name and Job Title: David Williams Theme Lead, Regional Transformation Team		Date: May 2017	