

Agenda Item No: 7(c)

DERBYSHIRE COUNTY COUNCIL

CABINET

5 May 2015

Report of the Strategic Director for Adult Care

INDEPENDENT SECTOR CARE HOME FEES 2015-16

ADULT SOCIAL CARE

1. Purpose of Report

To seek approval to:

- increase the rate paid to independent sector care homes for the financial year 2015-16 by £11.76 per week as summarised in Appendix 3;
- make an inflationary payment of up to 2% where the provider can evidence their increase in costs for specialist care home placements. These are placements where fee rates have been individually negotiated to ensure that the needs of people who require complex support/care arrangements are met;
- introduce an additional Dementia Fee of £36.96 per week;
- increase the rate to £33.02 per session for a day care placement in a care home;
- commence a review of the Quality Premium Scheme with the involvement of representatives of the Derbyshire Care Providers Association and other individual home owners who express a wish to be involved.

Information and Analysis

Background

The Council has contract arrangements in place with over 350 independent sector care homes that provide residential services to approximately 2880 people as detailed below:

964 people in nursing placements where the person needs constant involvement of, or supervision of, a qualified nurse;
 1916 residential placements .

Fee Levels

A comprehensive review of fee levels for independent sector care services is undertaken annually. To assist with this review representatives of the Derbyshire Care Providers Association have welcomed the opportunity to advise the Council of particular business pressures affecting the care market and their costs. A number of providers, including representatives of the Care Providers Association, have also written into the Council identifying their cost pressures.

The Care Providers Association expressed concerns that the detailed fee analysis and consultation undertaken by the Council as detailed in the paper presented to Cabinet on the 9 September 2014 was in their opinion flawed and that the fee rates do not cover their actual costs. Care Home representatives identified that the Council, when setting the fee rates for 2015-16, should in their opinion take account of additional factors set out below:

2.2.1 Staffing costs highlighted by care home providers:

The minimum wage increased in October 2014 by an average of 3%. The home owners argued that they increased all of their staff wages including those paid above the minimum wage to reflect this increase and to maintain payment differentials.

The auto pension enrolment was another area the care home representatives felt the Council should build in to the fee rate increase. As part of these changes providers will need to make a pension payment of 1% for all eligible staff. The implementation date for this is different for each provider.

Nurse Shortages has pushed wages up 20-30% along with agency costs to cover vacancies.

Council Response:

It is proposed that the staffing costs used by the Council to identify the basic fee rates for care home placements should be increased by 3% to reflect the increase the minimum wage in October 2014. It is proposed that the management staff costs should be increased by 2.2%. This is the general

staffing increase used by the Council and reflects the fact that these staff will be paid above the minimum wage.

The auto-enrolment pension scheme has been subject to a national introduction over the past few years. From 1 April 2015, all providers have to sign all staff into a pension scheme. It has been nationally accepted that the costs to a provider should be in the region of 1% on their staffing bill. It is proposed that overall staff costs should be increased by 1% to enable providers to meet this new requirement.

When making a placement into a nursing home the nursing care element of the placement including the cost of nurses is funded by the NHS. The funding covers the tasks identified by a nursing needs assessment as those that need to be carried out or supervised by a qualified nurse. The current nationally set Funded Nursing Care payment is £112.00 per week (from 1 April 2015). The rest of the nursing home placement standard fee is paid by the Council. The Council has encouraged the Derbyshire Care Providers Association to raise their concerns about shortage of Nurses and the impact on wages with Hardwick Clinical Commissioning Group (CCG) as the lead CCG on the payment of Funded Nursing Payments on behalf of the Derbyshire based CCGs.

2.2.2 Other cost increases highlighted by care home providers

Fuel Costs have increase at 4.5 % over the last 12 months

Insurance Premiums have increased by 100%

It was noted by Care Home Provider representatives that some homes charge top-ups to bridge the gap between what the Council pay and what care home providers believe is the value of that particular placement.

Council Response

For utilities, the Council notes that there is great variance between the individual categories including power, which is likely to make up the most of this category. Electricity has dropped by minus 0.7% and gas by minus 1%, whereas water has increased by 2.4%. It is therefore proposed that utilities should be treated as nil inflation because the increase in water costs will be proportionately a smaller outgoing.

The Council has no evidence to support the claim that insurance premiums have increased by such a large amount as 100%. The judgement made by the Council is that this and other costs identified in the fee rate methodology used by the Council and detailed in Appendix 1 will be inflated by 2%. These previously

identified cost headings have been inflated based on a set of assumptions about inflation pressures – see Appendix 2.

There are a number of homes that will request a contribution from family members of a client to supplement the amount paid by the Council. These requests are normally made on an individual placement basis with the third party payment being negotiated at the point of the placement. As a consequence the third party rates observed in an individual home can vary a great deal. These payments are known as third party contributions and can differ from less than £5 per week to over £150 per week.

The Council's current figures demonstrate that the majority (75%) of the placements being made by the Council in to independent care homes continue to be made at the Council's usual cost for care without a third party top-up.

Concern regarding Quality Premium expressed by care home providers

2.2.3 The Quality Premium fee that is paid by the Council has not changed in value for several years.

Council Response

The Quality Premium fee was introduced a number of years ago to promote improvements in the care home sector. It was agreed by Cabinet on 9 September 2014 that the current Quality Premium Payment of £21 per person per week is maintained and that a new set of criteria will be introduced during 2015-16 to continue to promote quality standards. It is proposed that any new system includes flexibility to accommodate the new rating system introduced by CQC. It is proposed that this review of the Quality Premium scheme will be undertaken with the involvement of representatives of the Derbyshire Care Providers Association and other individual home owners who express a wish to be involved.

2.2.4 Care Provider Association Feedback

The Council sent a letter to the Care Providers Association on the 23 March 2015 detailing the fee proposals subject to this Cabinet Paper. The Care Association sent a letter in reply to this invitation to comment on these proposals on the 9 April 2015. A copy of the Association's letter is attached in appendix 4. A response on behalf of the Council will be made to this letter following Cabinet.

The Care Provider Association express concern that in their view the proposals set out in this report to increase the fee rates will mean that the Council will not fulfil duties as set out in the Care Act 2014 to ensure the sustainability of the market.

In their letter of response they also make reference to previously expressed comments about the fee methodology used by the Council to help determine care home fee rates in Derbyshire. These comments included reference to fee rates set in previous years and inflationary pressures back to January 2011.

Additional comments about inflationary pressures include the Care Quality Commission registration fees are due to be increased to 9% whereas the Council has only allowed 2%. They also noted as described earlier in this report their view that insurance and training costs have risen above 2% and that the Council's assumptions in respect of return on the cost of capital is significantly undervalued. In summary the Care Providers Association state that they cannot accept the Council's proposals.

In addition the Care Providers Association makes reference to concerns relating to the provision of Nursing, Quality Premium and Dementia Payments which the Council has already responded to within this Cabinet Paper

Council Response

The Council takes its responsibilities under the Care Act 2014 very seriously and will continue to monitor carefully the sustainability and quality of the Care Home Market.

In respect of the feedback about the fees the Council has already responded to some of the concerns identified within this Cabinet paper. However, it is agreed that the increase in Care Quality Commission registration fees of 9% is greater than the 2% originally used in the fee rate calculation and it is proposed that 9% is now used in the fee calculation. The fee table in Appendix 1 has been updated to accommodate this change and any arithmetical calculations referred to in the Care Provider Association letter have been addressed.

Fee Rate Methodology

The method for identifying the proposed fee rates builds on the work previously undertaken to identify a basic care home fee rate as detailed in the paper presented to Cabinet on the 9 September 2014. As part of this work the Council asked care home providers to complete a questionnaire to evidence

their costs. The Council then used standard cost headings to analyse the returns before identifying values against each cost head - see Appendix 1.

To develop fee rate proposals for 2015-16, these previously identified cost headings have been inflated based on a set of assumptions about inflation pressures – see Appendix 2. These proposals have taken account of the feedback received from Care Home providers. Based on this analysis it is proposed to increase fee rates by £11.76 per week.

Introduction of Dementia Care Payment

It is unclear how many of the people currently in care home placements in Derbyshire have diagnosable dementia. The Derbyshire Dementia Strategy highlights that there will be a significant growth of the numbers of older people in Derbyshire with a projected 76% increase in people aged 85 and over between 2008 and 2025, resulting in the number of people in this age range increasing by 13,400 to a total of 31,100.

With the predicted increase in the numbers of people with dementia and the need to ensure people's needs are appropriately met it was agreed by Cabinet on 9 September 2014, to introduce an additional payment to care homes (nursing and residential) that have been approved by the Council to support people with dementia, in order to cover the additional costs of supporting people with dementia.

It is proposed that an additional payment of £36.96 per week towards supporting people with a diagnosis of dementia would be payable to homes that meet set criteria of dementia-friendly provision. The additional funding commitment will be met from the Better Care Fund and be responsive to the Better Care Fund KPI's. The process to determine which homes can provide dementia specific provision has been developed with care home representatives with the intention that the new payments would commence on the 1 April 2015.

Impact of the Proposals on Care Home Fees for other Client Groups

The proposals made in this report, and summarised in Appendix 1, focus on the basic fee rates for older people. It is proposed to increase the base fee rates by £11.76 for other client group placements. This includes care home provision for people with a physical disability, people with learning disabilities and people with mental ill health – see Appendix 3.

The changes proposed to the basic fee rates for other client groups will not change the level of funding already paid against specialist care home placements where fee rates have been individually negotiated to ensure that the needs of people who require complex support/care arrangements are met. The fees for specialist placements are often substantially more than the standard care home fees - see Appendix 3.

The additional funding (top up) paid for a specialist placement reflects the greater investment in staff and training to meet an individual's needs. It is proposed that payments of up to 2% can be agreed with providers in receipt of specialist placements where they can evidence their increase in costs.

Day Care Placements in Care Homes for Older People

Some people who are supported to live in their own homes are able to use day care places in care homes for older people. The care home is often close to where an individual lives and they frequently help with transport to and from the home and provide meals. In some cases homes will also provide a bathing service and are very flexible with places being made available at weekends and evenings, which can help carers.

The standard fee rate for day care placements in independent sector care homes is currently £32.38 per day. It is proposed for 2015-16 that this fee level is increased by 2% to provide a new daily fee of £33.02 per day.

Financial Considerations

The estimated cost of this proposal is:-

Fee Increase	£1.640m
Dementia Care Payments	£0.360m
Specialist Care Home Placements	£0.270m
Total	£2.270m

The 2015/16 budget was increased by £1.760m to partially cover this increased cost and the balance of £0.510m has been allocated from the Better Care Fund to cover additional costs to meet the additional Dementia Payment and the costs of meeting the pension auto-enrolment will be met from funding to assist with implementation of the Care Act.

Legal Considerations

The Council is under a legal duty, arising both from case law and Department of Health Guidance, “Building Capacity and Partnership in Care” (2001), to ensure that fee setting reflects the actual costs of care. The rates should also take into account the legitimate current and future costs, and the potential for improved performance and most cost effective ways of working.

Under the Care Act 2014, the Council is under a new duty to promote diversity and quality in the market of care and support provision

Equality and diversity Considerations

Providers are required to adhere to Derbyshire County Council’s Equal Opportunities’ policies. The Council also encourages Providers to gain the Derbyshire Respect and Dignity award.

Other Considerations

In preparing this report the relevance of the following factors has been considered: human resources, health, environmental, transport, and crime and disorder considerations.

7. Key Decision

Yes

Is it necessary to waive the call-in period?

No

9. Officer’s Recommendation

That Cabinet approves;

- the proposed fee increases for independent sector care homes for the financial years 2015- 16 by £11.76 per week as summarised in Appendix 3,
- the payment of up to 2% inflation for specialist care home placements where evidence is provided of inflationary pressures.

- the introduction of a Dementia Fee of £36.96 per week.
- the payment of £33.02 per day session for a day care placement in a care home
- a review of the Quality Premium scheme with the involvement of representatives of the Derbyshire Care Providers Association and other individual home owners who express a wish to be involved.

Mary McElvaney
Strategic Director – Adult Care

Appendix 1 Summary of Costs

PERSONAL CARE ONLY FOR FRAIL OLDER PEOPLE	2014/15	Adjust for inflationary pressures	2015/16
A) STAFF, INCLUDING EMPLOYERS' ON-COSTS			
TOTAL NURSING STAFF	N/A		
TOTAL CARE ASSISTANTS (inc senior) STAFF	£169.33	3.00%	174.41
Catering, cleaning and laundry staff cost per resident	£38.80	3.00%	39.96
Other Staff Costs (exc. management and admin)	£3.74	3.00%	3.85
TOTAL STAFF	£211.87		218.22
Management, administration, reception staff cost per resident	£55.40	2.20%	56.62
Pension on total staff		1%	2.74
B) REPAIRS AND MAINTENANCE			
Maintenance capital expenditure	£15.52	2.00%	15.83
Repairs and maintenance (revenue costs)	£9.33	2.00%	9.52
Contract maintenance of equipment	£1.77	2.00%	1.81
TOTAL REPAIRS AND MAINTENANCE	26.62		27.15
C) OTHER NON-STAFF CURRENT COSTS AT HOME LEVEL			
Food	£21.79	-2.80%	21.79
Utilities (gas, oil, electricity, water, telephone)	£19.50	0.00%	19.50
Handyman and gardening (on contract)	£8.42	2.00%	8.58
Insurance	£2.04	2.00%	2.09
Total medical supplies and continence products	£2.39	3.10%	2.46
Trade and clinical waste	£1.60	2.00%	1.63
Registration fees (including DBS checks)	£2.70	9.00%	2.94
Recruitment	£0.69	2.00%	0.70
Direct training expenses (fees, facilities, travel and materials) net of grants and subsidies	£2.88	2.00%	2.93
Other non-staff current expenses	£19.40	2.00%	19.79
Equipment Costs	£3.40	2.00%	3.47
TOTAL NON-STAFF CURRENT EXPENSES	£84.81		85.88
TOTAL EXCLUDING CAPITAL	£ 377.69		390.61
Return on capital	£ 46		46
Summary Weekly Fee	£424.70		436.61
Divisible by 7	£424.90		436.66

Appendix 2

Inflation Assumptions used to Identify Fee Rates for 2015/16

In considering the budget lines in Appendix 1 the Council took account of the Office of National Statistics' CPI report.

Food is shown as a negative -2.8% (CPI report 1.1 Food) however for purposes of this analysis we have treated this as 0% inflation.

Medical supplies and continence products at 3.1% (CPI report 06.1.1 Pharmaceutical products).

For utilities the Council notes that there is great variance between the individual categories including power, which is likely to make up the most of this category. Electricity has dropped by minus 0.7% for and gas by minus 1.0%, whereas water has increased by 2.4%. It is therefore decide that this should be treated as nil inflation.

The Council has decided to use general CPI at 2% for other cost items.

Staffing

As noted there was an increase of 3% in the national level of minimum wage on the 1st October 2014. Providers clearly have to meet this increase in staff wages for those members of staff paid at minimum wage. Providers have stated that they uplifted wages of all staff by similar amounts to maintain differentials between staff.

The Council has decided to use the 3% for staff costs except for management and administrative staff where we have used 2.2%.

Auto-enrolment pension scheme has been subject to a national introduction over the past few years. From 1st April 2015 all providers have to sign all staff into a pension scheme. It has been nationally accepted that the costs to a provider should be in the region of 1% on their staffing bill.

Fee Rate

The proposed fee rate as highlighted in Appendix 1 has been changed slightly so that it can be divisible by 7 to provide a daily allowance.

The increase is equivalent to £11.76 per placement per week. This value will be used to increase all of the current fee rates as per the schedule in Appendix 3.

Appendix 3

Proposed Care Home Fee Rates from 1 April 2015

Placement Types	£
Residential Placements without Quality Premium	
Older People	
Places for People with Mental ill Health	
Places for People with Drug and Alcohol Problems	436.66
Places for People with Physical Disabilities Under 65	509.88
Places for People with Learning Disabilities Under 65	457.94
Residential Placements with Quality Premium of £21 per person per week	
Older People	
Places for People with Mental ill Health	
Places for People with Drug and Alcohol Problems	457.66
Places for People with Physical Disabilities Under 65	530.88
Places for People with Learning Disabilities Under 65	478.94
Nursing Placements * without Quality Premium	
Nursing Placements for Older People	448.98
Nursing Placements for People with Learning Disability Under 65	503.09
Nursing Placements for People with a Physical Disability Under 65	451.62
Nursing Placements for people with Mental ill Health Under 65	461.58
NURSING PLACEMENTS* with Quality Premium of £21 per person per week	
Nursing Placements for Older People	469.98
Nursing Placements for People with Learning Disability Under 65	523.09
Nursing Placements for People with a Physical Disability Under 65	472.08
Nursing Placements for People with Mental ill Health Under	482.58

* A Funded Nursing Care (FNC) contribution is made by the local NHS of £112 per person per week is paid in addition to the fees quote for the nursing placements.

Appendix 4



Derbyshire Care Providers Association (formerly known as Derbyshire Care Homes Association)

Mary McElvaney
Acting Strategic Director- Adult Care
Derbyshire County Council
County Hall
Matlock DE4
3AG

Date: 09/04/2015

Dear Ms McElvaney,

Re: Proposed Fee rates for 2015/16

Thank you for meeting with us on the 16 February 2015 and thank you also for your letter dated 23 March 2015 regarding the above.

We have now had a chance to review your proposed increase. The Association's comments are set out below:

General Comments

1. As you will be aware, the majority of the Care Act 2014 came into effect on 1 April 2015. Section 5 of the Act is of key importance. It requires the Council to "promote the efficient and effective operation of a market in services for meeting care and support needs". This includes ensuring the presence of a variety of high quality providers to choose from.

2. In performing its duty to promote the efficient and effective operation of the market, the Council is required to have regard to "the importance of ensuring the sustainability of the market". The Department of Health's guidance on this point highlights the impact that a local authority (as a significant purchaser of care) has on the sustainability of the market. Specifically, the guidance states:

"Local authorities **must not** undertake any actions which may threaten the sustainability of the market as a whole, that is, the pool of providers able to deliver services of an appropriate quality – for example, by setting fee levels below an

amount which is not sustainable for providers in the long-term." (paragraph 4.35 of DoH 'Care and Support Statutory Guidance')

3. The Guidance also states that:



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"Local authorities should understand the business environment of the providers offering services in their area and seek to work with providers facing challenges and understand their risks."

Specific Comments

4. The Council's proposal is to uplift the current fees by the inflation mechanisms set out within your letter to the Association of 23 March 2015. This approach assumes that the current costs are themselves sufficient to meet the assessed care needs and are sustainable. Unfortunately, this assumption is wrong.

5. In the Association's letter dated 15 May 2014 we set out a number of fundamental flaws contained within the Council's calculations of the current fees. The Council chose not to address those flaws. However, the same flaws again become highly relevant in light of the Council's proposed method of setting the fees for 2015/16 by inflating the current fees; the existing flaws being carried through and effecting the 2015/16 fees. Were this to be permitted, it would have the effect of ensuring that the 2015/16 fee levels fall significantly below the actual cost of providing the services; the fees therefore continuing to be insufficient to meet residents' care needs and are not sustainable in the short, medium and long term. The only way to bridge this funding gap is by cross subsidisation through third parties (which are seeing an increasing amount of third party top-ups), private fee payers and the care home owner themselves.

6. I do not propose repeating what the Association has already said previously about the flaws. I simply refer you to our previous correspondence and discussions and provide the following examples:

6.1. The Council's survey data (used to calculate the existing fees) was based on year- end ranging from 31 March 2011 to 31 August 2012. The council only adjusted for inflation for 2014/15 (2%) and therefore omitted cost increases for 2011/12 and 2012/13. The failure to factor in inflation for these two years means that there is a shortfall of approximately £25 in the fee calculation.

6.2. Utilities have increased 26% in price since Jan 2011 (CPI 04.5). The Council has failed to recognise this, only making provision for 2% over the same period.

6.3. Similarly, food costs have increased by 7% since Jan 2011, yet the Council has only made provision for 2% (2% in 2014/15 and 0% for 2015/16) for the same period.

7. In addition to these flaws, the Council's proposed fee increase for 2015/16 fails to make provision for a number of costs which providers have to incur in the provision of the services:

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Phone: 0800 020 9554 | Email: secretary@derbyshirecare.org.uk | Website: www.derbyshirecare.org.uk

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7.1. CQC registration fees: it has just been announced that fees have increased by 9% for 2015/16, yet the Council has only allowed 2%.

7.2. Insurance: we have written to the Council setting out the substantial increase in insurance costs over the last few years, yet only a 2% increase has been offered. This leaves a substantial shortfall.

7.3. Training: As per previous letters the 2% does not take into account substantial increases in training costs due to more regulatory and commissioning expectations and less free training opportunities.

7.4. Cost of capital: this is still significantly undervalued as outlined in our letter of 15 May 2014. The figure of 7.25% published by the CIBR is an expected return on rent only. The Council has made no allowance for any return on operations (see Laing & Buisson). Furthermore, the assumed capital values of £32,000 are well below market values. As a comparison, the costs for building the new DCC homes are well in excess of £100,000 per bed. Put simply, cost of capital is an actual cost incurred in the provision of residential care services. The Council's fees must therefore take account of and make provision for the whole of the cost of capital and not just part of it.

8. Further, the Council's calculations of the fee increase are arithmetically incorrect. The correct rate at the Council's presumed inflation is £436.44.

9. The Association cannot accept the Council's proposals. For the reasons set out above:

9.1. The proposals fail to take into account and make adequate provision for the existing insufficiency of the current rate. These insufficiencies arise out of the Council's previous errors in its calculations of the current rate.

9.2. The current and proposed fees fail to take account or adequate account of all of the costs incurred by providers.

9.3. There are arithmetical errors in the Council's calculations.

10. Accordingly, there is and will continue to be a significant funding gap between the rates paid by the Council and the costs to providers of providing the services. As such, the proposed rates are not sustainable, nor are they sufficient to meet care requirements without the need for bridging the funding gap by cross-subsidisation. It would be wrong for the Council to therefore adopt the proposals; were the Council to do so, it would be failing in its duties to promote an efficient and effective market as the Council's fees will

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not be sustainable without cross subsidisation. As the Council will be aware from previous judicial review decisions, cross subsidisation of any sort is not permissible.

11. In addition to these points, the Association raises the following matters:

11.1. Nursing: we have written and spoken to you on numerous occasions regarding the market risk related to nursing care. Yet the Council does not appear to have even calculated a fee for nursing care and assumed that this category will have the same £ increase (which means the nursing fee will have a lower % increase than residential care!). Even if the Council does not pay the free nursing care contribution it is still responsible for commissioning the nursing care placements and as such has a responsibility to ensure that the market is sustainable. With regards to this market risk, I draw the Council's attention again to its obligation to ensure the sustainability of the market and the variety of services offered within that market and to understand the risks that face providers in their attempts to maintain sustainable and quality services.

11.2. The Quality Premium has yet again had no increase, despite additional costs in staff wages (for doing net payments) and training. This does little to engage with the Council's duty to promote a market with a variety of high quality services on offer. If the premiums do not increase, then the incentive and ability to meet the quality requirements falls away.

11.3. Dementia Payments: We have written to you previously regarding this and we are waiting for your response. We are particularly concerned that before the Council pays providers a dementia rate (the purpose of which is to cover the cost of meeting dementia service needs) the Council requires providers to meet set criteria. In short, providers are treated less favourably if they provide services to dementia residents than they do in the case of non-dementia residents. This is plainly discriminatory as no additional criteria is required in the event that the service is being provided to a non-dementia resident. The effect is to heighten the risk that dementia services will not be adequately funded in the event that providers do not meet the criteria and/or the availability of dementia services will become disproportionately restricted to non-dementia services. The consequence is that there is discrimination as well as a failure to meet the Care Act obligations.

12. On a final note, we notice that the DCC fees were in line with Derby City for 2014/15 but that Derby City has allowed for a greater increase for 2015/16 than the DCC. There does not appear to be any sensible rationale for this.

We kindly urge you to take these points into account and to reconsider the fee proposal for 2015/16 in order to address the matters we have raised.



Derbyshire Care Providers Association (formerly known as Derbyshire Care Homes Association)

We look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, which appears to read "Pierre Falleth". The signature is written over a horizontal line.

Pierre Falleth

Chairman

On behalf of the committee of the Derbyshire Care Providers Association

