1. **Background**

1.1 Members of the Public Accounts Select Committee requested a report on how the Council manages contract performance for residential and nursing care services.

1.2 This report responds to the Committee's request and provides details of the commissioning, contracting and brokerage arrangements currently in place to ensure that Lewisham residents within care homes receive high quality and cost effective care.

2. **Summary**

2.1 At present Lewisham commissions 1032 residential and nursing placements, this includes learning disabilities and adults with mental health. Services are commissioned from approximately 310 providers in and out of the borough. (Source ControCC)

2.2 The current cost of these placements is as follows:

- Nursing £19.2m
- Residential £25.7m

2.3 Lewisham has to ensure that there is a continuous supply of care home accommodation to meet the assessed need or demand at a price which is competitive, can be afforded and at an acceptable level of quality. In relation to the commissioning of residential and nursing home care, the fundamental questions that need to be continually addressed are:

a) Is the overall supply adequate to meet the assessed need and is there any need to intervene in the market to support some or other aspect of the overall supply?
b) How will LBL be able to secure a continuous and adequate supply, in terms of volume, price and quality, in competition with other boroughs, including should the contracts be spot or block?

2.4 These objectives and questions are set in the context of values and priorities which are both national and local, principally the requirement to take forward the personalisation agenda and the need to ensure value for money. Commissioners utilise a number of negotiation tools to achieve a fair placement fee, including benchmarking other local authorities, the Care Funding Calculator and historical intelligence.

3. Structure of the Report

3.1 The report is structured as follows:

Section 4 sets out the commissioning process
Section 5 describes the procurement process
Section 6 describes the contracting process
Section 7 outlines the brokerage process
Section 8 outlines the monitoring and reviewing of contracted services

4. Commissioning good quality residential and nursing home placements

What is Commissioning?

4.1 Commissioning is the process used by local authorities and NHS bodies to specify and procure services for their local population. It is the practice of translating local aspirations and assessed needs into services for people that need them. A model of the commissioning cycle is set out at Diagram 1 on page 3 of this report. The overall aim of Lewisham’s commissioning strategy in relation to social care and health is to provide services to people in their own homes; however, if this is not possible, then it is essential that there is sufficient capacity and excellent standards of care within nursing and residential care homes available for Lewisham residents.

4.2 In Lewisham, the Council and partners commission care home places both within Lewisham and out of borough. The commissioning process is utilised by officers to ensure that social care and health services purchased from any provider meet the needs of the local population. The process includes assessing the needs, prioritising outcomes, procuring the service as set out below, and managing contracts.

The Commissioning cycle

4.3 This commissioning cycle model demonstrates the importance of continual assessment and analysis and shows the close relationship between commissioning and procurement. It is based upon four key performance management elements - analyse, plan, do and review - and assumes that all of the four elements are sequential and of equal importance. Commissioners and contractors should spend equal time, energy and attention on the four elements. The commissioning cycle (the outer circle in the diagram) should drive the procurement/purchasing and contracting activities (the inner circle). However, the purchasing and contracting experience must inform the ongoing development of commissioning.
5. The Procurement process

5.1 The procurement process is designed to choose the service provider who will provide the service to the required standard identified in the service specification and at the optimum cost, thus representing the best value for money. This is achieved by evaluating the tender submissions on a balance of “Quality” and “Cost”. The “Quality” aspects relate to how the service will operate and potential providers are asked to respond to specific questions (known as method statements).

5.2 These method statements are based on the specification and the outcomes contained in the Care Quality Commission’s Guidance about compliance with Health and Social Care Act 2008 (Registration Requirements) Regulations 2009, and the Council’s Environmental Policy. Care homes have to demonstrate how they will provide services around the following areas:

- Dignity in care provided
- Involvement and information (respecting and involving people who use services, consent to care and treatment)
6. **The Contracting process**

6.1 The commissioning of nursing and residential places has been secured through both block and spot contracts. Currently, block contracts, which are awarded by Mayor and Cabinet (contracts) following a procurement process, are used to secure a specified number of nursing and Category 1 places (fully funded by the NHS), and a small number of respite beds in borough. Block contracts are only used where there is a scarcity of these beds and the Council has to ensure that there is sufficient provision to meet the needs of residents who require these services. Spot contracts are used for the majority of care home placements to secure individual placements on a case by case basis.

6.2 As well as providing all the necessary social care and health information pertaining to the individuals care needs, all care homes are issued with the following contract documentation:

- A Service Specification, which sets out information to care homes and service users about the standard and type of care that Lewisham social care and health expects to be provided to its service users.

- Spot Agreement terms and conditions, which apply to the provision of residential and nursing care on a spot purchase basis. This forms part of the agreement made between the service provider and Lewisham.

- Block contract, which sets out the contract conditions, including number of beds purchased, details of the service to be provided and how these will be monitored.

7. **The Brokerage process - Placements into Care homes**

7.1 Once a service user has been assessed under Section 47 of the National Health Service and Community Care Act 1990 as having met the Fair Access to Care (FACS) eligibility criteria, and has been approved at a multiagency panel meeting, commissioners or brokerage officers will work with the service user, relatives, advocates and care homes to find a suitable care home of their choosing. Similar NHS assessments are carried out under the NHS Continuing Healthcare 2009 national framework. The NHS continuing healthcare assessments are used by health and social care staff, when a council service user’s condition/needs deteriorates to the extent that it is no longer practical, appropriate or safe for the Council to provide care for such complex healthcare needs.

7.2 Contract officers ensure that the care home is compliant under the Care Quality Commission’s Guidance set out above, and they will liaise with other local authorities to seek out intelligence on care homes in other localities to
determine whether there are any causes of concern. A care home placement will only be completed when all necessary checks have been concluded.

8. Monitoring and reviewing of contracted services

8.1 The monitoring and reviewing of contracts covers the following areas:

- Contract monitoring
- Individual case review
- Complaints
- Service reviews
- Regulation

8.2 The process of reviewing contracts is not an end in itself but can assist officers to manage risk and improve services. Contracts are monitored and reviewed to:

- Distinguish between success and failure
- Identify success and replicate it
- Identify failure and correct it
- Identify success and reward it

8.3 Monitoring performance alerts commissioners to the fact that a problem exists, not why it exists. The commissioners use the contract monitoring tools (set out at Appendix 1) that are available to them to ensure that providers are meeting the key criteria set out in the contract. These criteria are used at all stages of a contract lifecycle and are prominent at the outset when a service is being tendered. The provider is required to illustrate how they meet the criteria and their performance against them is regularly measured by the commissioners. Where practical, providers are expected to provide supporting examples of current practice which clearly evidences their compliance.

Contract Monitoring

8.4 Once a residential or nursing home placement has been identified with the service user and their family as a suitable home, there is a process in place to ensure that the service user receives a good service. Contract Monitoring is the regular process undertaken by the Council to ensure that providers comply with the requirements of the contract and service specification for commissioned services.

8.5 All commissioned services are routinely monitored for contract compliance and acceptable performance and quality. Currently, five contract monitoring officers are responsible for carrying out this area of work; however, it is to be noted that they are also responsible for monitoring other services such as domiciliary care, extra care, meals service, day care, direct payments, Community Equipment, Public Funerals and carers services delivered by voluntary organisations.

8.5.1 The aim of contract monitoring is to ensure that the services delivered by care homes are delivered in line with the contract and specification and are providing care of the highest quality, adhering to the principles of best value. Monitoring helps provide qualitative observations and data on how well
services are being provided and whether desired service outcomes are being achieved.

8.5.2 In addition, Lewisham’s Lay Visitors Scheme forms an important part of the contract monitoring process. The scheme seeks to improve quality of life in residential and nursing care homes across the borough by providing an independent, trained, voluntary service. Lay Visitors visit care homes in the borough and are able to raise issues and concerns about the quality of care being provided or the standard of the facilities with the appropriate statutory sector. Following these recommendations the Lay Visitor can expect change and improvements to be made in the areas of concern that they have highlighted. These volunteers are able to look at the service from a different perspective than the commissioners and add real value to the contract and performance monitoring process.

8.5.3 Lay Visitors also provide peer support to people who are receiving commissioned services in the borough. In Lewisham, five volunteers on the scheme work alongside Lewisham Long Term Care Contract Monitoring Officers to observe, monitor and report on dignity, respect and quality of life issues. Each lay visitor has received training to help them fulfil their role effectively. There is a rolling programme to recruit new Lay Visitors.

8.6 Contract management is evident through the various stages of the commissioning cycle, whilst contract monitoring is done at a specific time in the cycle. A Contract Management Tool and Care Homes Monitoring Framework are in place to ensure there is a consistent approach to monitoring performance. Contract monitoring is a continual process in which Care homes are judged as either having achieved a satisfactory or unsatisfactory performance based on the outcomes of the services they have provided.

8.6.1 Contract monitoring takes place at least on a quarterly basis for block contracts and large spot contracts. Where the local authority has few residents, for example one or two in a care home, appropriate and proportionate monitoring is undertaken. This monitoring can take the form of individual case review, and shared monitoring with other local authorities. Contract officers carry out periodic reviews, for example, periodic reviews would involve Contract Monitoring Officers examining training records, complaints, and the care home’s recruitment process. Officers also carry out unannounced visits, which may be as a result of Whistleblowing or any concerns raised by relatives, residents in the care homes or others.

8.7 In addition, contract management includes scrutinising the provider’s financial position under open book accounting to ensure that the organisation is secure and sustainable. Providers are required to participate in regular Providers’ Forum meetings and attend training sessions that informs best practice, for example Deprivation of Liberty Safeguards.

Contract compliance

8.8 Where there are high volumes of concern over a range of matters relating to the quality of care in a particular home this can lead to an enhanced level of contract monitoring and support for a particular home. Such concerns can include, for example, a lack of robust policies and procedures within the home or procedures not being implemented; poor lifting and handling techniques;
inadequate risk management, unsatisfactory nutrition, personal care and continence management. There may also be quality alerts raised in homes where there is no evidence of activities that encourage mental stimulation or where service users are not supported to make choices for themselves when they are able.

8.9 Where a service provider is not performing adequately, the Council will work closely with the provider to address the areas of concerns and produce a plan to rectify failings. The reasons for the poor performance must be clearly identified so that the risk of a re-occurrence is either reduced or eliminated.

8.10 In cases where poor performance is consistent and frequent or where the breach is very serious, the Council has legal means it can pursue to adjust or terminate the contract. The details of this are set out clearly in the contract. In reaching a view about the appropriate response to unsatisfactory performance, the Council also has regard to the likely impact on service users. This includes striking a balance between encouraging performance improvement and identifying those circumstances where it is unlikely that the service will be successfully delivered and where service users may suffer as a result. The likelihood of re-occurrence of the issue is also considered.

Failing to meet key performance indicator targets

8.11 Failure to meet key indicator targets, such as training standards and dealing with complaints, in a specific time period will not normally lead to funding/payments being withheld, except in cases where there has been a severe breach of contract. Where there is an under-performance in respect of the Key Indicators, care homes must explain any significant variations in performance and details of actions being taken to rectify the position.

8.12 In reaching a view about the appropriate response to unsatisfactory performance, the commissioner, contract monitoring officer or brokerage officer will have regard to the likely impact on the services to service users. This includes striking a balance between encouraging performance improvement and identifying those circumstances where it is unlikely that the service will be successfully delivered and that service users may suffer as a result. The likelihood of re-occurrence of the issue should also be considered.

Breach of contract

8.13 If a breach of conditions of contract is identified the commissioners will seek legal advice and a letter will be written to the service provider drawing attention to the specifics of the breach and requiring action to be taken within a specified period from the date of the letter. It is a condition of the contract that funding/payments may be reduced, suspended or withheld, or all or part of the payments may be required to be repaid if service providers are found to be in breach of contract.

8.13.1 Over the past three years, the council has served the following notices on providers:

- Seven default notices
- Two partial validations
- One breach
• One mutual breach
• Two temporary suspension of placements under safeguarding protocol

8.13.2 During these periods enhanced monitoring is planned by contract and safeguarding teams. Enhanced monitoring includes more frequent site visits, and unannounced visits that sometimes take place at weekends and night time. In these situations, multi agency meetings, which include council officers, NHS, other professional and providers, meet to discuss and monitor action plans and remedies required to achieve continuous service improvement. More importantly, residents and relatives are kept informed of developments and their views are sought on the services being provided.

8.13.3 Throughout the default notice period or temporary suspension period no payments are made for void a bed, which is allowed for under the block contract. There are no provisions for void payments under spot contracting arrangements.

Individual case reviews

8.14 A dedicated placement review team within the Safeguarding Quality and Risk service (SQR) is responsible for reviewing the needs of service users placed into long-term Residential or Nursing Home care. Whilst the main purpose of the review is to ensure that the service user's individual needs are being met and that the placement continues to be appropriate, a significant part of the review focuses on the quality of the care being provided under the contract.

Service users’ and carers’ views are sought on:

• The quality of the care provided
• The amount of choice and control they have in terms of choosing menus whether special dietary needs are catered for and the general quality of the food
• The general appearance and ambiance of the home and garden
• The quality of relationships with staff, key workers and other residents
• Whether issues around dignity and autonomy are respected, for example whether the service user can decide what to wear, and whether their privacy is protected.

8.15 The placement review team work closely with contract monitoring staff and any complaints or concerns resulting from reviews are immediately shared with the relevant contract monitoring officer. Prior to any contract monitoring visit, questionnaires are sent to social workers and review officers and their views are sought on the quality of the care being provided by that home.

Complaints

8.16 Complaints received about service provision form an integral part of the evaluation of the provider’s performance. The number of complaints, the nature of the complaint, how the provider has dealt with the complaint, and actions taken to remedy the complaint are all considered. The outcomes of these complaints inform the contract monitoring process.

8.17 Contracts officers and managers in the SQR service meet to discuss and screen any complaint received in relation to a care home to ensure that any
safeguarding issue is identified and investigated. Where the complaint is deemed to be a quality alert as opposed to a safeguarding issue, these are passed on to the contracts officer responsible for that home.

8.18 As mentioned above, The Council has in place a Quality Alerting System. This system is not a complaints procedure, but forms part of the quality monitoring process. Quality Alerts are designed to bridge the gap between informal communications about good experiences and concerns regarding services that vulnerable adults receive. In addition, feedback is provided to the person reporting the Alert, and the service user. The Quality Alerting System gives service users the opportunity to raise their concerns and to inform the Contract Monitoring Officers of how well commissioned services are performing.

Service reviews

8.19 Service reviews involve seeking feedback from the service users, their advocates if they are unable to communicate their views, and from a range of partners from adult social care and health (in particular all residential and nursing homes will be visited by a number of health professionals, including GPs and district nurses, who can report any concerns). In addition, finance officers and other local authorities who are involved in the commissioning, client management and delivery of services to residents receiving residential and nursing care services also inform the service review process.

8.20 Regular service improvement meetings are held to discuss any homes that are giving cause for concern. These concerns may come either from a quality or safeguarding alert. Decisions are made about what action should be taken, which may include enhanced monitoring of placements as improvements are secured, or terminating contracts depending on the seriousness of the quality or safeguarding alert.

8.21 Care homes also need to demonstrate that they are taking steps to ensure continual improvement. This includes demonstrating that they have gathered the feedback of service users, stakeholders and partners to assist them with this aim. They also need to have processes in place which enable the service to benchmark with similar services and to be informed of “best practice” across the sector. Other individuals and professionals also play an important part in identifying and reporting concerns around poor performance within care settings.

Regulation

The Lewisham Safeguarding Board

8.22 Lewisham Adult Safeguarding Board is a statutory multi-agency board which better facilitates a more joined up and effective approach to adults safeguarding in the borough. The Board has been working to safeguard vulnerable adults since 2000. It includes representatives at a strategic level from all the main statutory agencies and some key voluntary organisations.

Lewisham’s Adult Safeguarding Board has reinforced the systems, policies and processes for investigating allegations of abuse against those adults at
risk of abuse. Annual reports outlining safeguarding performance are provided by the Board.

The Care Quality Commission (CQC)

8.23 In addition to The Council’s own performance monitoring regimes, the Care Quality Commission (CQC) plays an important role as the independent regulator of health and adult social care services in England. This regulatory role gives CQC the power to inspect care homes. CQC began operating on 1 April 2009, replacing three earlier commissions: the Healthcare Commission, the Commission for Social Care Inspection and the Mental Health Act Commission.

8.24 The CQC’s role is to make sure that care provided by care homes, care services in people’s own homes, hospitals, dentists, ambulances, and elsewhere meets the Government’s standards of quality and safety. CQC inspectors visit health and adult social care services across England to check that they are meeting the standards. They make unannounced inspections of services on a regular basis and at any time in response to concerns. During inspections the CQC:

- ask people about their experiences of receiving care
- talk to care staff
- check that the right systems and processes are in place
- look for evidence that care is not meeting Government standards

8.25 Any inspection reports issued by CQC are monitored locally for any placements made in or out of borough. The CQC has a range of powers which enable it to take action if people are getting poor care. These measures include:

- Issuing warning notices
- Imposing, varying or removing conditions
- Issuing a penalty notice instead of prosecution
- Prosecuting for specified offences
- Suspending registration
- Cancelling registration

9. Conclusion

The range of interventions and activity set out above is designed to ensure that Lewisham’s residents receive high quality and cost effective care and that when this is not the case, remedial steps are taken.

If there are any queries on this report, please contact Audrey-Marie Yates on extension 49464.
Appendix 1: Contract Management Tools

<table>
<thead>
<tr>
<th>information required at start of contract</th>
<th>regular sources of information</th>
<th>Less regular sources of information</th>
<th>non provider feedback</th>
<th>external information received</th>
<th>interventions available if concerns arise</th>
</tr>
</thead>
<tbody>
<tr>
<td>contract and specifications</td>
<td>quality monitoring surveys (provider)</td>
<td>annual monitoring report or equivalent</td>
<td>service user satisfaction surveys</td>
<td>results of CQC inspection fed back (compliance reports)</td>
<td>meeting with provider</td>
</tr>
<tr>
<td>service level agreements</td>
<td>quarterly performance information (PI) workbooks</td>
<td>strategic reviews</td>
<td>quality monitoring surveys (service users and other stakeholders)</td>
<td>lay visitor scheme</td>
<td>meeting with other stakeholders</td>
</tr>
<tr>
<td>value for money assessment</td>
<td>key performance indicators</td>
<td>monitoring visits (announced)</td>
<td>contract monitoring review meetings</td>
<td>Adult Safeguarding Board</td>
<td>issue timetable for implementing necessary changes</td>
</tr>
<tr>
<td>Prequalifying Questionnaire (PQQ)</td>
<td>service performance indicators</td>
<td>annual self assessment workbooks</td>
<td>contract monitoring reviews</td>
<td>quality alerts and safeguarding reports</td>
<td>monitoring visits (unannounced)</td>
</tr>
<tr>
<td></td>
<td>periodic contract reviews</td>
<td>provider forums</td>
<td>commissioning team led health check reviews</td>
<td>advocacy</td>
<td>range of (re) procurement processes e.g. preferred providers’ framework</td>
</tr>
<tr>
<td></td>
<td>social services information</td>
<td>thematic audits</td>
<td>safeguarding subgroups</td>
<td>feedback from elected members and MPs</td>
<td>Review of credit rating of providers.</td>
</tr>
</tbody>
</table>

This is the standard tool box. Commissioners can increase the frequency and speed of utilising these tools if necessary e.g. if a provider is in special measures.

Commissioners may come across non-attributable information which they will look to triangulate through more formal contract management methods.