Wiltshire Council

Cabinet

5 January 2021

Subject: Recommissioning and procurement of nursing block and

nursing & residential care framework beds

Cabinet Member: Councillor Simon Jacobs - Cabinet Member for Adult Social

Care, Public Health and Public Protection

Key Decision: Key

Executive Summary

- 1. Current contracts for nursing block and nursing and residential framework beds expire on 31st March 2021. This report makes proposals to develop and implement a new commissioning platform for these services across two stages:
 - a. The establishment of a pseudo-dynamic purchasing system, known as the 'Care Home Alliance', or 'Alliance' to commence in February 2021.
 - b. Alliance providers to tender for 'draw-down' contract opportunities for block contracts or individual framework beds to commence in April 2021.
- 2. The Alliance platform improves access to good value, quality care home capacity and the ability to respond to urgent system need, while being fully compliant with procurement regulations. It creates an improved market shape in which to commission services from private providers in challenging trading conditions.
- 3. Officers have engaged with providers on the long-term direction for care homes and will engage providers on the Alliance platform before procurement begins.

Proposals

- 1. Cabinet is invited to consider the proposals outlined in item 1.1 of this report. In summary:
 - a. That officers continue to develop and implement the Alliance platform and draw-down contract procurement.
 - b. That the authority to make decisions connected with the procurement and award new contracts and associated documents is delegated to the Director Joint Commissioning in consultation with the Cabinet Member for Adult Social Care, Public Health and Public Protection and the Corporate Director of Resources.

Reason for Proposal(s)

A new commissioning approach to secure value for money nursing and residential care capacity is required due to the expiry of existing contracts and market conditions, which remain challenging.

Terence Herbert, Chief Executive

Wiltshire Council

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1 Purpose of Report

- 1.1 This report concerns proposals for the successful recommissioning and procurement of nursing and residential care capacity. This report makes the following specific proposals:
 - 1.1.1 The development and implementation of a new commissioning and procurement platform for nursing and residential beds in Wiltshire. This platform will be in the form of a pseudo-dynamic purchasing system known as the 'Care Home Alliance', or 'Alliance'.
 - 1.1.2 Under the Alliance, 'Draw Down Contracts' can be tendered for by the providers who are Alliance members. This enables the Council to be more flexible if it needs to tender at short notice as it has due to COVID and winter pressures.
 - 1.1.3 As identified in appendix 1 (Indicative Procurement Timeline), the Alliance will commence on 8th February 2021. The first 'Draw Down Contracts' will be tendered in February 2021 with contract commencement on 1st April 2021. These contracts will be for:
 - a. Block contract nursing beds
 - b. Framework contract beds for both nursing and residential care
 - c. 'Passive' nursing and residential care services required on an ad-hoc basis (as identified in the Alliance tender documentation) to enable the Council to quickly and compliantly secure services in response to urgent system need and its strategic priorities.
 - 1.1.4 To delegate authority to make decisions connected with the procurement and award new contracts and all associated documents to the Director Joint Commissioning in consultation with the Cabinet Member for Adult Social Care, Public Health and Public Protection and the Corporate Director of Resources.
 - 1.1.5 That officers will continue to assess demand and market conditions and urgent care system needs to review the level of block beds required under the Alliance.

2 Relevance to the Council's Business Plan

- 2.1 This report's proposals resonate most strongly with the Council's Business Plan's priority to protect the vulnerable:
 - 2.1.1 A more personalised, targeted approach to supporting complex cases.
 - 2.1.2 Supporting more cost-effective package costs and enabling more effective use of existing capacity in the wider social care and health workforce.
 - 2.1.3 Shape care markets sustainably with providers. Using their vision and creativity to move beyond traditional services and to implement principles of person-centred care and an enabling approach to service delivery.
 - 2.1.4 To facilitate prompt discharges from acute hospital.
 - 2.1.5 Meet the Council's duty of care to protect the most vulnerable people in our communities by ensuring equitable access to nursing and residential care supply.

3 Background

- 3.1 Nursing and residential care plays an essential role in the care system, for some of the most vulnerable people in the community. Good care home services aim to deliver high quality care, which is person centred, treat people with dignity and respect, keep people safe, offer real choice and control, promote independence and social inclusion and are supported by highly skilled and dedicated staff.
- 3.2 These services support other developments which improve the health and wellbeing and independence outcomes of customers, including asset based social care practice and outcomes-based commissioning.

Current Block & Framework Contracts

3.3 Wiltshire currently has three distinct types of contracts for care homes: Block, Framework and Spot. An overview of the contract models is provided here:

Figure 1 – Care home contract types in place in Wiltshire				
Block	 Fixed number of pre-purchased beds at a more competitive rate with guaranteed supply. Council is committed to the 'block' level of spend including unoccupied (void) beds Utilisation therefore needs to remain high to secure value for money. An approved provision for voids can also be used to create capacity in times of urgent system need 			
Framework	 Pre-agreed rates and terms and conditions with more competitive rates. No commitment to purchase beds which are not required, so no cost for voids Do not guarantee supply Reduce administration time and costs around individual placements 			
Spot	 Individual beds are purchased as required and last for the duration of each individual service user's stay at the home Rates are not pre-agreed so are subject to individual negotiation. 			

- 3.4 Block and framework contracts maximise the Council's ability to manage spend and bed availability and be less reliant on spot-purchased beds where it has less control financially and in terms of quality assurance.
- 3.5 Block and framework contracts also place obligations on the provider to achieve specified quality of care outcomes and support system flow by reducing delayed transfers of care from hospitals into the community.
- 3.6 <u>Block Nursing</u> The block contract was extended from 1st April 2020 to 31st March 2021. Currently Wiltshire has 7 providers offering a total of 178 block nursing beds across 11 care homes.
- 3.7 <u>Framework Nursing & Residential</u>: The framework contract ends 31st March 2021. Currently Wiltshire has 14 providers offering 149 nursing beds and 154 residential beds across 19 care homes.
- 3.8 Most of the Council's block and framework care homes contracts for nursing and residential care expire on 31st March 2021. The exception to this is the block contract for residential care with Order of St John Care Trust (OSJCT) which runs until 2025.
- 3.9 Voids and utilisation: Utilisation of existing block beds throughout 2020 is 98.50% at October 2020, showing that there is minimum risk of the Council having large numbers of voids.

Future cost, demand and strategic direction

- 3.10 Overall demand for nursing care beds exceeds current block contracted and framework supply, leading to increased use of individual 'spot' care home beds where the Council has less control over pricing at the point of need.
- 3.11 In the wider care homes market, there is an increasing number of voids within care homes, increased significantly as a result of the COVID-19 pandemic. This indicates that block contracting and a range of pre-agreed pricing on framework beds is in both providers' and the Council's best interest in terms of surety of income and supply respectively.
- 3.12 Spend on block and framework care home beds depends upon contract prices and demand. An alliance platform typically improves purchasing power and a Council's ability to manage both cost and demand pressures.
- 3.13 In November 2020, officers engaged care home providers in a market shaping workshop. This event considered both Council and providers emerging priorities as well as hearing valuable insight and feedback.
- 3.14 The use of demand data, including the effects of COVID -19, helped identify demand priorities and informed longer-term strategic direction for care homes and the wider social care commissioning landscape.
- 3.15 Current modelling shows a drop in demand for traditional residential beds but an increase in nursing bed needs, particularly for more complex cases and including people living with dementia. Commissioning through an Alliance platform enables both commissioners and providers to be more flexible.

3.16 The term of the Alliance Agreement will be for 6 years with expected start on 8th February 2021. The 'Drop Down' Nursing Block Contract will be for an initial term of 3 years with the provision to extend for up to a further two years (3+1+1). Expected start date for these contracts is 1st April 2021.

4 Statutory Requirements

- 4.1 Local Authorities in England have a range of responsibilities under the Care Act (2014) in relation to these proposals:
 - 4.1.1 To shape care and support market sustainably and in collaboration with care providers, to ensure a range of appropriate and high-quality providers and services are available.
 - 4.1.2 Local market oversight and contingency planning for provider failure and a temporary duty to support providers and service users through service interruptions. Where a provider cannot meet needs as their business has failed, the Council ensures smooth transition for services users so that their needs continue to be met.
 - 4.1.3 The Council's duties in market shaping, oversight and provider failure as well as safeguarding apply to all care providers active in the county, regardless of whether the Council has a contractual relationship with a provider.

5 Main Considerations for the Council

Commissioning approach and principles of service delivery

- 5.1 The tender seeks to provide high quality, safe and person-centred care that promotes choice and control, dignity and quality of life for service users, families and carers.
- 5.2 A key principle is establishing longer-term relationships with service providers to develop services in partnership, modernising the approach to care beyond traditional models and developing models of trust, risk sharing, accountability and continuous improvement.
- 5.3 The Council will seek to increasingly co-produce care models with service users and wider stakeholders and maximise the use of available resources to deliver value for money and impact.

Pricing and Value for Money

- 5.4 The Alliance's implementation occurs alongside regular activity over peak winter demand and COVID-19 response. The need to facilitate timely hospital discharge and support more people in the community has increased the need to secure cost-effective, flexible and person-centred care home capacity.
- 5.5 On joining the Alliance from 8th February, providers can tender for block contracts for nursing care, and to provide framework beds for nursing and residential care. These contracts will start from 1st April 2021.
- 5.6 Wiltshire Council must consider its financial position and secure best value from any contract. Drawdown block and framework contracts will be let based on an appropriate price/quality ratio, with price being the overriding factor as

- providers will have had to demonstrate quality to get on the Alliance. The Council will seek to significantly reduce spot purchasing and use which will deliver efficiencies for the Council.
- 5.7 The Council will publish a placement process to clarify its arrangements and priorities for purchasing care home beds. This process will consider the contract type (e.g. block, framework or spot) against other essential factors such as service user choice and control and the Council's statutory duty to meet care needs in the most cost-effective way. A draft placements process is intended to be published as part of the draw-down contracts tender in February 2021. The Council will also establish its price position for 2021/22 for any beds commissioned outside of the Alliance.
- 5.8 To maximise the value for money achieved from investing in block contracts, the placements process will seek to prioritise those contracts wherever possible. Where a suitable block contract bed is not available, brokers will secure a framework bed. If no suitable framework beds are available, then another suitable bed from an Alliance member will be sought. Finally, a 'spot' bed from a non-Alliance provider may be sourced.
- 5.9 In consultation with providers, officers are preparing to carry out an 'Actual Cost of Care' exercise for care home beds in Wiltshire (see 15.5 below). This is expected to be completed early in 2021/22. The summary findings of the exercise will be published and may inform a future update of the published placements process.
- 5.10 Additional measures have been included into the Alliance terms and conditions to reduce the impact of block contract void costs and ensure value for money.

Market Readiness

- 5.11 The widespread impact of the COVID-19 pandemic has reprioritised activity across all parts of the care sector. Many organisations and care home providers have raised concerns of COVID-19's impact on their business models and have sought direction from the Council on future commissioning intentions and support for the market.
- 5.12 The Wiltshire care home provider market is large. There are 173 care homes registered in the county, relying on a balance between private and publicly funded care. COVID-19's impact has significantly reduced the level of privately funded resident enquiries, suggesting greater interest in working with the Local Authority.
- 5.13 In November 2020, officers held a market shaping event with care home providers in partnership with the Institute of Public Care (IPC). This delivered valuable insight on providers' views on future opportunities, priorities and concerns. It has informed the Council's draft Market Position Statement which identifies the Council's commissioning priorities.
- 5.14 Officers have arranged specific market engagement sessions on 10th December for the Alliance and draw-down contracts. The Alliance procurement will start in w/c 14th December (see Appendix 1). Further

- engagement sessions will take place during the tender period to help address any provider queries.
- 5.15 Officers have sought to maximise opportunities for providers to take part in initial tendering activity by ensuring the self-assessment questionnaire for Alliance membership is robust yet straightforward.

Governance and Commissioning Arrangements

5.16 It is imperative that a robust governance structure is in place for this procurement to ensure key decisions are considered through appropriate forums in a timely manner. Robust project management arrangements have been established with representation from across the Council's commissioning, operational and corporate services.

6 Overview and Scrutiny Engagement

6.1 A briefing on these proposals has been scheduled for the Chairman and Vicechairmen of the Health Select Committee and the Chairman of the Financial Planning Task Group. The chairmen will report their comments at the Cabinet meeting.

7 Safeguarding Implications

7.1 Current contract arrangements with care home providers contain robust safeguarding measures in line with Council policy. All Alliance contracts build on these provisions and give clear direction on safeguarding policy process.

8 Public Health Implications

- 8.1 The current service specification is informed by public health data and evidence from the Joint Strategic Needs Assessment (JSNA). This has supported the establishment of key performance indicators in the contract to drive the efficiency and effectiveness of services.
- 8.2 Improved availability of care home bed supply will ensure that people with care needs that cannot be met in less specialised settings and who are reliant on financial support from the Council to pay for care, can access appropriate services to meet their needs and support their wellbeing.

9 Procurement Implications

- 9.1 The Council will follow a robust process in line with the Public Contracts Regulations (2015) Light Touch regime. The procurement vehicle for the Alliance is a pseudo-dynamic purchasing system under regulations 74-76 of the Public Contracts Regulations (PCR). Due to the contract value, it will follow a full OJEU (Official Journal of the European Union).
- 9.2 Advertising and market engagement for the tender will stimulate the market and should secure competitive bids from those providers able to meet the requirements to join the Alliance and bid for services. The procurement process enables officers to seek a good geographical coverage of block and framework beds across the county.
- 9.3 The initial procurement exercise will invite providers to join the Alliance from its start date of 8th February. Providers will be selected on the basis of key business information, current Care Quality Commission (CQC) registration status and evidence provided through a quality self-assessment.

- 9.4 Providers with an 'Inadequate' CQC rating will not be invited to join the Alliance. However, they will be able to resubmit an application when they provide sufficient evidence that their CQC rating has improved.
- 9.5 In addition to the initial invitation to participate in the Alliance, providers can subsequently apply to join the Alliance every four weeks for the first six months of its term, and quarterly thereafter.

10 Equalities Impact of the Proposal

- 10.1 An initial EQIA risk assessment was undertaken which concluded that the potential impact on service users did not meet the requirement for a full Equalities Impact Assessment (EQIA). A summary of the risk assessment's findings is included as Appendix 2 with a full copy available on request.
- 10.2 These proposals support equitable access for any individual who has assessed needs and who also requires financial support from the Council. Future contract opportunities and service specifications for future services will require providers to demonstrate social value.
- 10.3 Providers seeking to join the Alliance must demonstrate that they have policies and procedures in place that are compliant with Equality Act 2010.
- 10.4 Service specifications under the Alliance state that providers must demonstrate use of local resources, take account of customer's religion and culture, value diversity and promote equality and inclusivity.

11 Environmental and Climate Change Considerations

- 11.1 The tender evaluation criteria and contract terms & conditions include provision on environmental and climate change impact to ensure this is appropriately considered.
- 11.2 By ensuring a range of good quality local provision in the county, local residents are enabled to remain living in Wiltshire. Travel and associated fuel costs and usage for families are reduced along with related fuel emissions.

12 Risks that may arise if the proposed decision and related work <u>is not</u> taken

- 12.1 This will create additional financial pressures for the Council from increased spot purchasing where the Council has less control on price. The price of currently utilised block and framework beds will also likely increase significantly as these contracts expire on 31st March.
- 12.2 Delay beyond 1st April for the implementation of draw down contracts will create an interim period of increased cost and negotiation on expiring block capacity.

13 Risks that may arise if the proposed decision <u>is</u> taken and actions that will be taken to manage these risks

13.1 Due to challenging trading conditions in the care home market such as abnormally low utilisation amplified by COVID-19, providers may use the Alliance and draw down contract procurements to inflate price. Mitigation exists through the provisions for managing price in section 5 above.

- 13.2 Rigorous oversight and management of empty beds (voids) will be carried out to ensure effective use of block contract beds.
- 13.3 Delay in the project timeline: Officers continue to ensure sufficient engagement across Council functions to support this project and deliver to the required standard within the indicative project timeline in Appendix 1. A risk and issues log is in place and regularly reviewed.

14 Financial Implications

14.1 The Alliance will be managed and delivered within existing resources, a summary of which is provided below. The block contract budget is based on the number of block beds that were procured in 2017. Ongoing support budgets include spend for both spot and framework beds.

FY Budgets & projected spend in 2020/21 for budgets relevant to the Alliance					
Budget	2020/21 Budget	2019/20 Outturn position			
Adult Care Nursing Placements- Block Contracts	£5,746,970	£5,205,878			
Ongoing Support residential spot placement budget	£14,896,260	£15,412,157			
Ongoing Support nursing spot placement budget	£8,919,340	£9,157,028			
Total	£30,562,570	£29,775,063			

- 14.2 Actual spend for the 2019/20 across block, framework and spot care home beds was £29,775,063 (excluding the Council's residential care block contract with OSJCT which is out of scope). Budgets in 2020/21 are greater than the 2019/20 outturn position. Projections for an outturn position in 202/21 are complicated by the impact of additional government funding for these services in relation to COVID-19. The overall picture however is expected to remain challenging.
- 14.3 In recent years there has been a small decrease in block bed availability while over the same time while there has been an increase in demand for nursing care. This has increased use of beds outside of the block contracts, with an impact on overall spend.
- 14.4 The table below illustrates the significant difference between the average cost of nursing block beds against the much higher cost of spot purchased beds. Frameworks are typically seen to also provide better rates than spot beds except for enhanced nursing beds, suggesting further opportunity for improved value.

Average weekly bed rates (Dec, 2020)

*indicates a combined average or standard and average spot purchased beds (where separate averages for 'standard' and 'enhanced' beds are not available)

Red Type (NB: nursing costs are exclusive of funded nursing care (FNC) payable by the NHS)	Current Block	Current Framework	Current Spot
Nursing (standard)	£623.22	£716.58	£803.06*
Residential (standard)	NA	£712.02	£801.26*
Nursing (enhanced / EMI)	£702.18	£826.49	£803.06*
Residential (enhanced / EMI)	NA	£784.31	£801.26*

- 14.5 Draw down contracts support positive market management and give greater control to the Council on spend because rates, terms and conditions have been agreed up front. This reduces the reliance on other beds with a more expensive unit cost.
- 14.6 However, care must be taken to ensure block beds are appropriately utilised and deliver value for money as the impact of voids on block contracts reduces the value for money offered by the headline rate.
- 14.7 FNC is paid by the NHS in respect of individual service users who are eligible. For block nursing contracts, officers should consult and secure agreement from local NHS commissioners prior to the procurement for draw-down contracts to confirm arrangements for paying Funded Nursing Care (FNC) in respect of void beds. This is necessary to avoid any additional financial impact on the Council.
- 14.8 In transitioning to the Alliance, providers may seek to submit increased costs for block and framework drawdown contracts. Increases in weekly bed rates can be mitigated through better controls through the tender process, effective management of voids and as identified in section 5 above, implementing a published placements process and the findings of an actual cost of care exercise.

15 Legal Implications

- 15.1 Any procurement process must be undertaken in line with the provisions of Part 9 (Financial Regulations), Part 10 (Contract Regulations) of the Council's Constitution, as well as the Public Contracts Regulations (2015, PCR).
- 15.2 Decisions for the award of new contracts and all associated documents in respect of the Alliance and draw-down contracts may be delegated to the Director Joint Commissioning in consultation with the Cabinet Member for

- Adult Social Care, Public Health and Public Protection and the Corporate Director of Resources in accordance with the Council's Scheme of Delegation.
- 15.3 Appropriate contract documents support the compliant and effective delivery of services and support the Council in ensuring its statutory duties are upheld through commissioning services from the private care market. Legal Services are supporting the project and ensuring the contractual documentation required is robust and fit for purpose.
- 15.4 Non-compliance with the Constitution, the Public Contract Regulations and the general principles of contract law could result in a legal challenge. However, this risk is minimised through a robust procurement process and involvement of the Council's Strategic Procurement Hub.
- 15.5 As identified in 5.10 above, in consultation with providers, officers are seeking to undertake an 'Actual Cost of Care' exercise for care home beds in Wiltshire in consultation with providers. Due to potential conflicts of interest/compliance with procurement laws, only certain officers are involved with this as a separate exercise to the current procurement. Confidentiality agreements have been signed with providers.

16 Workforce Implications

- 16.1 These proposals relate to a continuation of current activity which is delivered through external providers. There is no direct impact on the Council's own workforce.
- 16.2 Care Homes play a key role in community care & support services. The Alliance's focus on developing care models beyond the traditional is inkeeping with wider workforce strategy goals for demonstrating the social care sector as a rewarding place to work with good opportunities for career development; driving enhanced recruitment & retention rates and better availability of care for those that need it the most.

17 Conclusions

- 17.1 With existing nursing block and residential/nursing frameworks coming to an end in March 2021, a new commissioning and procurement platform for care homes activity is required.
- 17.2 Available evidence and market conditions suggest the Alliance platform is the most effective option to secure value for money and security of supply for the Council, while ensuring fairness and equal opportunity to care home providers in bidding for block contracts.
- 17.3 Therefore this report makes the following specific proposals:
 - 17.3.1 The development and implementation of a new commissioning and procurement platform for nursing and residential beds in Wiltshire. This platform will be in the form of a pseudo-dynamic purchasing system known as the 'Care Home Alliance', or 'Alliance'.
 - 17.3.2 Under the Alliance, 'Draw Down Contracts' can be tendered for by the providers who are Alliance members. This enables the Council to be

- more flexible if it needs to tender at short notice as it has due to COVID and winter pressures.
- 17.3.3 As identified in appendix 1 (Indicative Procurement Timeline), the Alliance will commence on 8th February 2021. The first 'Draw Down Contracts' will be tendered in February 2021 with contract commencement on 1st April 2021. These contracts will be for:
 - a. Block contract nursing beds
 - b. Framework contract beds for both nursing and residential care
 - c. 'Passive' nursing and residential care services required on an adhoc basis (as identified in the Alliance tender documentation) to enable the Council to quickly and compliantly secure services in response to urgent system need and its strategic priorities.
- 17.3.6 To delegate authority to make decisions associated with the procurement and award new contracts and all associated documents to the Director Joint Commissioning in consultation with the Cabinet Member for Adult Social Care, Public Health and Public Protection and the Corporate Director of Resources.
- 17.3.7 That officers will continue to assess demand and market conditions and urgent care system needs to review the level of block beds required under the Alliance.

Helen Jones (Director - Commissioning)— Director Joint Commissioning

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Appendices

Appendix 1	Indicative Procurement Timeline
Appendix 2	Equalities Impact Assessment (EQIA) risk assessment summary

Appendix 1 Indicative Procurement Timeline

Project Stage	Date
Stage 1: Alliance procurement programme	
Market Engagement	10.12.20
Tender publication	14.12.20
Pro-contract support session	05.01.21
Deadline for questions submitted via pro-contract	06.01.21
Deadline for responses to questions circulated to all tenderers	08.01.21
Closing date for submission of tenders (15.00)	15.01.21
Tender Opening	18.01.21
Tender Evaluation	19.01.21
Approval to award report	29.01.21
Care Home alliance commences	08.02.21
Stage 2: Tender for block and framework draw down contracts	
Tender publication	08.02.21
Pro-contract support session	15.02.20
Deadline for questions submitted via pro-contract	19.02.21
Deadline for responses to questions circulated to all tenderers	22.02.21
Closing date for submission of tenders (15.00)	28.02.21
Tender Opening	01.03.21
Tender Evaluation	02.03.21
Approval to award report	20.03.21
Draw down contracts commence	01.04.21

Section 5

Conclusions drawn from the impact of the proposed change or new service/policy

- The commissioning and procurement of nursing and residential, block and framework beds across Wiltshire will support equitable access to any individual to have their assessed needs met in an appropriate setting.
- A positive impact to ensure that the Care Home Alliance provides services that are designed to meet the needs of the people who use them. Residents and their family/carers will have access to high quality care services which are person centred, treat people with dignity and respect, keep people safe, offer real choice and control, promote independence and social inclusion and are supported by highly skilled and dedicated staff.
- The specification of future services will state that providers are expected to demonstrate social value.
- Commissioners will require the provision of services which take account of and are committed to ensuring that the organisation values diversity and promotes equality and inclusivity on all aspects of its business.
- The procurement process ensures that organisations entering into a contract with the Council must have their own policies and procedures in place to comply with the Equality Act 2010.

Section 6

How will the outcomes from this equality analysis be monitored, reviewed and communicated?

- ➤ The performance of the Care Home Alliance will be monitored by the Commissioners in the Adult Commissioning Team.
- ➤ A Care Home Alliance Contract Monitoring and Review Group will be developed and will continue during the lifetime of the new contract.
- This group will be attended by Commissioners and Provider Representatives and will be responsible for the continual develop of Care Home Services and will work with the providers to identify and implement opportunities for improvements in service delivery.