

**Notice of a public meeting of:  
Decision Session - Cabinet Member for Health, Housing and Adult  
Social Services**

**To:** Councillor Simpson-Laing  
**Date:** Thursday, 27 September 2012  
**Time:** 4.30 pm  
**Venue:** The Guildhall, York

**AGENDA**

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**Notice to Members – Calling In**

Members are reminded that, should they wish to call in any item on this agenda, notice must be given to Democracy Support Group by:

**4.00pm on Monday 1 October 2012** if an item is called in after a decision has been taken.

Items called in will be considered by the Corporate and Scrutiny Management Committee.

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Written representations in respect of items on this agenda should be submitted to Democratic Services by 5pm on **Wednesday 26 September 2012**.

**1. Declarations of Interest**

At this point in the meeting the Cabinet Member is asked to declare any personal, prejudicial or disclosable pecuniary interests they may have in the business on this agenda.

- 2. Minutes** (Pages 1 - 4)  
To approve and sign the minutes of the meeting held on Wednesday 1 August 2012.

**3. Public Participation**

At this point in the meeting, members of the public who have registered their wish to speak at the meeting can do so. The deadline for registering is **5pm on Wednesday 26 September 2012.**

Members of the public may register to speak on:

- an item on the agenda;
- an issue within the Cabinet Member's remit;
- an item that has been published on the Information Log for the current session. Information reports are listed at the end of the agenda.

**4. Fair Price for Care - Residential & Nursing Care Fees** (Pages 5 - 12)

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.

**5. Urgent Business**

Any other business which the Chair considers urgent under the Local Government Act 1972

**Information Reports**

No items have appeared on the Information Log since the last meeting.

Democracy Officers:

Names: Catherine Clarke and Louise Cook (job share)

Contact Details:

- Telephone – (01904) 551031
- E-mail – [catherine.clarke@york.gov.uk](mailto:catherine.clarke@york.gov.uk) and [louise.cook@york.gov.uk](mailto:louise.cook@york.gov.uk)

For more information about any of the following please contact the Democracy Officers

- Registering to speak
- Written Representations
- Business of the meeting
- Any special arrangements
- Copies of reports

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If you would, you will need to:

- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) **no later than 5.00 pm** on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
- find out about the rules for public speaking from the Democracy Officer.

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### **Further information about what's being discussed at this meeting**

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

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If you have any further access requirements such as parking close-by or a sign language interpreter then please let us know. Contact the Democracy Officer whose name and contact details are given on the order of business for the meeting.

Every effort will also be made to make information available in another language, either by providing translated information or an

interpreter providing sufficient advance notice is given. Telephone York (01904) 551550 for this service.

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## **Holding the Cabinet to Account**

The majority of councillors are not appointed to the Cabinet (39 out of 47). Any 3 non-Cabinet councillors can 'call-in' an item of business following a Cabinet meeting or publication of a Cabinet Member decision. A specially convened Corporate and Scrutiny Management Committee (CSMC) will then make its recommendations to the next scheduled Cabinet meeting, where a final decision on the 'called-in' business will be made.

## **Scrutiny Committees**

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

## **Who Gets Agenda and Reports for our Meetings?**

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City of York Council

Committee Minutes

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MEETING	DECISION SESSION - CABINET MEMBER FOR HEALTH, HOUSING AND ADULT SOCIAL SERVICES
DATE	1 AUGUST 2012
PRESENT	COUNCILLOR SIMPSON-LAING (CABINET MEMBER)
IN ATTENDANCE	COUNCILLOR CUTHBERTSON

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### 1. **DECLARATIONS OF INTEREST**

The Cabinet Member was invited to declare at this point in the meeting any personal or prejudicial interests she might have in the business on the agenda. No interests were declared.

### 2. **MINUTES**

RESOLVED: That the minutes of the last Decision Session of the Cabinet Member for Health, Housing and Adult Social Services held on 24 April 2012 be approved and signed by the Cabinet Member as a correct record.

### 3. **PUBLIC PARTICIPATION**

With the agreement of the Cabinet Member, Councillor Cuthbertson spoke in opposition to the recommendations in agenda item 4 (Changes to Eligibility Criteria for Adult Social Care). He drew the Cabinet Member's attention to two written representations which had been submitted by Councillor Aspden and the Liberal Democrat Group.

He thanked the Cabinet Member for holding a public decision session to discuss this issue but raised concerns over how the consultation process had been conducted, including the design of the form and the way it had been brought to public attention.

He agreed with the view expressed by York Older People's Assembly, that low level intervention at modest needs level can

help sustain independence for longer and that any short term financial gains should be set against the costs of having more people fall into the “substantial” or “critical” needs bands because they lose this crucial support. He suggested that savings could be made elsewhere in the budget to protect social care and expressed the view that this option had not been thoroughly explored.

He confirmed that the Liberal Democrat Group formally opposed the recommendation to change the eligibility criteria for adult social care from Moderate, Substantial and Critical to Substantial and Critical.

#### **4. CHANGES TO ELIGIBILITY CRITERIA FOR ADULT SOCIAL CARE**

The Cabinet Member considered a report which updated her on the public consultation and sought her approval to change the eligibility criteria for adult social care from Moderate, Substantial and Critical to Substantial and Critical.

The Assistant Director (Assessment and Safeguarding) introduced the report and responded to specific queries from the Cabinet Member.

The Director of Adults, Children and Education stressed the need to respond to demographic changes and in particular the increased numbers of older people and life expectancy of those with long term needs. He welcomed the proposed £150,000 reinvestment into early intervention services but recognised that this should be used to supplement and enhance the rich range of services which were already available. He confirmed that the proposed changes would not affect a customer’s right to assessments (including carers assessments), access to telecare, or the right to access the re-enablement service – all of which would be unaffected.

The Cabinet Member advised that this was an important but difficult decision to make, noting that over 85% of councils had already taken the decision to change the eligibility criteria with more expected to over the next few years. She confirmed that she had read the comments submitted by other organisations and the Liberal Democrat Group and taken these into account in coming to a decision.



She assured Members that no changes would be made to a customer's support until a review had been undertaken with the individual.

She confirmed that some of the savings would be reinvested in alternative community and voluntary sector support for those with moderate level needs and this provided the opportunity to be developed as part of the personalisation agenda.

**RESOLVED:** That option 1, "to agree the change to City of York's Eligibility Criteria to Substantial and Critical and confirm that £150k a year will be invested in alternative support within the community to help meet moderate level needs" be approved

**REASON:** To protect the needs of those people with higher needs and to develop alternative support for those with moderate level needs that promote their wellbeing and independence. To support the change to more community based and user led support as part of the personalisation agenda.

## **5. HOMELESS REVIEW 2011-12**

The Cabinet Member considered a report that looked at the activity governed by the Housing Act 1996, the Homelessness Act 2002 and the City of York Council's Homelessness Strategy 2008-13 in respect of the financial year 2011/12. The primary focus was to report on prevention work, the trends of statutory homelessness, Youth Homeless Services and the work of the Resettlement Services and Housing Registrations Team to outline service developments throughout the year and future targets.

The Service Manager (Homelessness) drew the Cabinet Member's attention to paragraph 6 of the report which stated that the Housing Options Team have seen an increase in demand for services which has been evidenced by an increase of 76 percent in contacts at Customer Service Centre 3350 this year, with a similar increase the previous year. With regard to appendix 1 (Homelessness Performance 2011-12) she stated

that the figures were pleasing. She referred the Cabinet Member to paragraph 9 of the report which listed the work which would be given priority within the team in 2012-13 and which included the re-provision of Ordnance Lane.

- RESOLVED:
- (i) That the contents of the report be noted.
  - (ii) That the priorities for 2012/13 as set out in paragraph 9 of the report, the targets and the forthcoming plan be agreed.

REASON: To ensure the council continues to meet its statutory responsibilities and supports the most vulnerable in society.

Councillor T Simpson-Laing, Cabinet Member  
[The meeting started at 4.30 pm and finished at 5.10 pm].



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**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.*

### Contact Details

**Author:**

Gary Brittain  
Commissioning and Contracts  
Manager  
01904 554099

**Chief Officer Responsible for the report:**

Pete Dwyer  
Director Adults, Children and  
Education

**Report  
Approved**



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

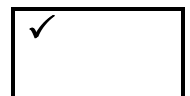
Cllr Tracey Simpson-Laing  
Cabinet Member for Health, Housing  
and Adult Social Services

### Specialist Implications Officer(s)

Legal:  
Glenn McCusker  
Deputy Head of Legal Services

**Wards Affected:**

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**For further information please contact the author of the report**

### Background Papers

None

### Annexes

None

**DECISION SESSION OF CABINET MEMBER FOR**  
**HEALTH HOUSING AND ADULT SOCIAL SERVICES**

**SUBMISSIONS FROM THE INDEPENDENT CARE GROUP (“ICG”) ON BEHALF OF**  
**CARE HOME PROVIDERS IN THE CITY OF YORK COUNCIL AREA**

1. A report has been presented to the Cabinet Member on negotiations which have taken place with ICG regarding the fee levels paid to independent sector residential and nursing homes in 2012/13 and beyond.
2. ICG have been provided with a copy of this report and submissions on it have been invited. ICG is grateful for this opportunity to make direct submissions to the Cabinet Member.
3. The report that has been presented is an accurate representation of the discussions that have taken place between ICG and CYC. ICG is pleased to see that CYC has recognised that its fee setting process is deficient and that it is engaged in remedying that deficiency.
4. The Cabinet Member will see from the report that ICG requested at 6.5% increase for 2012/13. CYC has to date offered a 1% increase from 1 April and a further 1% from 1 October.
5. CYC has further agreed to join with North Yorkshire County Council (“NYCC”) and ICG on the creation, completion and operation of a bespoke cost of care model, which shall be utilised by both Council’s to set fee levels for future years.
6. The Cabinet Member will further be aware from the Report that the creation of the model above, arose as a result of Judicial Review proceedings being issued against NYCC, a 15 hour mediation, and a further 2 weeks of discussion between NYCC and ICG. The terms of the settlement are prescriptive, with very clear commitments from NYCC regarding the operation and implementation of the outcome of the model. A further interim increase on fees was also agreed between ICG and NYCC.
7. ICG recognises the commitment from CYC to join with NYCC in the completion and use of the model, however, this commitment is not felt to be as significant as that invested by NYCC.
8. ICG has previously presented cogent evidence to CYC regarding the 6.5% increase sought – to summarise this seeks to address the significant cost pressures faced by

providers in recent years, including heating, lighting and food bills, coupled with increases in staffing costs year on year, in respect of national minimum wage increases and the forthcoming pension obligations. This figure took into account the fact that there was no increase in fees in either 2010 or 2011.

9. The offer from CYC does not even go half way to meeting those costs.
10. ICG has not had cause to issue Judicial Review proceedings against CYC, as a final decision regarding rates had not yet been made, and discussions were ongoing. If the current offer is presented to ICG and its members as a final decision, consideration will be given to commence Judicial Review proceedings and/or to propose mediation. Legal advice received is that ICG will be successful in compelling CYC to follow due process.
11. ICG sincerely hopes that such a step will not be necessary and want to continue to work in partnership.. The negative publicity and the costs of both parties in commencing and defending a legal action, or in engaging in extensive mediation, could better be utilised by CYC revising its offer to ICG and its members.
12. ICG would not hesitate to recommend to its members that no Court action be taken in respect of 2012/13 fees, if CYC offer an increased revision to the 1% offered with effect from 1 October 2012.
13. Should the Cabinet Member wish to discuss this further with me, I can readily be contacted.

**MIKE PADGHAM**

**CHAIR, INDEPENDENT CARE GROUP**

**26 SEPT 2012**