

Divisions Affected –

CABINET

21 November 2023

Purchasing Framework for Care Homes

**Report by Corporate Director of Adult Social Care
CABINET**

RECOMMENDATION

1. The Cabinet is **RECOMMENDED** to
 - a. **Approve the new care home banding model and note the engagement of the market and partners in its development.**
 - b. **Approve the implementation of an integrated purchasing framework with the Buckinghamshire, Oxfordshire, and Berkshire West Integrated Care Board and to implement the new Care Home Banding model.**
 - c. **Approve the revision of the s75 NHS 2006 agreement with the ICB to support implementation of the model and to delegate authority to agree further amendments to this agreement to the Corporate Director of Adult Social Care in consultation with the Director of Law and Governance.**

Executive Summary

2. The Council and the Buckinghamshire, Oxfordshire, and Berkshire West Integrated Care Board (ICB) plans to implement an integrated care home purchasing framework to source residential and nursing home beds for over 18-year-olds in Oxfordshire and within a 10-mile radius of the County boundary. This will cover adults who have been assessed as eligible under either the Care Act 2014 or under the NHS Continuing Health Care (CHC) Framework and who require a care home placement to meet their care needs.
3. This new purchasing framework will apply to all beds in scope from May 2024 to May 2027 with the opportunity to extend to May 2029. The framework is based on a new Care Homes Banding model which will enable the Council and the ICB to meet their obligations respectively under the Care Act 2014, NHS Continuing Healthcare Framework and s117 Mental Health Act 1983. The model will support the Council and the ICB to meet their spending, efficiency, and performance targets, and to deliver key national and local dependencies such as Council and NHS Choice Policies, the NHS national Hospital Discharge Policy, the Better Care Fund, the CQC regulatory regime and the implementation of the Oxfordshire Way.
4. The Business Case that supports the procurement of the care home purchasing framework will be approved by the Corporate Director of Adult Social Care exercising their delegated authority and by the ICB under its governance arrangements. The procurement is to secure a framework of residential and nursing home providers through which the Council will source individual

placements on a call-off contract basis against the care bandings set out in the model.

5. This paper is presented to Cabinet to approve the principle of entering into an integrated care homes purchasing framework with the ICB. Under the proposed framework the Council will:
 - a. Procure and maintain the care homes framework on behalf of both parties.
 - b. Enter into framework contracts that provide for the purchase of both health and social care services
 - c. Broker individual placements on behalf of the ICB
 - d. Enter into call-off contracts in line with the care bandings set out in the model funded by adult social care and NHS Continuing Healthcare (CHC)
 - e. Manage those call-off contracts including those funded by CHC.
6. There are several implications for the respective roles and liabilities of each party within the contract structure and for the s75 NHS Act 2006 agreement between the Council and the ICB which will need to be resolved prior to implementation in May 2024.
7. This integrated purchasing approach develops the relationship between the Council and the ICB which was initiated in the formation of the Health, Education and Social Care Integrated Commissioning Team (HESC) in March 2021. The ICB Executive Management Committee approved the model and approach at its meeting on 23 October 2023.
8. This integrated purchasing approach builds on existing joint commissioning approaches and supports integration between health and social care for the benefit of our population and partnership with the provider market.

Exempt Information

9. Not applicable.

Background

10. The Council and the ICB jointly support an approach where more people who meet the thresholds for care should be supported in their own homes or in supported living or extra care housing. We should only consider a care home placement for meeting long term needs where this offers the most person-centred, efficient, and sustainable way of meeting the assessed care needs. In line with the *Oxfordshire Way*, this has been at the forefront of our thinking when developing this model. For the Council this supports delivery of the Better Care Fund target to reduce the number of permanent adult social care funded residential placements over time.
11. The Council currently purchases, and has historically purchased, care home beds for long-term care from several sources:
 - a. Within the block contract agreement with the Oxfordshire Care Partnership and delivered by the Order of St John Care Trust. These arrangements fall outside of the proposed new purchasing framework and will continue to be the primary source of residential and nursing home beds for the Council.

- b. From a Dynamic Purchasing Framework which has expired. Some contracts have been extended on an interim basis, but this framework needs to be replaced to ensure a legal basis for new contracts going forward.
- c. On a spot basis exceptionally when unable to source suitable vacancies under 11a and 11b above.

12. The ICB purchases beds mostly on a spot purchase basis.

13. The Council and the ICB jointly purchase 25 beds in a block arrangement for people with complex dementia presentations. The Council contracts on behalf of the ICB for these beds. The beds are funded either by adult social care or by CHC and charged back to the Council and the ICB respectively.

14. The current arrangements are cumbersome and inefficient for both partners:

- a. They rely heavily on individual negotiation around care needs and around the resulting fee required by the provider. This can create delay for the person needing care and capacity challenges for brokers and operational staff where negotiations become extended. On average it takes 1-2 days to negotiate a cost for individual care home beds. On occasions this could take up to a week.
- b. The current model does not support cost controls and complicates our ability to forecast future spending commitments when fees are largely determined on a case-by-case basis.
- c. The separate purchasing approach also means that the Council and the ICB are competing for places within the marketplace. This works against developing a strategic relationship with the care home sector in Oxfordshire.
- d. For the Council the separate purchasing approach also can lead to inheriting high-cost cases when people drop out of NHS CHC funding and revert to adult social care

15. Our proposal is to address these issues via:

- a. An integrated purchasing framework approach within HESC for adult social care and NHS CHC funded residential and nursing care.
- b. A care model based on defined care bands that will apply to and work for both adult social care and CHC (See paragraph 16).
- c. One system for all purchasing of care home beds and reduce the need for spot purchasing outside the framework. This would involve the Council brokering and issuing contracts on behalf of the ICB.
- d. Fixed costs against the care bands to make the brokerage process less onerous and simpler for care providers and Council brokers by reducing the need for negotiating on cost.
- e. Clear quality criteria aligned with quality and performance management by the Council's Quality and Improvement team. This will assure the delivery of the care necessary to support the care plan and will improve the clarity of the conversation with providers regarding quality and performance.
- f. The framework would also create a mechanism for purchasing future block arrangements for instance to meet the needs of defined care groups or provide further assurance regarding supply and cost control.
- g. Clear messaging to providers that the framework will be used for all business relating to care home placements except a small number of

placements in defined circumstances which may require spot arrangements.

Proposed Care Home Banding model

16. The Council has worked with providers to develop a model of care bands with defined needs and defined inputs. These care bands have been co-produced with Oxfordshire Care Partnership and Order of St John Care Trust as strategic providers of block beds for the Council and has also had input from adult social care, CHC and other care home providers as well as services such as the Oxford Health NHS FT Care Home Support Service. There will be one banding model for both the block contract with the Oxfordshire Care Partnership and other providers as follows:
 - a. Band 1: Residential Care
 - b. Band 2: Residential Specialist
 - c. Band 3: Nursing Care
 - d. Band 4: Nursing Specialist- A) Complex Physical Needs & B) Complex Mental Health Needs/ Complex Dementia
 - e. Band 5: Specialist Plus care
17. The Care Home bands at 16a-16d will have fixed fees which have been reviewed with the provider market. In effect, when Council adult social care or ICB CHC staff assess someone as needing (e.g.) a nursing care placement they will issue a service requisition to Council brokers who will source the placement via an e-brokerage portal. Providers will understand the needs of the individual and the inputs that will be required to meet these needs as defined in the Banding model. They will also know the fee that will be paid weekly to secure this placement.
18. Where people fall into Band 5 Specialist Plus Care there will continue to be a level of negotiation. Typically, this group of people may have increased nursing needs and/or behavioural challenges in relation to dementia or other conditions. The banding approach will support the negotiation with providers in that it defines the additional inputs that will be required to meet needs and provide the basis to negotiate the fee. Typically, the needs are defined in terms of additional 1-1 support to the individual. The approach builds on work that has been carried out by HESC commissioners in working with providers to define inputs and costing approaches for more complex NHS CHC funded placements.
19. The model has strong engagement from the market and the fixed fee approach is recognised as a good way forward. It builds on the approach that the Council has taken in the implementation of the Live Well at Home reablement and domiciliary care framework which has proved effective in delivering care from a responsive market at a fixed price.
- 20. Cabinet is asked to approve the new care home banding model and note the engagement of the market and partners in its development.**

Integration with NHS and implications for s75 NHS Act Agreement

21. The new model extends the integrated commissioning approach set out by the Council and the then Oxfordshire Clinical Commissioning Group with the establishment of the HESC integrated commissioning team in March 2021 and confirmed by the Council and the ICB in the s75 NHS Act 2006 agreement in April 2023.
22. There are several integrated commissioning approaches already in place:
 - a. The Council contracts on behalf of the partners joint-funded services such as Carers Oxfordshire and Dementia Oxfordshire, as well as the reablement elements of the Live Well at Home Framework and Short Stay Hub beds that step people down from hospital.
 - b. The Council contracts the block bed arrangements in relation to complex dementia set out at paragraph 13 above. Residents in this home are either funded by adult social care or by NHS CHC, but the Council holds the contract on behalf of both parties.
 - c. Where people become eligible for NHS CHC when in a Council contracted setting (e.g., Oxfordshire Care Partnership or a Supported Living placement for someone living with Learning Disabilities or Autism) they should remain in that setting and within the Council contract even when their funding route has changed.
23. Our approach to the new model develops these existing arrangements in line with the ambition in the HESC model and the s75 agreement:
 - a. The framework contract will be procured by the Council on behalf of the ICB with a clear message to the market that it will be the sourcing route for both NHS CHC as well as adult social care funded residential and nursing home placements.
 - b. Council brokers will receive service requisitions from both adult social care and NHS CHC staff and source placements on their behalf.
 - c. The Council will enter into and manage call-off contracts irrespective of the funding source.
24. These developments will be contingent upon the following:
 - a. Acceptance by the ICB of the use of the Council's form of contract.
 - b. Agreement between the parties on an approach to annual fee uplifts. Historically the NHS and the Council have had a different approach and different timelines for agreeing and implementing fee uplifts.
 - c. Clarification of the respective roles of the parties in relation to the model
 - i. The ICB would delegate to the Council responsibility for sourcing, and contracting care, and managing performance of the provider under the contract.
 - ii. The ICB would retain and cannot delegate its responsibilities to
 1. assess eligibility against the NHS CHC Framework
 2. Develop care plans to meet assess identified needs.
 3. Review care plans at 3 and 12 months and where there is a change in needs or circumstances.
 4. Maintain clinical oversight of the effectiveness of the plan even when delivered via the Council contract.

25. This a complex area and would need to be developed prior to the commencement of the new framework in May 2024 and captured within a variation to the s75 NHS Act 2006 agreement between the parties.
26. At its Executive Management Committee meeting on 23 October 2023 the ICB endorsed this approach and committed to developing these specific arrangements subject to approval of the Business Case (see below).
27. **Cabinet is asked to approve the implementation of an integrated purchasing framework with the Buckinghamshire, Oxfordshire, and Berkshire West Integrated Care Board and to implement the new Care Home Banding model.**
28. **Cabinet is asked to approve the revision of the s75 NHS 2006 agreement with the ICB to support implementation of the model and to delegate authority to agree revision to this agreement to the Corporate Director of Adult Social Care in consultation with the Director of Law and Governance.**

Business Case for new purchasing model

29. Approval for the Business Case to proceed to procurement of the new purchasing model is delegated to the Corporate Director of Adult Social Care under the Council's scheme of delegation.
30. The Business case sets out the key benefits and risks of the purchasing framework based on care bandings costed with fixed fees:
 - a. Clarity of requirements of care homes and an opportunity to develop their business.
 - b. Greater business efficiency around sourcing and placement
 - c. A fixed fee model that will over time deliver reductions in total care home spend.
 - d. Improved financial forecasting.
 - e. Strategic engagement with the market and the opportunity to further develop block and other arrangements that deliver better outcomes for our residents, the Council, and providers.
 - f. Elimination of hand-offs and competition between Council and NHS commissioners that drives unnecessary cost.
31. The implementation of the new Care Band model with fixed fee bands will over time support cost controls and the identification and delivery of efficiencies. The phasing of efficiencies will be contingent on several factors and a full financial appraisal of the opportunities and risks is being prepared.
32. Within the Business Case the ICB is asked to invest new funds to support the expansion of the Council's brokerage team within HESC to reflect the increase in purchasing activity and the expansion of the Quality and Improvement team to reflect the increased number of Council contracted placements. The ICB will confirm its decision after its Executive Management Committee meeting on 13 November. The Corporate Director of Adults Social Care will make the decision to proceed in the light of the ICB decision.

33. **Cabinet is asked to note that the Business Case to proceed to procurement of the new Care Homes Purchasing Framework will be made by the Corporate Director of Adult Services using their existing delegated powers.**

Corporate Policies and Priorities

34. The procurement aligns with the following strategic priorities identified in the Council's Corporate Plan:
- a) **Tackle inequalities in Oxfordshire.** With the adoption of a care bandings approach based on need we will improve our planning to meet assessed care needs and avoid people being placed in Care Homes unnecessarily in line with our ambition in the Oxfordshire Way.
 - b) **Prioritise the health and wellbeing of residents.** The Care Band model will map the needs of our residents so that we ensure the right care in the right place when they need a care home placement.
 - c) **Support carers and the social care system.** The Care Band model supports carers in making the right decisions to support their loved ones when a care home placement is indicated to meet assessed need. The ownership of the Care Band model across health and care and with the provider market will support an integrated approach to understanding needs and to developing the care inputs to meet those needs.
 - d) **Work with local businesses and partners for environmental, economic and social benefit.** The purchasing framework will support the business development model of our local care home providers.

Financial Implications

35. Annual spending on care homes is more than £88m with the framework aiming to bring greater control and consistency over unit costs for the County Council, while providing certainty over rates for providers.
36. This will provide benefits in relation to reducing the need to negotiate fees on a case-by-case basis providing efficiencies for both the County Council and our providers of care home services.
37. A single rate however will see some providers receiving higher fees in the future and some lower. The biggest financial risk for the council is expected to come about if the number of providers who receive more outweighs the providers who receive less as a result of the framework, particularly if this results in the framework not providing sufficient capacity to meet demand and this risk is addressed below in *Risk Management*.
38. On balance the key risks are well understood and mitigated as set out below, and therefore it is expected that the total amount spent on care homes will be broadly similar as under our current processes when considering today's prices and demand levels. Inflation and changes in demand will clearly have an impact on

spend, but these are not likely to be affected materially by the new framework as they are more closely linked to wider economic and health factors.

39. As a result it is assumed at this stage that there will be no significant change in the overall cost of care home placement in the short-term, however the framework will provide an opportunity to better understand and manage the market over the medium term and therefore may present opportunities once established.

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Legal Implications

40. Section 75 of The NHS Act 2006 (the “2006 Act”) enables NHS bodies and local authorities to enter into arrangements which are prescribed in secondary legislation. The [NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000](#), as amended, is the relevant secondary legislation that sets out details of the permitted arrangements which include as follows:

- NHS bodies can carry out local authorities’ health-related functions together with their NHS functions
- local authorities can carry out NHS functions together with their local authority health-related functions
- NHS bodies and local authorities can establish and run a pooled fund which is made up of contributions by the partners, and out of which payments may be made towards carrying out the functions that are within the scope of the arrangements

41. The Health and Care Act 2022 (the “2022 Act”) abolished clinical commissioning groups and allowed for the establishment of ICBs. The 2022 Act introduced broad powers of delegation (by the insertion of new sections 65Z5 & 65Z6 into the 2006 Act) which enable ICBs and NHSE to delegate functions to certain bodies, including local authorities. However, certain functions, as may be prescribed in Regulations, may not be delegated.

42. The National Health Service (Joint Working and Delegation Arrangements) (England) (Amendments) Regulations 2023 provide that ICBs are precluded from delegating decisions as to whether or not an individual is eligible for CHC or FNC to another body and from delegating the function of arranging for the review of CHC eligibility decisions to another body.

43. The Regulations do not preclude ICBs from delegating their functions relating to the carrying out of the assessments or the commissioning of CHC and FNC services to a local authority. ICBs may properly delegate the carrying out of CHC & FNC assessments or the commissioning of those CHC & FNC services (such as commissioning appropriate care packages) to other bodies.

44. Under section 75 liability for delegated health-related functions (which covers the delivery of the Better Care Fund) remains with the organisation on which the

function was originally conferred, irrespective of who exercises it. Under sections 65Z5 and 65Z6, the division of liability can be determined by the parties to the arrangement.

45. The existing S75 Agreement between the council and the ICB will need to be reviewed, negotiated and amended to ensure that any delegation of functions is accurately reflected, and, wherever permissible, liabilities apportioned, prior to the start of a contract envisioned by this report.

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Staff Implications

46. There are no direct staffing implications for the Council other than the planned expansion of the HESC Brokerage and Quality Improvement teams resourced by the ICB.

Equality & Inclusion Implications

47. The deployment of the purchasing framework will be in line with the Care Bands developed to assess need and confirm the care inputs to meet these needs. The framework is designed to meet the needs of all adults aged over the age of 18 requiring a care home placement. The mechanism within the contract to develop future block arrangements will enable the Council and the ICB to develop dedicated arrangements that meet the needs of our community, for instance the development of specialist provision for older people living with learning disability and dementia, or for specific health conditions.
48. We will evaluate the equality impact of the providers bidding to join the framework as part of the contract award process.

Sustainability Implications

49. The proposed purchasing framework and care homes banding model do not directly create any sustainability benefits or issues. As part of the evaluation of bids to join the purchasing framework the Council will assess providers commitment to and plans to move to a carbon neutral model for their businesses.

Risk Management

50. Within the Business Case there have been key potential risks identified relating to the implementation of the Framework
- a. There is a risk that insufficient providers will register on to the framework thereby reducing capacity available to the Council and ICB for care home beds.
 - i. This risk is mitigated by the evidence of the strong engagement of the market in the Care Band model and the framework will be the

only route to accessing Council and ICB new business from May 24. We have engaged the market around the fee rates, and we have the experience of the development of the implementation of the Live Well at Home framework as evidence of our ability to bring the market with us over time.

- b. There is a risk that there will be upward pressure to move people to higher care bands including to Band 5 as providers seek to recover costs associated with the Care Band Fees.
 - i. This risk is mitigated by our approach to assessment. Any Specialist Plus placements will need to be authorised by leads in adult social care and the ICB.
- c. There is a risk that the ICB do not agree to additional resourcing requirement to implement the new model.
 - i. The ICB is confirming its approval of the Business Case, and this will be updated to Cabinet at its meeting on 21 November.
- d. There is a risk to both parties arising from the different approaches to annual contract price uplifts. There would be a non-alignment currently in terms of the framework for uplifts, the amounts awarded and the timeline for decision and implementation.
 - i. The ICB has confirmed its commitment to develop a common approach to uplifts and this will be developed prior to the first round of uplifts for 2025/26.
- e. There are several complexities relating to the relationship between the Council's liability for contracts issued under the framework and the ICB's liabilities in respect of NHS CHC which cannot be delegated.
 - i. These risks can be mitigated by the appropriate form of undertakings within the s75 NHS Act 2006 agreement between the parties. The direction of travel is in line with both our local strategy and the national approach to integration. The revised s75 agreement will need to be backed by an implementation approach that assures that staff working across the framework and the model understand their responsibilities and should be reviewed regularly between the parties in the Joint Commissioning Executive.

Consultations

51. There has been very strong engagement with the provider market and with partner organisations across health and care. The Care Home Bandings model can be considered "owned and accepted" across the sector and will govern the care prescription for people whose needs fall within Care Bands 1-4 above.

52. As part of the development of the model a sampling exercise was undertaken talking to residents of care homes specifically to ask regarding their views on the quality of care, what is important to them and what we should be seeking to evaluate in assessing bids from providers to join the framework.

NAME

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Annex:

Nil.

Background papers: Nil.

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