
**Decision Session of Cabinet Member for
Health Housing and Adults Social Services**

27 September 2012

Report of the Director, Adults, Children and Education

Fair Price for Care – Residential & Nursing Care Fees

Summary

1. This report advises the Cabinet Member of the negotiations undertaken with the Independent Care Group on proposals to increase fee levels paid to independent sector residential and nursing homes in 2012-13. The report seeks Cabinet Member approval on a fee level increase for 2012-13 and reports on an agreement to undertake a fee modelling exercise to assess a “Fair or Actual Price for Care” to inform subsequent years’ fee levels.

Background

2. It is a requirement of the NHS and Community Care Act 1990 that contractual arrangements are in place to govern the purchase of community care services in the independent sector. The council has a strong and robust process in place for the management of contractual arrangements with the sector and part of this has always involved consultation with partners and their representative body - The Independent Care Group (ICG) - on potential fee adjustments, usually effective from April of each financial year.
3. The Cabinet Member will be aware that levels of payment to the Independent Sector have been given a great deal of attention both locally and nationally of late.
4. Nationally there have been a number of legal challenges to local authorities which have required local authorities to be able to publically justify decisions that they make about fee awards, levels of fees and inflationary increases to fees.

5. A number of local authorities have had legal challenges to date. The consistent thread running through the outcomes has been that local authorities have not adopted a meaningful consultation process about the setting of fee levels, nor taken appropriate consideration of providers' actual costs for providing care.
6. In addition to the legal judgments, The Department of Health issued an agreement in October 2011 between the statutory and independent social care, health care and housing sectors entitled "Building Capacity and Partnership in Care" in which it set out its expectations of commissioners and providers in building positive arrangements. Whilst the agreement is not formal guidance, the council should have regard to it when looking at the issues identified within this report. Some key areas include:
 - commissioners and providers should ensure (among other things) that they recognise the financial and other constraints faced by partners
 - fee setting must take into account the legitimate current and future costs faced by providers as well as the factors that affect those costs, and the potential for improved performance and more cost effective ways of working
 - contract prices should not be set mechanically but should have regard to providers' costs and efficiencies, and planned outcomes for people using services, including patients
 - providers should ensure that they (among other things) are able to provide a full breakdown of the costs of services provided and undertake prompt and timely communication with commissioners
7. A recent report examining the UK market for long term care of the elderly stated that despite an increasingly ageing population and a growing demand for care services, the residential care and nursing home sector had been significantly affected by the economic downturn. Between 2006 and 2010, the long term care market for elderly and physically disabled people grew by 14.9% to nearly £14bn. The sector continues to be dominated by private providers which accounted for 84.6% of the total provision in 2010. Over the same period the number of long term care places provided by the public sector declined from 58,700 to 46,200. (Source - Key Note UK Care Home Industry 2011/12 Market Intelligence Report)

8. Latest projections published by the Office for National Statistics continue to show that the fastest population growth in the next few decades will be among people aged 85 and over. By 2035 it is projected that the number of people aged 85 and over will be reaching 3.5m and accounting for 5% of the total population. These projections show the continued requirement for an enhanced range of community and residential care provision and reinforces the importance of having a strong and sustainable partnership with providers.

Consultation & Current Position

9. The council has been in consultation with the ICG about residential fee levels for 2012-13 and proposals for setting a “fair level for fees” in the future. It has accepted that the setting of care fee rates should be informed (though not constrained) by an assessment from time to time on the true cost of providing services. It has indicated that such exercises are necessarily complex and time consuming and as part of the consultation process has given a commitment to conducting a “fee modelling” exercise during 2012 to inform the 2013-14 fee levels.
10. At the time of the commitment to undertake the exercise, the council’s initial view was that it would not be in a position to offer any increase in rates before such an exercise had been undertaken. It was conveyed to partners that this was due to the budget pressures within the council.
11. Consultation with the ICG and directly with providers continued, and following representations, the council reflected on its position and conveyed a revised offer to the sector, the proposals included:
 - a 1% increase on fee levels effective from the 1 April 2012 in relation to all registered residential & nursing care homes within the City of York
 - provision of specialist dementia training to staff in residential & nursing care homes with the aim of increasing the number of dementia champions in the city
 - continued consultation on fee levels during 2012 and confirmation of the council’s intention to undertake an agreed “modelling exercise” to evaluate fee levels within York to establish an up to date fair price for care

12. The ICG subsequently indicated it was unhappy with the proposals and a meeting was held with them on the 10 May. Immediately before that meeting, we received notification from the ICG's solicitors requesting more formal documentation from the council and conveying the fact that the ICG was now assessing options open to them and their members. The council was clear that discussions remained ongoing and that at this stage we had not necessarily conveyed our final position in relation to 2012-13.
13. Following further meetings, and in response to the evidence provided by the ICG, the council has made a revised offer to the sector which is detailed below and this paper reports on the results of that further consultation. The ICG also represent providers in North Yorkshire and they have gone through a similar process with colleagues at the county council. However, the ICG has taken more formal legal action against North Yorkshire County Council resulting in a judicial review which is currently subject to an agreed mediation process.
14. The ICG, care homes which participated in the judicial review and NYCC agreed that the legal process was a last resort and that they were keen to move forward together to consider the rates paid for care in North Yorkshire. The main outcomes of the mediation agreement were:
 - NYCC will work together with the ICG on an exercise to consider the actual cost of care within residential homes. An independent accountancy/audit firm will be appointed and information will be collected and verified independently. NYCC will give due regard to this in the fee setting process for 2013-14 onwards
 - Judicial Review proceedings will be "stayed" for four months to allow for progress in terms of developing and undertaking an actual cost of care exercise
 - in the interim, the current standard rates paid by NYCC will be increased by 2.5% from 8 October 2012. Any changes to fees for 2013/14 will now be subject to the "due regard" detailed above
15. Officers from the council have now held a subsequent meeting with representatives from the ICG on the 14 September. The meeting further explored options to undertake an exercise on fees

modelling to consider the actual cost of residential care and to consider fee levels for 2012-13.

16. As detailed within paragraph 11 of this report, the council implemented a 1% fee increase in April 2012. As a result of the discussions with the ICG, the council has offered to increase fees by a further 1% from the 1 October 2012. The impact of an additional 1% increase will be £61K in 2012-13 with the full year effect being £122K for 2013-14. The council has also agreed to undertake an exercise to model the costs of care. The council and NYCC have agreed to share this undertaking. The outcomes will be specific to each authority but it will enable assumptions and parameters to be agreed jointly between the councils and the ICG.
17. The council has also agreed to pay “due regard” to the outcomes of this exercise in the fee setting process for 2013-14 onwards. The council has also agreed as part of the exercise to consider and explore moving to paying providers two weeks in advance/two weeks in arrears. The current position is that providers are paid monthly in arrears and the ICG have requested the changes to improve “cash flow” for partners. Due to the work required in making this change it would if accepted be implemented from the 1 April 2013. However, if the above exercise on modelling care costs is completed by December 2012, an earlier implementation could then be possible.
18. The 1% fee increase in York referred to above has been implemented with effect from April 2012. This means that current gross weekly fee levels paid to providers are:

EMI Nursing	£540.44
Nursing Care	£524.92
EMI Residential Care	£391.02
Residential Care	£375.50

19. If it is agreed to implement an additional 1% increase from the 1 October 2012 this would increase fees that would be paid to:

EMI Nursing	£545.84
Nursing Care	£530.17
EMI Residential Care	£394.93

Residential Care	£379.26
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Analysis & Impact of Modelling Exercise

20. The last time the council undertook a fee modelling exercise was in 2005. It utilised the JRF/Laing & Buisson Fair Price Toolkit in partnership with the ICG and whilst the results were noted the full recommendations were never adopted. This has led to fee levels falling behind increased rates of inflation, despite modest increases since 2005. There are also a number of other contributory factors which have led to fee levels becoming a significant issue for our partners. These include no inflationary increases in 2010 & 2011, increases in fuel and utility costs, regulation fees increases, food price increases and general costs in both maintaining service quality and providing services with increasing inflationary pressures.
21. As detailed earlier within this report, the council has made a commitment to undertake an exercise to consider the actual cost of care. It is acknowledged that this could lead to further fee increases in 2013 and beyond. The Cabinet Member is therefore asked to note that there could be a significant financial pressure placed upon the council as it pays “due regard” to future fee levels as a result of the outcome of the modelling exercise. The implementation timescale for any agreement arising from actual/fair price for care work would be for aligned future discussion.
22. At current rates each 1% increase costs approximately £122k per annum. At this stage it is not possible to pre-empt the outcome of the modelling exercise. The initial request from the ICG for this year was a 6.5% increase.

Council Plan

23. This report would take into account the Protection of Vulnerable People as part of the Council Plan and Corporate Strategies.

Implications

Financial

24. The financial implications of this report are covered in detail in paragraphs 16-19 of this report. In summary the fee increases already implemented (from 1 April) or proposed (from 1 October) are estimated to cost £183k in 2012/13 with a full year cost of £244k. No provision was made in the 2012/13 budget for any inflationary fee increase. Therefore the additional costs arising from this decision will impact on the existing budget for residential and nursing home placements and will have to be managed alongside wider strategies to balance the 2012/13 budget of the local authority.

Equalities

25. An Equalities Impact Assessment has been completed in respect of this report with no issues identified.

Legal

26. Recent court decisions have emphasised the importance of proper consultation before any decision on the level of fees is reached. This includes the requirement to take into account the actual cost of providing the service. Under the Equality Act 2010, the Authority must also have due regard to the need to eliminate discrimination and promote equality, and accordingly, it will be necessary to assess any equality impact of any change in the level of care fees.

Other

27. There are no other implications associated with this report.

Recommendations

28. Cabinet Member is asked to agree to the award of an additional 1% inflationary fee award to residential & nursing care providers in York to be effective from the 1 October 2012. The Cabinet Member is also asked to note the commitment to undertake an exercise to consider the actual cost of care home fees and the

council's commitment to give this "due regard" when setting fees for 2013-14 onwards.

Reason: To continue to stabilise the care home market within York, recognise the consultation that remains ongoing and to recognise the cost pressures currently facing the sector.

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Report
Approved



Date 17/09/1
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Cabinet Member responsible for the report:

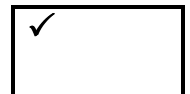
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For further information please contact the author of the report

Background Papers

None

Annexes

None