

## DEVELOPMENT OF A NEW CONTRACT FOR BED BASED CARE

<b>Cabinet Date</b>	29 January 2020
<b>Adult Social Care Commissioning</b>	Cllr Carole Allaway Martin
<b>Key Decision</b>	Yes
<b>Background Documents</b>	<ul style="list-style-type: none"> <li>• Proposed timeline for phases 1 and 2</li> <li>• Care Home Strategy</li> <li>• Market Position Statement</li> </ul>
<b>Location/Contact for inspection of Background Documents</b>	<p>Proposed timeline for phases 1 and 2 – attached as Annex 1</p> <p>Market Position Statement: Adult Social Care  <a href="https://www.gloucestershire.gov.uk/media/2083902/market-position-statement-for-older-people-2018.pdf">https://www.gloucestershire.gov.uk/media/2083902/market-position-statement-for-older-people-2018.pdf</a></p>
<b>Main Consultees</b>	<p>External</p> <ol style="list-style-type: none"> <li>1. Provider market for bed based provision</li> <li>2. Users of bed based services and their families/carers</li> <li>3. Gloucestershire Clinical Commissioning Group Commissioning</li> </ol>
<b>Planned Dates</b>	<p>A programme of third party engagement is planned in respect of the council's current contract terms for the provision of bed based care. Provider engagement will take place in March, May, July and September 2020. Consultation with care home residents will take place in September/October 2020. Consultation with commissioners in Gloucestershire Clinical Commissioning Group will take place across the year as all relevant stakeholders will be involved in contract development.</p> <p>Cabinet approval for procurement of new contract – December 2020</p> <p>Procurement of new contract – January to March 2021</p> <p>Start of new contract – April 2021</p>
<b>Divisional Councillor</b>	All divisions
<b>Officer</b>	<p>Jenny Cooper            Head of Integrated Commissioning (Older People)            Tel: 01452 425211  <a href="mailto:Jenny.cooper7@nhs.net">Jenny.cooper7@nhs.net</a></p>

<b>Purpose of Report</b>	To seek cabinet approval to conduct an engagement process with care home providers and care home residents which will inform the development of a new bed based care contract.
<b>Recommendations</b>	<p>That Cabinet delegates authority to the Interim Head of Integrated Commissioning (Older people) in consultation with the Cabinet Member for Adult Social Care Commissioning to:</p> <ol style="list-style-type: none"> <li>1. approve the initiation of “Phase 2” of the review of the council’s bed-based care services contract (known as the “Pre-Placement Contract” or the “PPC”);</li> <li>2. conduct a consultation process with care home providers that will inform the development of new bed based care contract terms); and</li> <li>3. develop such new contract terms in conjunction with the council’s support services;</li> </ol> <p>in anticipation of such new contract terms being brought back to cabinet for its approval in December 2020, prior to implementation of a procurement process for bed based care services.</p>
<b>Reasons for recommendations</b>	The current contract terms for bed based care are no longer fit for purpose given that they require significant changes in order to bring them in line with the council’s current commissioning intentions. A new contract is required, hence extensive stakeholder engagement will be needed in order to develop a new bed-based contract that will be robust and sustainable.
<b>Resource Implications</b>	<p>The cost of a full engagement with providers, and consultation with residents and their families (including venue hire and materials) will be between £500-£1000. These will be met within existing resources from an existing market shaping budget.</p> <p>There are some significant resource implications of the new contract if potential risks such as debt recovery and financial pressures are not successfully managed. Detailed financial modelling will be undertaken to understand the full financial implications of the changes proposed and the feedback from the engagement. These will be provided within the proposed cabinet report in Dec 2020.</p>

## **MAIN REPORT CONTENTS**

### **1. Background**

There are over 5000 nursing and residential care home beds for older people and just over 1000 care home beds for people aged 18-64 in Gloucestershire in total. The “Pre-Placement Contract” (PPC) is the overarching contract that is used to buy beds for all service user groups on behalf of both GCC and Gloucestershire Clinical Commissioning Group (GCCG). This contract dates back to 2006 and is therefore 13 years old. The contract is out of date in terms of legislation and therefore a two phase project to review and update it is proposed.

### **2. Two Phase Project**

Phase 1 of the review involved a “Deed of Variation” being drawn up to incorporate The Care Act and GDPR. Phase 1 was agreed under delegated authority by the Director of Adult Social Care in October 2019 as a non-key executive decision. Phase 1 is now nearing completion.

Phase 2 of the review involves more significant changes that require the development of a new contract. This phase will involve:

- An extensive engagement with care home providers to understand how the changes will impact them and how they can be successfully brought about
- The development of a new contract and service specifications for bed based care including nursing and reablement provision
- The development of a procurement process to facilitate the move to a new contract
- A consultation with residents of care homes regarding the proposed new payment processes
- A return to cabinet in December 2020 with the outcome of engagement and consultation, a proposed new contract and specifications and a proposal for a procurement process to take place in early 2021
- The new contract, if approved, to start in April 2021.

### **3. Proposed changes**

As it stands the current PPC does not reflect our commissioning intentions as it does not fully represent the range of services we wish to commission going forward. Our Market Position Statement (2018) identified the following themes under which our future commissioning intentions sit:

- Supporting Independence
- Appropriate Housing
- Community Support
- Rehabilitation, recovery and reablement
- Flexible long term support
- Sustainable long term services

In order to ensure our contract for bed based care aligns to our strategic ambitions there are five areas which need consideration.

### **4. Net to gross payment:**

Currently the Gloucestershire County Council (GCC) assessed financial contribution is collected by the provider from their residents. GCC pays the care home the difference between the contribution and the agreed GCC rate - the “net” price. Care Act guidance indicates that:

*“Where a local authority is meeting needs by arranging a care home, it is responsible for contracting with the provider. It is also responsible for paying the full amount, including where a ‘top-up’ fee is being paid. However, where all parties are agreed it may choose to allow the person to pay the provider directly for the ‘top-up’ where this is permitted.”*

It is therefore expected that a local authority will pay the provider the “gross” price and then collect the individual’s contribution. There have been several ombudsman rulings regarding this practice including one around “top-ups” in Gloucestershire and increasingly frequently the council is being challenged by providers to pay the fees in gross.

It is considered that a move from net to gross payments would require significant contractual change and should be done within the context of the development of a new contract. The change will need a thorough risk analysis regarding additional costs to the authority such as potential increase in debt and any process changes.

#### **5. Inclusion of equipment:**

Guidance in the current contract regarding the provision of equipment is limited. There is variable practice across the county in regard to provision of equipment in care homes. It is proposed that the new contract will include guidance regarding what should be included as standard equipment in residential and nursing homes and what will be supplied by GCC/GCCG and when. Changes of this kind would require robust engagement with providers to ensure that proposals are realistic and sustainable for both purchaser and provider.

#### **6. Enhanced independence offer – “Home First”:**

It is proposed that the new contract will include the ability to purchase a variety of short term beds that will cover all of our commissioning needs including respite and reablement. A reablement service in a care home is one which aims to support the person to reach an improved level of self-care, and where possible to return home.

The reablement offer will provide a short stay in a care home to either help people who have been in hospital to return home sooner or to avoid a hospital stay becoming necessary. Our current agreements for short-term beds vary in price and funding arrangements which does not ensure a reablement focus is maintained.

Our new reablement beds are likely to be commissioned from our key contractual provider Gloucestershire Care Partnership but the same specification will be included in the new care home contract to allow for flexibility in future arrangements as and when required. It is proposed that the new contract which is developed will include a pricing structure that allows a consistent approach to short-term beds.

#### **7. Single contract for everyone:**

The council’s current form of contract for the supply of bed-based care services (known as the “Pre-Placement Contract” or “PPC”) covers all service user groups but a number

of more complex or specialised bed based services are currently commissioned at individually negotiated rates. Going forward the intention is that the PPC will include a consistent and transparent pricing structure which will facilitate the commissioning of bed based care for all service users.

In order to facilitate this it is proposed that specifications will reflect the needs of all groups and all levels of need. It is anticipated that an accompanying pricing structure will reflect the prices for differing levels of care, but it is acknowledged that the few most complex cases will still require individual price negotiations.

Changes to the pricing structure could only be achieved through the development of a new contract and will need thorough analysis in terms of cost impact as well as robust engagement with providers to understand all the factors involved.

#### **8. Commissioning process:**

Whilst Phase 1 incorporated developments in recent legislation into the current contract via a deed of variation, the more significant changes in Phase 2 will require the development of a new contract. In order to make the change to a new contract a commissioning process will need to be employed. The exact nature of the procurement cannot be determined until the structure and content of the new contract is understood more fully, careful consideration needs to be given to how price will be determined and the associated risks of each type of procurement process.

#### **9. Proposal:**

It is proposed that a new contract is developed including: a changed payment process; clearly defined expectations regarding the provision of equipment; new service specifications including one for short term care. This work will require substantial risk assessment and a robust engagement process. It would result in a new contract and planned procurement process which would be brought to cabinet for approval in December 2021.

#### **Options**

1. Retain the existing PPC contract terms
2. Develop a new form of contract which makes provision for:
  - a) gross payment change;
  - b) equipment change;
  - c) inclusion of reablement; and
  - d) specification and price structure changes;on the basis described above and to carry out a procurement process for bed based care services incorporating such new contract terms .
3. Instigate changes through contractual amendment rather than a procurement process

#### **Risk Assessment**

1. OPTION 1: Retain existing PPC  
The risks associated with retaining the council's current PPC are:
  - a) That it does not meet Care Act guidance in relation to gross payment on the basis described above, hence the council could face scrutiny from the ombudsman.

- b) That the council will continue to suffer strain on its equipment budget through uneven and unmanaged provision.
- c) That the council will not have the necessary market options to support the commissioning intentions described above given that the council's care home provision will not include an effective reablement offer.
- d) That if current payment arrangements are not amended the contract will not support the provision of short term reablement and will continue to lead to long term placements.
- e) That the council is unable to purchase the services it requires in order to meet its commissioning intentions and that fees for specialist services continue to be varied potentially increasing pressure on the council's funding envelope for bed based care services.

2. OPTION 2: Develop a new form of contract which makes provision for some or all of changes under consideration.

There are risks and opportunities associated with each of the proposed changes described above:

a) Gross payment change

There is some evidence that this change is one that will be supported by providers so including it in the process will increase providers' appetite for change. This change will also grant the council a wider understanding of third party contributions and thus a better market picture. Leaving it out will negate that advantage. The main risk of including this change is that the council will experience first-hand the impact of unpaid resident and third party contributions. In the current arrangements the council is liable to meet the costs of a placed resident if there is a default so it is envisaged that there will not be significant change. In addition it is proposed that our assessment processes could include assisting in the set-up of direct debit arrangements which would also reduce the risk of debts.

b) Equipment change

The council's current pattern of providing equipment for care homes is unequal and in some areas adds to budget pressures. There is therefore an opportunity here to clarify expectations for all and ensure that the proposed new contract supports an agreed protocol.

The main risk of this change is that providers will be concerned that expectations upon them to provide equipment will increase and could make their business unsustainable. We propose to work with providers to understand their pressures in order to ensure that the market is not destabilised by any change.

c) Inclusion of reablement

Whilst the likelihood is that the council's reablement service will be largely purchased from our strategic provider partner under different contractual arrangements there is an advantage in including it so that we have an alternative option should one be required.

The risk of including reablement is the potential complexities and pressure it might add to any proposed price structure.

d) Specification and price structure changes

Changes to the specification are proposed in order to facilitate the ability to purchase services that will meet the level of needs of the person being placed without resorting to individual negotiation except in the most complex cases. This

could offer the opportunity to structure price to more accurately reflect levels of need giving the potential to make some placements more economic in future. Changes to the specification could also bring operational difficulties and a potential change to pricing structures. We will be working with stakeholders internal and external, to ensure these are appropriate and managed.

3. **OPTION 3:** Instigate changes through contractual amendments rather than a new procurement process.

The proposed changes are substantial and will, if implemented, have significant repercussions for both the council and the provider market. Accordingly, the proposed changes would likely lead to a breach of procurement legislation if implemented outside a competitive procurement process.

### **Officer Advice**

Approving the recommendations that are set out in this report will enable GCC to work in with providers to develop a new bed-based care contract that supports the council's commissioning intentions.

### **Equalities considerations**

All protected characteristics have been considered and no disproportionate impact for any one group has been identified. People who live in care homes and their families might be affected by changes to payment processes and therefore consultation will be undertaken with them towards the end of 2020. Efforts will be made to ensure that consultation is not intrusive and is equally accessible to all.

Cabinet Members should read and consider the Due Regard Statement in order to satisfy themselves as decision makers that due regard has been given.

### **Consultation feedback**

Consultation has yet to be undertaken as this paper requests permission to do so.

### **Performance Management/Follow-up**

Officers will be reverting to Cabinet for its approval of the proposed new contract terms from December 2020.

<b>Report Title</b>	Development of a new contract for bed based care
<b>Statutory Authority</b>	Care Act 2014
<b>Relevant County Council policy</b>	Market Position Statement
<b>Sustainability checklist:</b>	
Partnerships	The council is seeking to develop this contract for commissioning long term bed based care from the private care home market and from our strategic partner provider. The contract will be developed incorporating learning from a period of stakeholder engagement planned for 2020.
Decision Making and Involvement	A project group oversees the contract development with representatives from finance, procurement, legal and operations.
Economy and Employment	This contract will seek to build on the current care home workforce, sustaining local care jobs and encouraging career development in the local care sector.
Caring for people	Provision of this Contract supports Gloucestershire County Council to meet its statutory obligations under Care Act 2014
Social Value	This contract aims to help people return to their home where possible and avoid long term care admissions.
Built Environment	N/A
Natural Environment' including Ecology (Biodiversity)	The council will ensure that any impact on the natural environment is minimised.
Education and Information	N/A
<b>Tackling Climate Change</b>	Carbon Emissions Implications? Positive Offers opportunity to consider updating contract with expectations regarding climate change. Vulnerable to climate change? Maybe Climate change may impact on business model for care homes thus reducing market capacity.
<b>Due Regard Statement</b>	Has a Due Regard Statement been completed? Yes

	<p>Yes - considerations included in main body of report</p> <p>A copy of the full Due Regard Statement can be accessed on GLOSTEXT via <a href="http://glostext.gloucestershire.gov.uk/uuCoverPage.aspx?bcr=1">http://glostext.gloucestershire.gov.uk/uuCoverPage.aspx?bcr=1</a></p> <p>Alternatively a hard copy is available for inspection from Jo Moore, Democratic Services Unit, e-mail: <a href="mailto:jo.moore@gloucestershire.gov.uk">jo.moore@gloucestershire.gov.uk</a>.</p>
<b>Human rights Implications</b>	<p>Improve the Human Rights for Gloucestershire's vulnerable and older people offering more options where a care home place is indicated.</p>
<b>Consultation Arrangements</b>	<p>An extensive engagement programme with provider, resident, families and professionals is planned to span 2020. Within this consideration will be given to people with protected characteristics and efforts made to ensure that engagement has been accessible to them and their views taken into account.</p>

## Annex 1 – Proposed timeline for phases 1 and 2

Time period	Actions
<b>Phase 1</b>	
Apr - Jun 2019	Minimal changes to contract to be identified as specific variations
Jun – Oct 2019	Inform senior management re: plans to update contract with legislative changes only; no provider engagement required as advised by GCC legal.
Nov 2019	Introduction of DOV to providers
Dec 2019	Letter with contract addendum sent to providers for signing
<b>Phase 2</b>	
From Apr 2019	Impact and risk analysis for changes proposed in new contract: <ul style="list-style-type: none"> <li>• Net to gross</li> <li>• Equipment</li> <li>• Short term beds</li> <li>• Single contract for all groups</li> </ul>
Jan 2020	Take Stage 2 approach to cabinet to seek approval to engage with providers regarding proposed changes
Mar - Sept 2020	Internal and external engagement on changes involved in new contract
Sept - Oct 2020	Draft new contract and specifications
Dec 2020	Take new draft contract to cabinet with recommended proposals for procurement of new services.
Nov- Dec 2020	Develop commissioning process for new contract
Jan - Mar 2021	Commissioning process and award for new contract include 10 day standstill period
Jan - Mar 2021	Preparation for payment process changes required by new contract
April 2021	New contract starts, new payment processes go live