

CYNGOR SIR POWYS COUNTY COUNCIL.
Cabinet Executive
27th March 2018

REPORT AUTHOR: County Councillor Stephen Hayes
Portfolio Holder for Adult Services

SUBJECT: Section 33: Care Home Accommodation Functions

REPORT FOR: Decision

1. **Summary**

1.1 This report informs the Cabinet on the Section 33 Agreement for Care Home Accommodation Functions and seeks Cabinet's approval to the Section 33 Agreement to ensure that the Council is compliant with new statutory requirements in April 2018.

1.2 In seeking Cabinet's approval, this report also outlines:

- the reasons and background for seeking to introduce the Section 33 Agreement to pool budgets with Powys Teaching Health Board for the future commissioning of residential care for adults;
- the aims, objectives and benefits of the Agreement;
- the scope and key components of the Scheme;
- key areas for development and issues;
- a high level implementation plan;
- the recommended Lead (Host) Partner for the Scheme;
- next steps for implementation of the agreement.

1.3 A copy of the draft agreement is attached in Appendix 1.

2 **Background**

2.1 Part 9 of the Social Services and Well-being (Wales) Act 2014 provides Welsh Ministers with powers to require partnership arrangements between local authorities and local health boards for the purposes of the discharge of their functions. Under these powers, Powys County council and Powys Teaching Health Board are required to develop and implement a pooled budget for the future commissioning and quality assurance of residential care services for adults by April 2018.

2.2 The Partnership Arrangements (Wales) Regulations 2015 include specific requirements for "*partnership bodies for each of the partnership arrangements to establish and maintain pooled funds*" including in relation to "*the exercise of their care home accommodation functions*".

2.3 The definition of a care home under the Care Standards Act 2000 relates to the provision of accommodation, together with nursing or personal care, for any of the following persons.

- (a) persons who are or have been ill;

- (b) persons who have or have had a mental disorder;
- (c) persons who are disabled or infirm;
- (d) persons who are or have been dependent on alcohol or drugs.

However, an establishment is not classified within the Act as a care home if it is—

- (a) a hospital;
- (b) an independent clinic; or
- (c) a children's home, or if it is of a description excepted by regulations

The above definition of care homes in Wales was revised by the regulation and Inspection of Social Care (Wales) Act 2016, which define care homes as:

A care home service is the provision of accommodation, together with nursing or care at a place in Wales, to persons because of their vulnerability or need.

However, accommodation together with nursing or care provided at the following places does not constitute a care home service—

- (a) a hospital;
- (b) a school (but see sub-paragraph (3));
- (c) a residential family centre;
- (d) a place providing a secure accommodation service;
- (e) a place providing accommodation for an adult arranged as part of an adult placement service.

2.3.1 Care home accommodation functions means

- (a) The functions of a local authority under section 35 and 36 of the Social Services and Well-being (Wales) Act 2014, where it has been decided to meet adult's needs by providing or arranging to provide accommodation in a care home.
- (b) The functions of a Local Health Board are defined under Section 3 of the NHS Wales Act 2006 in relation to an adult in cases where:
 - i) the adult has a primary need for health care and it has been decided to meet the needs of the adult in a care home (Continuing Health Care), or
 - ii) the adult does not have a primary need for health care but the adults needs can only be met by the local authority arranging for provision of accommodation together with nursing care (Funded Nursing Care).

3 **Proposal**

- 3.1 The development and implementation of the pooled budget relates to all care home accommodation for adults and not solely that for older people, and includes providing and arranging to provide residential accommodation, whether commissioned via the local authority's direct provision, or from the independent sector.

3.2 Welsh Ministers have set out their expectation that these pooled funds should be established jointly at the regional level, between health boards and all local authorities within the partnership area. The new duties under Part 9 of the Social Services and Wellbeing (Wales) Act 2014 in relation to care home accommodation functions come into force in April, 2018.

3.3 Key steps nationally leading to the implementation date in April are summarised below:

- Social Services and Wellbeing (Wales) Act 2014
- Partnerships Arrangements (Wales) Regulations 2015
- Update request from Minister August 2017
- Discussions Welsh Government (WG), Regional Partnership Board (RPB) and national representatives July and August 2017
- Updates from RPBs 30 September 2017
- Letter from the Minister for Social Services and Public Health 1 November 2017
- Partnership bodies for each of the partnership arrangements to establish and maintain pooled funds in relation to the exercise of their care home accommodation functions from April 2018

A copy of the letter from the Minister is attached in Appendix 2. This letter explains that intervention, if necessary, will start in 2019-20.

3.4 **The Aims, Objectives and Benefits of the Agreement**

3.4.1 PTHB and the Council are committed to working together in partnership to improve the lives of Powys residents, so that people can start well, live well and age well – living as independently as possible for as long as possible.

3.4.2 PTHB and the Council are seeking to transform the whole system by focussing on wellbeing, prevention, early help and support, joined up care and developing alternatives to residential care for people's home life.

3.4.3 The purpose of this Section 33 Scheme is to assist PTHB and the Council to work in partnership to develop alternatives to residential care and to improve outcomes for all adults with residential care needs.

3.4.4 This Scheme establishes a pooled fund in relation to care home accommodation functions between Powys County Council and Powys Teaching Health Board as required by duties under Part 9 of the Social Services and Wellbeing Act 2014.

3.4.5 There are significant opportunities to build on the integration work in Powys to date. The Scheme will be an important lever in helping to deliver the Health and Care Strategy. The benefits of the Scheme include:

- Improved outcomes for individuals with residential care needs
- A reduction in the number of people who are referred to residential and nursing care homes outside Powys due to insufficient care home capacity within Powys
- Choice of accommodation options
- Improved quality
- Improved safety
- Improved transitions

- Improved co-ordination
- Integrated services
- Sustainable provision
- Improved effectiveness of public sector expenditure through improved care home commissioning, fee setting, market development and market sustainability

3.4.6 Pooled budgets will support and build on the excellent collaborative working practices already taking place, with partners retaining statutory responsibility for their functions carried out under all pooled funding arrangements. This closer collaboration, underpinned by a pooled budget will help ensure a seamless pathway between health and social care, to meet individual needs.

3.5 Scope

3.5.1 This Scheme is for adults of all ages from the 18th birthday and includes:

- Frail Elderly Residential Care
- Frail Elderly Residential Care Elderly Mentally Ill (EMI)
- Residential Learning Disability services (young people and working age adults from the 18th birthday)
- Residential Physically Disabled (young people and working age adults from the 18th birthday)
- Funded Nursing Care (adults from the 18th birthday which may include young people up to the age of 25, working age adults, and older people)
- Continuing Health Care in nursing homes (adults of all ages from the 18th birthday)
- Mental health CHC nursing homes (adults of all ages from the 18th birthday)
- Learning disabilities CHC nursing homes (adults of all ages from the 18th birthday)
- Short-term interim placements to facilitate transfers of care from hospital and choice of accommodation
- Intermediate care beds
- Residential respite (adults of all ages from the 18th birthday)

3.5.2 A decision will be made within the first-year review whether to include additional services such as residential educational facilities. The Scheme notes that there are already Schemes in place under the overarching Section 33 Agreement for “*Commissioning Personal Care and Facilities Management Services at Glan Irfon Integrated Health and Social Care Unit, Builth Wells*” and for the provision of Community Equipment Services.

It is proposed that the Scheme does not cover:

- nationally defined specialised services commissioned via the Welsh Health Specialised Services Committee (WHSSC), which is a Joint Committee of the seven health boards in Wales;
- any services provided in a *hospital; an independent clinic; a children’s home, or excepted by regulations*. (Schedule 1 of the Partnership Arrangements (Wales) Regulations 2015 excludes surgery, radiotherapy, termination of pregnancies, endoscopy, the use of Class 4 laser treatments and other invasive treatments and emergency ambulance services);

- alcohol and substance misuse services, which are covered by a separate Section 33 Agreement;
- prior to the first year review, young people in residential special colleges which are also registered as care homes.

3.6 The Scheme

3.6.1 There is an overarching Section 33 Agreement in Powys of which this Scheme will form part. The Scheme covers:

- The Lead (Host) Partner for the Scheme
- The Scheme Partnership Lead (and the seniority required)
- The Pooled Fund Manager and support arrangement for the Operational Group
- Aims and Objectives
- Principles and approach
- The scope
- The management of funds in 2018/19
- Benefits
- Service improvement objectives
- Supplementary arrangements not part of the pool
- Review arrangements
- A service schedule, access and referral
- Performance monitoring
- Personnel issues
- Confidentiality and information sharing
- Concerns
- Risk Management, escalation and dispute processes
- Resources
- Billing and payment arrangements
- Cost recovery
- Financial protocols
- Treatment of under/overspends
- Cross-subsidisation
- VAT regimes
- Insurance arrangements
- Pension/TUPE
- Hosting and administration costs
- Audit
- The role of the Operational Group
- Planning and reporting requirements

3.7 Assurances

3.7.1 The Agreement covers assurance arrangements including:

- Financial audit
- National and local metrics
- Clinical audit
- Complaints and feedback
- Staff feedback
- Commissioning assurance (quality, safety, timeliness, finance, activity, governance, and the experience of those using services)

3.8 Process for Developing the Scheme

3.8.1 During 2017/18 there have been a series of workshops to crystalize the approach in Powys. These are complex matters raising significant challenges for both organisations.

3.8.2 Some aspects of the Agreement are unlikely to be resolved by April 2018 and may require further guidance from Welsh Government (for example in relation to young people in special colleges which are also registered as care homes). It is important that long lasting arrangements are put in place and that arrangements for services for vulnerable people remain safe and with clear accountabilities at all times.

3.9 A Phased Approach

3.9.1 Phasing has been necessary due to the level of complexity:

Phase 1 2017/18

- Preparation of the initial Scheme for approval in March 2018.

Phase 2 2018/19

- Implementation of the initial Scheme
- Operational Group and Support Arrangements
- 2018/19 Service improvement objectives
- Mid-year review
- Recommendations and approval of adjustments needed for 2019/20

Phase 3 2019/20

- Adjusted Scheme implemented.

The actions completed in line with the Phase 1 high level plan is set out below.

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| 1 st Mar 2017 | Section 33 Residential Care Workshop 1 |
| 7 th Jul 2017 | Section 33 Residential Care Workshop 2 |
| 11 th Dec 2017 | Workshop 3 (cancelled due to snow but all papers distributed to participants that day for response prior to Workshop 4) |
| 18 th Dec 2017 | Workshop 4 – (participants asked to provide written comments by Friday 22 nd December) |
| Jan 2018 | Informal Cabinet & Management Team Updated |
| 6 th Feb 2018 | Workshop 5 |
| 9 th Feb 2018 | Final comments after third circulation of the draft agreement |
| 12 th -16 th Feb 2018 | Legal advice |

The Section 33 will be required to be in place on the 1st April 2018.

3.10 Key areas for development and issues / risks

3.10.1 Some of the key risks and issues considered are set out below:

Governance

- Lead Partner

- Joint scrutiny
- Leadership and support arrangements for Phase 2 implementation
- Professional leadership
- Corporate reputation
- Regulation and Inspection of Social Care Act Wales 2016

Future Commissioning arrangements

- Capacity to develop the Scheme
- Approval route
- Risk mitigation
- Use of all-Wales frameworks within the Scheme
- Demand
- Service continuity

Financial considerations / management of areas such as:

- 2018/19 Financial Settlement for PCC & PTHB
- Financial recovery plans
- Under/overspends
- Rigid funding model
- National Living Wage
- Inflation
- Scheme of reservation and delegation
- Financial control and compliance with Standing Financial Instructions
- Cost recovery from individuals
- VAT Recovery

Regulation / Quality Assurance Frameworks

- Commissioning Assurance
- Concerns and Serious Incidents
- Communication and engagement
- Delayed Transfer of Care

3.11 Lead (Host) Partner Recommendation

3.11.1 The recommendation of the workshop of 18th December 2017 was that Powys County Council should take the role of Lead (Host) Agency. The key reasons were:

- The pooled fund may be about 35% of the adult social care budget
- Democratic accountability
- Residential care involves a larger number of people
- Organisational arrangements for the financial assessment of individuals, cost and debt recovery
- Income arrangements
- The Standing Financial Instructions (SFIs) of the host would apply, but aspects of PTHB's SFIs and Scheme of Delegation could be built into the Scheme
- VAT recharging arrangements (although this is not such a significant issue as initially indicated)
- The use of all-Wales frameworks would be protected within the Scheme

- Professional leadership arrangements would not be altered by the Scheme. Both organisations would ensure corporate commitment to ensuring the success of the Scheme.

3.11.2 The recommendation that the council should become the Lead (Host) Partner for the Scheme was discussed and supported by the March 12th ASC Scrutiny Working Group.

3.12 Phase 2 transitional year

3.12.1 The complexity of the range of services this involves has been recognised nationally and 2018/19 will be a transitional year. Funded Nursing Care, embedding the arrangements dating back to 2005 in Powys, will be pooled as will the support arrangements for the Operational Group. However, the main focus of this agreement is on partnership. This involves staff widely spread across both organisations. There are no plans to TUPE staff from one organisation to another.

3.12.2 The Operational Group, as set out in the Scheme, will cover all the services listed. It is important not to underplay the importance of integrated reporting and assurance processes spanning up to £33 million of services. There will be a mid-year review and work will be undertaken during 2018/19 to extend pooling arrangements for 2019/20

4 Other Options Considered

4.1 The Section 33 Agreement for Care Home Accommodation Functions has been developed through a comprehensive consultation and engagement process. The Council and PTHB already operate a number of other Section 33 Agreements, and area familiar and effective method of implementing a pooled budget in Powys.

5 Sustainability and Environmental Issues/Equalities/Crime and Disorder,/Welsh Language/Other Policies etc

5.1 The Regional Partnership Board will provide strategic oversight of the Section 33 Agreement for Care Home Accommodation Functions. It will ensure that critical links and responses are made to all relevant national and local strategies and policies which it may affect or enhance the work it has set out to do

6 Children and Young People's Impact Statement - Safeguarding and Wellbeing

6.1 The Section 33 Agreement for Care Home Accommodation Functions is for adults over the age of 18 only.

7 Local Member(s)

8 Other Front Line Services

9 Support Services (Legal, Finance, Corporate Property, HR, ICT, BPU)

9.1 HR - support will be provided to the Service in respect of any staffing considerations that may arise from the proposal outlined in this report.

9.2 ICT - The WCCIS application would support any joint approach under a s.33 agreement. Shared access to corporate systems e.g. finance, HR etc. is more problematic at the current time

9.3 Finance – The Finance Business Partner notes the content of the report, which is that the recommended Lead (Host) Partner for the Scheme is Powys County Council. There will be a phased approach to the implementation and in 2018/19 only the current arrangement of Funded Nursing Care will be pooled. The delivery of the Section 33 Care Home services as referenced in 3.5.1, must be provided within the financial budget envelope currently available to Adult Social Care.

The Section 33 agreement clearly defines the requirements in terms of financial governance, including the contributions from each body, monitoring arrangements, risk share and cash flow requirements. It is critical that this is in place and reviewed regularly, particularly in light of the significant investment from the Council, with approximately 35% of the Adult Social Care budget.

9.4 Legal – The recommendation can be supported from a legal point of view.

10 Local Service Board/Partnerships/Stakeholders etc

11 Corporate Communications

12 Statutory Officers

12.1 The Solicitor to the Council (Monitoring Officer) has commented as follows: “I note the legal comment and have nothing to add to the report”.

12.2 The Head of Financial Services (Acting Section 151 Officer) notes the contents of the Finance Business Partner. The Section 33 agreement defines the appropriate financial governance for this partnership and this is essential to limit the financial risk to the Council, as Lead partner.

13 Members’ Interests

13.1 The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

| Recommendation: | Reason for Recommendation: |
|--|---|
| That the Cabinet approve the Section 33 Agreement for Care Home Accommodation Functions attached at Appendix 1 of the report for implementation by the 1st April 2018. | • To meet the statutory requirements outlined in Part 9 of the Social Services and Well-being Act. |

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| | <ul style="list-style-type: none"> • To support the partnership approach to commissioning health and social services in Powys |
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| Relevant Policy (ies): | | | |
| Within Policy: | N/A | Within Budget: | Yes |

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| Relevant Local Member(s): | N/A |
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|---|----------------------------|
| Person(s) To Implement Decision: | Dylan Owen |
| Date By When Decision To Be Implemented: | 1 st April 2018 |

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|------------------------------|--------------|-------------|-------------------------|
| Contact Officer Name: | Tel: | Fax: | Email: |
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