

## Wiltshire Council

### Cabinet

14<sup>th</sup> December 2021

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**Subject:** **Block and framework contracts for care homes beds on the Wiltshire Care Homes Alliance (WCHA)**

**Cabinet Member:** **Cllr Jane Davies, Cabinet Member for Adult Social Care, SEND, Transition and Inclusion**

**Key Decision:** **Key**

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#### **Executive Summary**

- 1 This report concerns proposals to procure nursing and residential care contracts through the Wiltshire Care Homes Alliance (WCHA).
- 2 On 5<sup>th</sup> January 2021 Cabinet agreed proposals to develop and implement a new commissioning and procurement platform for nursing and residential beds in Wiltshire. This platform is in the form of a pseudo-dynamic purchasing system known as the Wiltshire Care Homes Alliance. Cabinet at this time also agreed to run a Mini-Competition for the provision of block and framework nursing care beds, and framework residential care beds under the WCHA.
- 3 The WCHA platform commenced in February 2021 pursuant to those proposals and currently has 39 member homes out of 93 older people's homes in the local market.
- 4 During March and April 2021 the Council conducted a Mini-Competition as outlined in paragraph 2 of this executive summary. The Council was not able to award contracts due to the prices offered by the market being considered unaffordable.
- 5 The Council mitigated the outcome of the tender through extending existing contracts to support a new tender timeline to deliver new contracts from 1<sup>st</sup> April 2022.
- 6 The outcome of the previous tender has been duly considered as the Council prepares for a new tender intended to be published in January 2022. The Council continues to undertake engagement with providers to ensure that the resulting tender opportunity is better coproduced between providers and the Council.
- 7 Though Cabinet had delegated future decisions relating to the WCHA to Director Procurement & Commissioning in consultation with the Cabinet Member for Adult Social Care, SEND, Transition and Inclusion; the outcome of the previous tender necessitates a new Cabinet decision.

**Proposal(s)**

- 1 The report makes the following specific recommendations:
  - 1.1 That the content of this report is noted.
  - 1.2 That Mini-Competitions are conducted under the WCHA to award contracts for the provision of nursing block beds and nursing and residential framework beds in accordance with the indicative timeline in this report, to establish contracts commencing on 1<sup>st</sup> April 2022.
  - 1.3 To delegate authority to make decisions connected with the procurement and award new contracts and all associated documents to the Director Procurement & Commissioning in consultation with the Corporate Director Resources & Deputy Chief Executive and the Cabinet Member for Adult Social Care, SEND, Transition and Inclusion.

**Reason for Proposal(s)**

- 1 The Council's current block and framework arrangements for nursing beds in Care Homes expire on 31<sup>st</sup> March 2022. Following a compliant tender process, the Council was not able to award contracts due to the prices offered by the market being considered unaffordable. This paper proposes changes to the previous process following feedback from the market and consideration of a pricing model.

**Terence Herbert**  
**Chief Executive**

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#### **Purpose of Report**

- 1 This report concerns proposals for the procurement of nursing and residential care capacity on the Wiltshire Care Homes Alliance (WCHA) platform. The report also updates on the outcome of the previous tender on the WCHA, which was considered by Cabinet in its meeting of 5<sup>th</sup> January 2021.
- 2 The report makes the following specific proposals:
  - a) That the content of this report is noted.
  - b) That Mini-Competitions are conducted under the WCHA to award contracts for the provision of nursing block beds and nursing and residential framework beds in accordance with the indicative timeline in this report, to put in place contracts commencing on 1<sup>st</sup> April 2022.
  - c) To delegate authority to make decisions connected with the procurement and award new contracts and all associated documents to the Director Procurement & Commissioning in consultation with the Corporate Director Resources & Deputy Chief Executive and the Cabinet Member for Adult Social Care, SEND, Transition and Inclusion.

#### **Relevance to the Council's Business Plan**

- 3 This report aligns with Council's emerging Business Plan.
  - a) *Thriving Economy* - Officers have consulted with providers to ensure that these recommendations meet realistic commercial priorities for the local market while still supporting the Council's requirement to deliver best value.
  - b) *Decisions that are evidence based* – These proposals are informed by comprehensive supply and demand modelling, spend and activity analysis and further analysis of best practice in managing demand for care services and shaping care markets sustainably.

- c) *The Right Housing* – These proposals are put forward alongside the Council’s new market position statement for older adults (MPS) which, among its priorities, includes a continued direction to secure supply for people with complex dementia and nursing needs best met in a care home environment.

### **Background**

- 4 On 5<sup>th</sup> January 2021 Cabinet agreed proposals to develop and implement a new commissioning and procurement platform for nursing and residential beds in Wiltshire. This platform is in the form of a pseudo-dynamic purchasing system known as the Wiltshire Care Homes Alliance (WCHA) which commenced in February 2021 pursuant to those proposals and currently has 39 member homes out of 93 older persons’ homes in the local market.
- 5 The WCHA platform is intended to improve access to good value, quality care home capacity. In addition to securing block and framework capacity beds for long term use, it can respond to urgent system need for specialist or bespoke services while being fully compliant with procurement regulations. Furthermore, it creates an improved market shape in which to commission services from private providers in challenging trading conditions. Through the WCHA, providers can participate in Mini-Competitions for the provision of care home services including (but not limited to) residential care and nursing care.
- 6 Cabinet also agreed on 5<sup>th</sup> January 2021 to a specific proposal to conduct a Mini-Competition which would see the first contracts commence on 1<sup>st</sup> April 2021. These contracts were for:
- a. Block contract nursing beds
  - b. Framework contract beds for both nursing and residential care
- 7 The timing of the tender exercise unfortunately coincided with the second peak of COVID-19 which became providers’ principal focus. The indicative timeline to complete the Mini-Competitions was extended to accommodate this, with a revised contract start date of 17<sup>th</sup> May 2021. Existing block and framework contracts were extended to 16<sup>th</sup> May 2021 to provide service continuity, having been due to expire on 1<sup>st</sup> April 2021.
- 8 Following the Mini-Competition, the Council chose not to award any contracts due to the prices submitted being assessed as unaffordable – with a total potential impact of 34% over previous block contract costs. Following that decision, a debrief session was held with providers. This session identified that the prices submitted were higher than expected for various reasons including costs associated with Infection Prevention Control (IPC), uncertainty about rising utilities costs and workforce recruitment and retention pressures.
- 9 The impact of the decision to not award contracts was mitigated by agreeing extensions to existing contracts with providers through to 1<sup>st</sup> April 2022 to

support a new tender timeline. With a small number of exceptions, the majority of existing contracted providers accepted uplifts of up to 5% (block contracts) and 2.97% (framework).

- 10 Although the Council was not able to award contracts under the WCHA's first tender programme, there is still confidence that the WCHA remains the most effective long-term platform for commissioning care home beds from the open market. In creating the WCHA, the Council is striving to work in a collaborative manner with providers to create a sustainable and vibrant care home market that supports the needs of the residents of Wiltshire.
- 11 The Council has undertaken engagement with the local provider market since the decision not to award contracts to shape the new tenders. This has included two market engagement events, meetings with Wiltshire Care Partnership and feedback from 16 providers on the service specification.
- 12 Key changes since the last tender to reduce the risk of unaffordable prices and failure to attract quality tenders to meet demand are:
  - a. The Council will move to paying gross rather than net. This will reduce financial risk and administrative burden on providers
  - b. Establishing lots so the Council has flexibility to award contracts for those lots that meet the requirements
  - c. Lots for Complex Care have been added. This will allow the Council to provide services to a specific cohort of customers with complex needs whilst bringing down the price of the main block. The reason for this is, currently, providers will submit prices for beds that fall into the category of Complex Care when tendering for the main block, elevating the price of the main block. This distinction will enable providers to bid for the services that are best suited to their operating models and prices will be relevant to the types of care and support that is being delivered
  - d. The agreements awarded will commence on the 1<sup>st</sup> April 2022 and have a natural expiry date of 7<sup>th</sup> February 2027. Tender prices will be agreed for the first 2 years and an uplift applied for year two using a formula which will be set out in the contracts.
  - e. Price bands have been put in place for Lot 1- by creating bands (rather than allowing tenderers to submit prices with no banding or benchmark) that are based on prices that the Council already pays for similar types of care, exposure to increased prices is limited
  - f. The Council has added a break clause of 2 years for the block beds to prevent frontloading of prices and to understand the implications of legislative changes expected following the Health & Care Bill 2021.

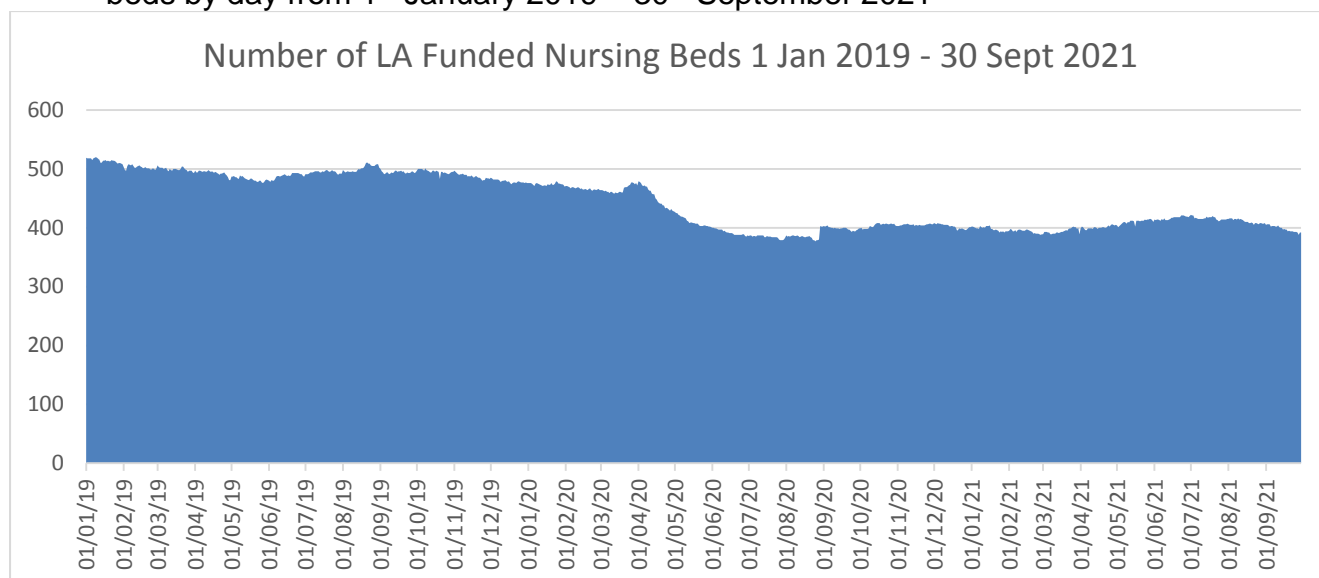
### **Main Considerations**

- 13 This paper's proposals relate to the commissioning and procurement of care home beds intended for long term occupancy. As such these beds are a vital

part of Wiltshire’s future commissioning intentions as articulated through its market position statement (MPS) and in items 20-22 below.

Supply and Demand

- 14 *Bed Occupancy* - The graph below details the number of LA funded nursing beds by day from 1<sup>st</sup> January 2019 – 30<sup>th</sup> September 2021



- 15 The Projecting Older People Population Information System (POPPI) forecasts that the following volumes of people aged 65 and over will be residing in either a local authority or non-local authority care home with or without nursing in Wiltshire.

	2020	2025	2030	2035	2040
People aged 65-74 living in a LA care home with or without nursing	8	8	9	10	10
People aged 75-84 living in a LA care home with or without nursing	19	24	25	26	31
People aged 85 and over living in a LA care home with or without nursing	37	43	51	65	70
People aged 65-74 living in a non-LA care home with or without nursing	313	319	366	399	392
People aged 75-84 living in a non-LA care home with or without nursing	1,031	1,282	1,370	1,418	1,643
People aged 85 and over living in a non-LA care home with or without nursing	2,097	2,387	2,869	3,628	3,918
<b>Total Population aged 65 and over living in a care home with or without nursing</b>	<b>3,506</b>	<b>4,062</b>	<b>4,690</b>	<b>5,546</b>	<b>6,063</b>

- 16 On the 14<sup>th</sup> October 2021, there were **3,602** people aged 18 and over living in a care home with or without nursing in Wiltshire. Of these people **1,381** were funded by Wiltshire Council
- As of 30 September 2021, **392** (local authority funded placements) Wiltshire residents aged 18+ were living within a nursing home

- The MEAN average number of Wiltshire residents aged 18+ living within a nursing home for the period 1<sup>st</sup> January 2021 – 30<sup>th</sup> September 2021 is **404** (local authority funded placements)

17 POPPI forecasts that Wiltshire will experience the following increases in people living in care homes over the course of 20 years.

2020 - 2025	2025 - 2030	2030 - 2035	2035-2040
15.86% Increase	15.46% Increase	18.25% increase	9.32% increase

18 If the same forecasted increases to the MEAN average of Wiltshire residents aged 18+ living within a nursing home (**404**) are applied, then the average number of people forecasted to reside in nursing care homes is:

2025	2030	2035	2040
468	540	639	758

19 If the POPPI forecasted increase of 15.86% (forecasted increase between 2020 – 2025) is divided by 5 = 3.17% (Indicative yearly increase). Applying the 3.17% increase yearly, gives an estimate of LA funded nursing bed demand, 2021-2024.

2021	2022	2023	2024
404	417	430	444

Volume of beds and type of beds required

20 By analysing 2021 new package starts it can be seen that the demand for beds per area is: north 31%, south 29% and west 40%.

21 The proposed block is below:

Total proposed block	Based on a total block of 311 <i>(311 is 70% of the 444 estimated LA funded nursing bed demand in 2024, as per items 19 and 22)</i>
North	95 Block Beds
South	89 Block Beds
West	127 Block Beds

22 The current MEAN average occupancy (2021 – LA funded placements) is made up of the following:

- 29% Block
- 44% Spot
- 23% Framework
- 3% Deferred loans / 12-week rule

It is intended over time to shift the bed base to:

Block	70%
Framework	25%
Spot	5%

### Commissioning Intentions

- 23 The Council's commissioning intentions for care homes are articulated through its market position statement for older adults (MPS). The MPS helps providers plan business models to support the Council's vision of social care and specialist accommodation provision.
- 24 Key principles of the MPS include a focus on prevention and early intervention, commissioning support that promotes independence, helps people live in their own homes and which promotes a partnership and systems-based approach to manage demand.
- 25 The Council is also developing an accommodation strategy to further outline its approach, which is intended to be considered by Cabinet in April 2022. Ahead of the accommodation strategy, the MPS gives an early indication to Wiltshire Council's strategic priorities for care homes specifically -
- Recognising the ongoing need for care homes in Wiltshire that can provide the right environment and suitably qualified staff to support an increasing number of older adults with complex nursing and specialist needs.
  - Reducing the overall number of people who are permanently admitted to care homes; aspiring only to place people who can no longer safely live at home and who have complex nursing or specialist needs.
  - Enabling more people that require personal care to remain in their own homes with the help of technology enabled care and innovative community-based care models.

### Pricing and Value for Money

- 26 It is common practice for care home providers to charge different rates for customers assessed with 'standard', 'enhanced' or very complex needs as well as a difference between block and framework prices.
- 27 The procurement will be published as a single opportunity made up of 5 lots:
1. Main Block – Nursing standard and enhanced
  2. Complex Care – Residential
  3. Complex Care – Nursing
  4. Flexible Framework Residential – Standard and enhanced
  5. Flexible Framework Nursing – Standard and enhanced
- 28 Services have been separated into different lots as it will give flexibilities over:
- Pricing mechanisms (making them appropriate to each service type)
  - Contract lengths (Complex Care has a shorter contract length)
  - The ability to award one or all the services without abandoning the whole procurement if prices in some of the lots did not meet the Council's requirements



- 29 The aggregate indicative annual contract price for the current nursing block contracts is £5,375,302.40. This is based on the contract bed volumes and rates agreed subsequent to the decision not to award contracts in the 2020 tender.
- 30 For the period 1 April – 30 September 2021 the Council's data identifies a void level of 7.2% in nursing block beds, which is within the range of reasonable expectation for efficiently run block contracts.
- 31 The price/quality split will be 70% Price 30% Quality for lots 1, 2 and 3. Tenderers will be asked to submit a price for flexible framework beds, but there will be no marks available for price or quality as:
- a) there is no obligation to either buy or sell the beds, and
  - b) quality is assessed when providers initially join the WCHA and is subject to regular monitoring and review.

For lot 1 the 70% price will be made up of weighted score where the price for a standard bed represents 1/3 of the available score and the enhanced bed price makes up 2/3 of the available score. This approach represents our current purchasing behaviour.

### **Lot 1 – Main Block – Nursing**

- 32 It is proposed that for this lot the Council will use price bandings. The banding for standard beds is between £707 and £840 and for enhanced is between £752 and £914 per week net of NHS Funded Nursing Care (£187 per week). The tenderer who submits the lowest price within that band will be awarded 100% of the available marks. Prices that are greater than that will receive a percentage of the available score until they reach the maximum price. Anything submitted that is greater than the maximum price will have their submission rejected deeming it non-compliant.
- 33 We propose to purchase the following number of block beds in this lot:

Area	Number of beds
West	127
North	95
South	89

### **Lots 2 and 3 – Complex Care**

- 34 The Council currently purchases this type of care via a variety of methods (spot, block or framework with additional support costs to meet customer needs). As a result, it is not possible to identify a banding or benchmark pricing figure for this type of care. Therefore, the Council will tender for small

blocks asking tenderers to submit a price. This will allow the Council to get an understanding of those prices, but it will also allow providers, who would submit prices for such care as part of the main block, to submit a price for the type of care that they deliver. This should take some price pressures off the main block. Tenderers will have to provide a narrative in relation to the additional costs that this type of care brings and how that affects the price we pay per bed. This will inform decision making for the future.

35 The following number of beds will be purchased initially:

Lot	Minimum Number of Beds	Maximum Number of Beds
2 Complex Care Residential	5	10
3 Complex care Nursing	5	10

#### **Lots 4 and 5 – Flexible Framework**

36 During the last tender the Council asked providers to submit prices for standard and enhanced nursing care and residential care without providing any wording in relation to what we currently pay and our expectations around the price. It is proposed that this time, the tender will give guidance about the current prices and the need to submit prices that are competitive, value for money and do not exceed the average price that can be achieved when making a spot placement (£915 per week).

#### **Uplift Mechanism**

37 In the previous tender, the Council said that it may conduct an internal fee setting review on an annual basis but made no firm commitment to do so. This time the Council proposes to offer an uplift on an annual basis made up of the following basket of goods on the basis of the percentage change in 3 indicators, namely EARN03 (Q), which tracks the change in wages and salaries paid to staff in social care and health, CPI, the change in average consumer prices, and BCIS Maintenance Cost indices. In doing this, the Council will be able to offer tenderers an uplift that adequately represents their costs and should help mitigate against providers submitting high prices due to uncertainty around how uplifts will be managed.

38 There are going to be potentially significant changes during the next two years as announced in the Health and Care Bill 2021. Some of these may have a direct impact on the price the Council pays as well as the way in which we work with our care home providers. By requesting a price only for the first two years of the block contract, the Council hopes to avoid the front loading of prices and enable any changes in legislation to be implemented. It is also anticipated that the Government will mandate a cost of care framework. A break point at the end of year two will enable either party to walk away if there is no agreement on prices for years 3, 4 and 5 of the block contracts. Any

Alliance members who were not successful in the January 2022 tender (or who chose not to bid) would be able to bid for contracts for up to three years after the initial 2 years.

- 39 The Council operates a Care Placements Process which supports placement activity on the WCHA and spot placements. The process sits outside of contract terms and conditions and provides guidance and clarity for providers and the Council's brokerage staff on how referrals are prioritised i.e. purchase block first, then framework and finally spot beds, ensuring value for money is able to be considered alongside client choice and control and the appropriateness of a particular bed to client need.

#### Market Readiness

- 40 Since the decision not to award drawn down agreements following the Mini-Competition exercise earlier in 2021, the Council has undertaken engagement with providers to ensure there is a good state of market readiness to respond to this report's proposals. This engagement is still ongoing.

#### **Overview and Scrutiny Engagement**

- 41 A briefing on these proposals was undertaken on 23<sup>rd</sup> November 2021 for the Chairman and Vice-chairmen of the Health Select Committee and the Chairman of the Financial Planning Task Group. There was support for the approach being taken and the Health Select Committee will consider taking a future update following the tender exercise later in 2022.

#### **Safeguarding Implications**

- 42 WCHA contract arrangements with care home providers contain robust safeguarding measures in line with Council policy and give clear direction on safeguarding policy process.

#### **Public Health Implications**

- 43 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.
- 44 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.

#### **Procurement Implications**

- 45 The procurement for the services outline in this paper will be conducted as Mini-Competition under the WCHA.
- 46 The WCHA is a pseudo-dynamic purchasing system purchasing platform that allows the Council to conduct Mini-Competitions for a variety of care home services. The pseudo-dynamic purchasing system (better known as the WCHA) was created in line with the Public Contracts Regulations (2015) (PCR) Light Touch Regime (regulations 74-76).

47 The Mini-Competition will be conducted in line with what has been set out under the WCHA and the PCR. Therefore, the providers who have joined the WCHA will be invited to participate in the Mini -Competition.

48 The WCHA has an expiry date of the 7<sup>th</sup> February 2027 with the option to extend for a further two years in one-year increments. The current proposals for the contracts are:

- **Lot 1 – Main Block**

- Contract commences on the 1<sup>st</sup> April 2022 and has just under a 5-year term (expires on the 7<sup>th</sup> February 2027)
- At the two year point we review prices and agree what they will be for years, 3, 4 and 5 (see further detail in item 38).

- **Lots 2 and 3 - Complex Care**

- Contract commences on the 1<sup>st</sup> April 2022 and has an initial term of 1 year with the option to extend for one year

- **Lots 4 and 5 - Flexible Framework**

- Contract commences on the 1<sup>st</sup> April 2022 and expires on the 7<sup>th</sup> February 2027

### **Equalities Impact of the Proposal**

49 An initial EQIA risk assessment was undertaken to support the implementation of the WCHA 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 1 with a full copy available on request.

50 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.

51 WCHA members must demonstrate that they have policies and procedures in place that are compliant with Equality Act 2010.

52 Service specifications under the WCHA state that providers must demonstrate use of local resources, take account of customer's religion and culture, value diversity and promote equality and inclusivity.

### **Environmental and Climate Change Considerations**

53 The tender evaluation criteria and contract terms & conditions include provision on environmental and climate change impact to ensure this is appropriately considered.

54 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.

**Risks that may arise if the proposed decision and related work is not taken**

- 55 Risks associated with the current contracts expiring. The Council may have limited legal rights to further extend existing contracts. Were this to be the case, the only means at the Council's disposal would be to award multiple spot contracts in respect of each individual care home placement whilst ensuring compliance with Part 10 of the Constitution i.e. if over £25k will have to obtain 3 quotes unless exemption secured. There would be a significant resource requirement to implement such an arrangement.

**Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

- 56 Contracts not able to be awarded due to a repeat of the high price submissions in the previous tender or low interest among providers for submitting bids. Each scenario is mitigated by the detailed work being undertaken in respect of:
- a. Pricing models to ensure that the tender opportunity is commercially attractive while remaining affordable to the Council.
  - b. Close continued engagement with care providers and in particular Wiltshire Care Partnership to demonstrate how the Council has responded to providers' feedback from the previous tender.

**Financial Implications**

- 57 Budgeted expenditure on Nursing Home placements amounts to £16.31m in 2021/22 and is provided through a mixed economy of block purchased and spot purchased beds.

Budget Area	Budget £m	Budgeted Client Numbers	Budgeted Price	Forecast Client Numbers	Forecast Average Price	Forecast Spend (£m)
Access & Reablement	7.95	180	849	173	864	7.55
Mental Health, including Working Age & Older People	3.30	65	968	66	966	3.22
Commissioning Block contract	5.06	152	639	118	718	4.31
<b>Total</b>	<b>16.31</b>	<b>397</b>	<b>788</b>	<b>357</b>	<b>834</b>	<b>15.08</b>

- 58 As shown in the table above, the budget for 2021/22 allowed for 397 placements to be purchased at an average price of £788 per week. A combination of factors arising both directly and indirectly from Covid have mean that the number of beds purchased this year is forecast to be down by c 10% at 357 placements; forecast prices are broadly steady, except for the block contracts where they have increased from £639 to £718 per week.

- 59 It is unclear whether the reduction in demand is part of a trend or is a one-off step change. The Medium-Term Financial Plan implicitly assumes the latter and builds in demographic growth in line with POPPI and PANSI predictions. Inflation is also built in to the MTFP in line with long term average increases in CPI, 2%.
- 60 A 1% increase in either prices or demographics represents expenditure of c £150,000. Note that the underspend on Nursing Care shown in the table above does not equate directly to an underspend for Adult Social Care; it is indicative of a change in the way that care is delivered with more care being delivered at home to more people.
- 61 The financial implications that arise from the tender are complex, and very much depend on the prices that are achieved through the tender, and the resulting mix of block purchased, framework purchased, and spot purchased beds. In addition, decisions on whether new prices will apply to existing placements, or only apply to new placements, will determine whether there is an instant or phased approach to any pressures or savings that might arise.
- 62 Providers will be invited to tender within a price range. If prices are in general at the upper end of the scale the potential financial impact in the most pessimistic scenario is a pressure of £2.5m. If prices are at the bottom end of the scale and coincide with a move to a greater percentage of beds being purchased via the block, then in the most optimistic scenario there would be a very marginal saving of £0.034m.
- 63 Any prediction is dependent upon assumptions. It would be prudent to consider as a reasonably likely outcome that prices will tend towards the middle of the range, with uplifts on current placements being in line with current MTFP projections. If so, there would be a financial pressure of £0.440m after 2 years. This needs to be weighed against the risk of not going out to tender and being subject to the risk of all placements being purchased on a spot basis.

### **Legal Implications**

- 64 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). The Wiltshire Care Home Alliance takes the form of a pseudo-dynamic purchasing system procured in accordance with Regulations 74 – 76 under the PCR.
- 65 Legal Services have been involved in the establishment of the Wiltshire Care Home Alliance and have advised on and produced the associated terms and conditions.
- 66 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.

- 67 Legal Services will continue to support the project and ensuring the contractual documentation required is robust and fit for purpose.
- 68 Non-compliance with the Constitution, the PCR 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.
- 69 The Council must have due regard to the duty of achieving best value and to its broad responsibilities at section 5 of the Care Act. In addition, the Council must ensure that decision making during the set-up, implementation and during the contract term remain fair and proportionate and that there is good record keeping and robust reasons for decision which are consistent with the statutory framework, the Care Home Alliance, contracts and the Care Placements Process.

### Workforce Implications

- 70 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.
- 71 Care Homes play a key role in community care & support services. The WCHA's focus on developing care models beyond the traditional is in-keeping 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.

### Options Considered

- 72 The following options were considered to inform this report's proposals –

Option	Rationale	Why not pursued
<p><b>1.</b> <i>Tender for framework beds only</i></p>	<p>Limits exposure to potentially high-cost voids.</p> <p>More time to resolve cost issues on nursing beds and impact on Council budgets</p>	<p>Impact on market relationships and loss of secure bed capacity</p> <p>Issues re: tender price, cost and budgets are satisfactorily covered by the preferred option and approach to costing</p>
<p><b>2.</b> <i>Extend tender timeline</i></p>	<p>To accommodate a cost of care exercise being undertaken prior to any tender</p>	<p>Alternative ways of managing potential increased prices and understanding what an acceptable price is have been considered in the Council's preferred option. It is therefore not necessary to undertake a</p>

		<p>cost of care exercise prior to a tender.</p> <p>Impact on market relationships and loss of secure bed capacity</p> <p>In the light of an anticipated national cost of care framework, the length of any extension is unknown and could result in uncertainty for an extended period</p> <p>Limited ability to put in place further extensions to current blocks increases Council's exposure to spot contracting</p>
<p><b>3.</b> <i>Stop tender</i></p>	<p>While the block tender prices increased significantly in the first tender, internal Council data shows that spot purchased beds prices have experienced lower increases and, in some cases, have decreased (new nursing placements in particular are being made at a lower price than last year)</p> <p>A number of Local Authorities do not have block or framework beds</p>	<p>Does not secure guaranteed bed availability which could have a significantly detrimental impact on flow</p> <p>Not viable to continue to extend current contracts. Evidence base re: decrease in spot prices requires deeper scrutiny</p> <p>Maturity of brokerage function and potential increase in costs to manage purchasing all beds as spot and ensure best value</p> <p>Risk to market relationships</p>
<p><b>4.</b> <i>Proceed with tender on existing timeline:</i>  <i>Publish ITT on 10<sup>th</sup> January 2022.</i></p>	<p>Secures capacity to meet demand</p> <p>Maintains relationships with the market</p>	<p>This is the Council's preferred option</p>



New contracts start: 1 <sup>st</sup> April 2022	Removes risk re; extension of current contracts	
	Enables the Council to more effectively manage cost	
	The Council has made significant changes to the specification and tender process to reduce the risk of costs it is unable to afford	

73 After due consideration of the above, the Council's preferred option is Option 4.

#### Indicative Timeline

74 The indicative timeline is as follows:

<b>10/01/2022</b>	<b>Tender go-live</b>
20/01/2022	Deadline for questions submitted via pro-contract (12:00 hrs)
27/01/2022	Deadline for responses to questions circulated to all tenderers
07/02/2022	Closing date for submission of tenders (10:00 hrs)
<b>07/02/2022</b>	<b>Tender Opening</b>
08/02/2022 –	
28/02/2022	Tender Evaluation and Moderation
28/02/2022	Moderation
04/03/2022	Award - Notify Preferred Provider
04/03/2022	Standstill - start
14/03/2022	Standstill - end
08/03/2022	Tender award and Contracts issued
01/04/2022	Contract Commencement

#### Conclusions

75 The report makes the following specific proposals:

- a) That the content of this report is noted.
- b) That Mini-Competitions are conducted under the WCHA to award contracts for the provision of nursing block beds and nursing and residential framework beds in accordance with the indicative timeline in this report, to establish drawn down agreements commencing on 1<sup>st</sup> April 2022.
- c) To delegate authority to make decisions connected with the procurement and award new contracts and all associated documents to

the Director Procurement & Commissioning in consultation with the  
Corporate Director Resources & Deputy Chief Executive and the  
Cabinet Member for Adult Social Care, SEND, Transition and Inclusion.

**Helen Jones, Director of Procurement & Commissioning**

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Report Author(s):

Vincent Edwards, Head of Adults Commissioning, 01225 713749 /

[vincent.edwards@wiltshire.gov.uk](mailto:vincent.edwards@wiltshire.gov.uk)

**Appendices**

Appendix 1 – Equalities Impact Risk Assessment (EQIA) Summary

**Background Papers**

None

## Appendix 1

### Equalities Impact Risk Assessment (EQIA) Summary

#### **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 Wiltshire 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 for future services states 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 Wiltshire Care Home Alliance will be monitored by the Commissioners in the Adult Commissioning Team.
- A Wiltshire 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 development of care home services and will work with the providers to identify and implement opportunities for improvements in service delivery.