

WIRRAL COUNCIL

CABINET

18 OCTOBER 2012

SUBJECT:	<i>FEES FOR RESIDENTIAL AND NURSING HOMES CARE</i>
WARD/S AFFECTED:	<i>ALL</i>
REPORT OF:	<i>GRAHAM HODKINSON</i>
RESPONSIBLE PORTFOLIO HOLDER:	<i>COUNCILLOR ANNE MCARDLE</i>
KEY DECISION?	YES

1.0 PURPOSE OF REPORT

- 1.1 To report the outcome and process of consultation with independent residential and nursing home care providers regarding cost modelling for the sector.
- 1.2 To present options and recommendations with regard to fees paid by the Council to independent sector residential and nursing homes.
- 1.3 To authorise the approved fee proposal to be consulted on.
- 1.4 The proposals will contribute to the Council priority to safeguard vulnerable adults and promote choice and control.

2.0 BACKGROUND

- 2.1 The Council has statutory responsibilities under Community Care Act legislation to assess the needs of individuals and to purchase services to meet those needs as appropriate.
- 2.2 Following an assessment of need, made in accordance with the General Principles of Assessment in LAC (2002)13 Fair Access to Care Services, should the Council decide to provide residential accommodation under Section 21 of the National Assistance Act 1948 either permanently or temporarily for example, short term break or intermediate care or by interim care arrangement, it will make a placement on behalf of the individual in suitable accommodation.

- 2.3 Residential care services offer essential services to some of our most vulnerable older people; for those that require it, the quality of care is critical. Providers must be able to provide care cost effectively, and to an acceptable standard. Care delivery standards are monitored through social care contracts and the Care Quality Commission (CQC). The problem of balancing cost and quality is particularly acute for both commissioners and providers of residential care. The consultation exercise with providers has been undertaken in the context of growing national and local concern, as reflected in the media regarding both the viability and quality of provision.
- 2.4 In comparison with other Local Authorities in the region Wirral is spending a larger share of its social care budget on residential services, this position reflects lower levels of investment in community based services designed to keep people at home.
- 2.5 The Wirral residential and nursing home market consists of 111 homes, the majority of which provide support to Older People; presently there is an oversupply in the market of approximately 200 beds. It is envisaged that the number of places purchased in residential care can be reduced through expanding the range and capacity of community based services.
- 2.6 Residential and nursing homes are currently populated by:
- People already placed and funded by the Council under the current contract
 - People already placed and funded by the Council at the 2010/2011 fee level under the old contract
 - People funding themselves
 - People already placed in nursing homes paid for at the Council's rates in receipt of continuing health care funding (reclaimed by the Council from the NHS).
 - People placed on a temporary basis pending a more permanent care arrangement
 - People in receipt of short term care respite, paid in accordance with the contract in place with the home
- 2.7 In relation to the market a defining principal is the "Choice Directive": individuals must be offered choice in relation to accommodation. Where an individual expresses a preference for a particular care home ("preferred accommodation") the Council must arrange care in that accommodation, provided;
- The Preferred Accommodation is suitable in relation to the individual's assessed needs
 - To do so would not cost the Council more than what it would usually expect to pay for accommodation for someone with the individual's assessed needs. This is known as the "Usual Cost".
 - The Preferred Accommodation is available
 - The provider of the Preferred Accommodation is willing to provide accommodation subject to the Council's usual terms and conditions for such accommodation.

- 2.8 If an individual requests it the Council must also arrange for care in accommodation more expensive than it would usually fund, provided that a third party is willing to pay the difference between the cost the council would usually expect to pay and the actual cost of the accommodation (i.e. to “top up” the payment). Residents that are subject to the 12 week property disregard or have a deferred payments agreement with the Council may make top ups from specific resources on their own behalf. These are the only situations where the resident may personally top up.
- 2.9 Guidance published in October 2004 under a Local Authority Circular regarding Choice of Accommodation states that:
When setting its usual cost a council should be able to demonstrate that this cost is sufficient to allow it to meet assessed care needs and to provide residents with the level of care services that they could reasonably expect to receive if the possibility of resident or third party contributions did not exist.
- 2.10 The Council has a statutory duty to set a fee level that enables efficiently run care homes to provide care that is compliant with the CQC Essential Standards of Quality and Regulations Safety 2010. There is also a responsibility to be able to ensure that there is adequate supply to meet the assessed need.
- 2.11 Council fee levels for independent sector residential and nursing home care were reduced by 9.5% with effect from 1 April 2011 following the Wirral Task Force Consultation exercise; this resulted in a saving of £4.5m to the Council in this area. Fee proposals are made as part of the budget setting exercise in November each year. It was anticipated in the 2012/13 budget for social care that the Council would be able to realise further savings from contracted rates, including an efficiency of £1.6m based on the assumption that greater value could be gained from changes to commissioned services. During 2011 there were, however, a number of high profile court cases against local authorities, most notably the Judicial Review Judgements from Pembrokeshire, Sefton and Leicestershire ruled that fees had been set without **due regard** to the actual costs of care and in the Sefton that the Council had failed to consult with home owners.
- 2.12 No provision was made in the 2012/13 budget to implement an increase in fees for residential based care in Wirral; additional resources of £1.5m were identified to improve the range and variety of alternative services to meet identified need. Wirral Council was, however, aware when it set its budget for 2012/13 that it would be necessary to increase the indicative allocation made for Adult Social Care Services, through use of revenue reserves, in order to meet the obligations to set fees taking into account actual costs of care. The Council is acutely aware that it should not transgress the Birmingham Judicial Review judgment where fees were set retrospectively to fit the budget available thereby predetermining the outcome of the consultation.
- 2.13 Discussions began in January 2012 when home owners were advised that the timetable for setting the Council’s budget for 2012/13 was 1 March 2012 and that the planned consultation would result in the fees being set after this date. Reassurance was given consistently throughout the consultation process that the final fees would be effective from 9 April 2012 and payments would be adjusted accordingly. Home owners were further advised that the budget had been set in the knowledge that the Council’s fee proposals were subject to consultation and may increase and that an allowance would be made for this contingency.

- 2.14 During 2012 extensive work has been undertaken with the local residential and nursing home care market to develop an Efficient Wirral Care Home cost model that has due regard to actual costs and determines a fair and reasonable contract rate. The economies of residential homes vary according to how they are financed, their lay out and their capacity. The Wirral Market contains a mix of purpose built homes and large former private houses that have been adapted and in many cases extended.
- 2.15 Developing the Efficient Wirral Care Home Model has involved deconstruction of provider costs and market returns. Provider assumptions have been challenged from a commissioning perspective and potential fee levels have been developed in order to ensure that, in accordance with the Local Government Act 1999, the Council achieves 'best value'. A chronology of communication and consultations with home owners has been included in Appendix 1. Home owners have been consulted in a number ways including;
- A questionnaire about Quality Premiums and developing a fee model.
 - Home Owner Forum Meeting discussions
 - Formal responses to an initial proposal using the Efficient Wirral Care Home Model
 - Feedback from the Wirral Care Homes Association to proposals
 - A data collection exercise for summarised actual cost information.
 - Wider Consultation issues relating to choice of residential care with an Older Peoples Group
- 2.16 All residential and nursing care contracts were terminated at the end of 2010/11 so that a new contract could be introduced in April 2011 via a tender based process. Some homes signed up to the new contract immediately and therefore receive the current rate, whilst others refused to accept the fee level offered. In order to facilitate a contractual relationship with homes that already supported people funded by the Council, home owners that refused to accept the new fees, were invited to sign a contract that secured the 2010/11 fees for those people until their residency ended.
- 2.17 At present 36% of homes have confirmed to the Council that they currently charge a top up in addition to the Council's usual fee. There is, however, evidence that some homes that claim not to charge a top up have entered into such arrangements suggesting that the actual percentage is higher. Separate arrangements are in place for intermediate care.

3.0 OPTIONS

- 3.1 Detail with regard to fee modelling, reflecting key issues and viewpoints is provided in Appendix 2. The appendix highlights issues in respect of the Wirral Quality Premium Model 2005 to 2011, the Laing and Buisson model and the Efficient Wirral Care Home Model.

3.2 It should be noted that as part of the consultation exercise Wirral Care Homes Association (WCHA) provided some data to assist the Council in calculating fees with reference to actual costs. The information available through the data collection exercise was limited; however it did provide a useful insight into the actual capital values of homes in Wirral and the staffing levels per bed used by homes. Using the information gathered throughout the consultation the following changes have been applied to the Wirral model;

- The inclusion of a separate Nursing Elderly Mentally Inform (EMI) Fee Rate
- Updated wage rates to take account of changes to the National Minimum Wage
- Updated Lifecycle Costs
- The use of average market value for land and buildings as a means of calculating capital value for the purpose of providing a level of return on capital.

3.3 The Council has identified three main options relating to the fees

i) Option 1

This proposal would involve the Council offering no increase to home owners for 2012/13, terminating the current contract for all placements and putting in place a revised contract with effect from 1 April 2013 with fees reflecting the actual cost of care. The legal implications are highlighted in section 10 of this report; in particular, there is a high risk that this approach would result in the Council being taken to Judicial Review should this option be taken.

ii) Option 2 - this is the recommended Option

This proposal would involve implementing the increase from April 2012 with all fees being adjusted accordingly. The basis of this model is:

- Revised Capital values taking into account the Data collection exercise
- Return on Capital based on 7%, which is supported by the work undertaken nationally by Laing and Buisson on their calculation of a Fair Price for care and work with Sefton Council. The rationale being that this is the amount an operator would have to pay to rent a care home or the price a care home owner would charge when letting it to an operator. The figure comes from the current rate at which a sale and lease back deal would be agreed.
- Business Return is 3% this represents the Profit Element to the home provider; Wirral's primary aim is not to entice further providers into the market at this time due to the excess capacity already available. The level has been proposed at 3% taking into account risk free saving investments. Laing and Buisson suggest that the rate applied to return on business activity lies between 0 and 13% and that Councils will be influenced by their need to attract new investment or maintain stability.
- This equates to an aggregated return of between 14.8% and 20.2%

- It should, however, be noted, that the Council has received feedback during the consultation that Nursing EMI would be adversely affected if further cuts were imposed. The Wirral Model suggests that the Nursing EMI rate should be paid at £542 per place per week, which would reduce the current rate by approximately £10. It is envisaged that although alternatives to residential based care are the development priority of the department, residential dementia services will continue to be a growth area of the market. There is at present limited Nursing EMI capacity in the market and it is therefore proposed to maintain the current rate to provide stability and encourage homes to consider diversification into this area. All Nursing EMI homes have achieved 3 stars under the Wirral Quality Premium Model.
- The efficiency level within the model is based on 50 beds which is the industry standard for a new build home; with an assumed 90% occupancy level
- A single rate is proposed.

Cost to the Council at current bed levels £757,473

iii) Option 3

This proposal would involve implementing the increase from April 2012 with all fees being adjusted accordingly. The basis of this model is:

- Return on Capital based on 7% which is supported by the work undertaken nationally by Laing and Buisson on their calculation of a Fair Price for care and work with Sefton Council. The rationale being that this is the amount an operator would have to pay to rent a care home or the price a care home owner would charge when letting it to an operator. The figure comes from the current rate at which a sale and lease back deal would be agreed.
- Business Return is 3% this represents the Profit Element to the home provider; Wirral's primary aim is not to entice further providers into the market at this time due to excess capacity already available but to maintain stability within the market and provide quality care
- The efficiency level within the model is based on 37 beds which reflects the average number of beds in Wirral Homes; with a 90% occupancy level. Using the average number of beds subsidises inefficient homes and creates increased profit for homes that do have economies of scale.
- Payments are made on a single payment basis

Cost to the Council at current bed levels £1,401,942

- 3.4 The actual fee rates that would be payable to home owners under each option, together with the overall return to home owners under each option, is shown in Appendix 3.
- 3.5 In order to make comparison to recent fee levels the changes in fees since April 2009 and the recommended option above are provided in Appendix 4.

3.6 A regional comparison of residential and nursing home rates has been provided at Appendix 5 to demonstrate how the Wirral Rates would compare. It is important to note that this information has been included in this report by way of context and that regional comparators have not been used to determine the rates proposed which are based on the Efficient Wirral Care Home model.

4. OTHER ISSUES TO CONSIDER

4.1 Appendix 6 sets out the rationale for discontinuing a premium based model in favour of basing the fees on actual costs. When surveyed only 13% of home owners felt the premiums were not out dated compared to 39% who felt that they were out dated. The predominant comment received from the balance of home owners was that if the fee set actually covered the cost of care then the premiums would be outdated.

4.2 During the consultation home owners suggested that quality premiums should be paid for external accreditations such as Investors in People and the Gold Standards Framework. Consequently a contribution towards external accreditation was built into the Efficient Wirral Care Home Model proposal to home owners on 17 April 2012.

4.3 As previously stated the Council has a statutory duty to set a rate that adequately funds care that meets the CQC Essential Standards of Quality and Regulations Safety 2010. Service offered over and above the essential standards that influence service user choice cannot be funded by the Council. Investors in People or the provision of a mini bus for example are not a requirements of the essential standards and do not form part of a compliant home. Consequently the contribution proposed initially has been removed from the proposals made in this report. External accreditations attracted premium payments under the previous model and home owners have stated that they are likely to stop external accreditations on cost grounds.

4.4 The Council has recently invested in the Quality Assurance function of the department which will be used to ensure that safe services are being delivered in accordance with the essential guidelines for care.

4.5 The Council funds approximately 50% of the residential and nursing home places in the market with 43% of places being privately funded. Research by Laing and Buisson suggest that privately funded people nationally pay more than service users funded by the Council. Service users qualify for Council funding when their funds fall below a level prescribed by the Government currently £23,250. The service users' ability to pay is defined within an individual financial assessment.

4.6 Due to this financial assessment, service users are not legally allowed to pay a top up premiums levied by a home. Any top up payment must be paid by a third party most commonly a relative of the service user. The Council has in recent years left all third party payment to be privately agreed between the home and the third party. Best practice clearly shows that the Council should facilitate the placement, ensure that the third party has sufficient funds to cover the commitment, pay the home accordingly and recover the additional top up premium from the third party.

- 4.7 These arrangements also ensure that the Council is clear what the additional third party payment is for. The financial risk associated with this arrangement arises where the third party defaults on the payment the Council may be liable for the third party payment. It is therefore essential that the Council negotiates a clear and transparent figure and where this is not paid on need, be clear that it will not be paid beyond a default by the third party. The Council has a clause in its contract that states where a third party falls into arrears of 4 weeks the payment to the home will default to the Council's standard rate.
- 4.8 An individual decision must therefore be made to review the needs of the service user and offer alternative accommodation or if there are grounds for the service user remaining in their home of choice then the Council would have to pay the top up inclusive rate. It would not be practical for the Council to take over all existing top up payments immediately as agreements between home owners and third parties are already in existence. It is therefore recommended that the Council takes responsibility for all new places that involve a third party payment from April 2013 including people relocating from one home to another where a third party payment is required, and look to review existing top up arrangements during 2013/14.
- 4.9 The fees paid by DASS are used to determine the charges that service users pay, with some paying the full cost. Service users should be notified when the fees are agreed and the charges revised to maximise the income to the Council. Due to the delay in setting fees only the charges for the last quarter of the financial year will be affected. It is estimated that 165 people will be affected by this adjustment.

5.0 RELEVANT RISKS

- 5.1 Risks of judicial review have been represented within the report reflecting strength of provider views in this matter. Should this happen the outcome would be either to uphold the approach taken or that the Council is asked to re-visit its calculation. It is hoped that this can be avoided and that the settlement of fees are not further delayed.
- 5.2 It is critical to obtain the correct balance between cost and quality to ensure quality standards can be maintained and Best Value obtained.
- 5.3 If Third Party Top Ups are not dealt with in a transparent manner according to Best Practice there is a danger that unforeseen financial obligations may accrue.

6.0 OTHER OPTIONS CONSIDERED

- 6.1 In helping people who need to use the services of the department, it is inevitable that some service users will require residential or nursing home care. All effort is made to assist service users to live independently in their own homes, but in order to ensure facilities are available for people who need residential and nursing home care the Council has a statutory duty to set an appropriate fee rate.

7. CONSULTATION

- 7.1 In order to demonstrate that due regard has been paid to the views of home owners an extensive consultation process began in January 2012; the chronology for which is shown at Appendix 1.

- 7.2 A questionnaire was used as part of the consultation in relation to quality criteria and a range of other issues. The value of this exercise was limited due to homes submitting common statements and void answers. This consultation exercise was extended at the request of home owners to allow the Wirral Care Homes Association to obtain a view on the Wirral model from Laing and Buisson and for discussions among providers to take place.
- 7.3 Care home fees cannot be based on actual costs because there are many variations in terms of size, financing and running costs. The Council must however demonstrate that it has given “due regard” to actual costs in setting its fees. To this end the Wirral model was revised and, at the request of home owners, consideration was given to the Fair Price for Care model commissioned by the Wirral Care Homes Association from Laing and Buisson and submitted to the Council in April 2011. However the Laing and Buisson exercise was based on a return of staffing information only and used running costs based on its national model thereby failing to give due regard to actual local costs.
- 7.4 At a meeting with WCHA and its legal representative on 14 June 2012 the Council was at the point of making a revised proposal based on the best information available. The WCHA provided some explanations surrounding the reluctance of its membership to provide business accounts and actual cost information. An alternative proposal was made by the WCHA to collect actual cost data in a summarised form.
- 7.5 The Data Collection exercise developed was completed on 4 August 2012 with only 23 homes out of over 111 making a return. Although the information produced by the data collection exercise was limited, as stated above, the results were considered and reflected in the Wirral Model.
- 7.6 A wider consultation exercise was also undertaken with a focus group of older people to look at the impact on setting fees, the factors that impact on the choice of a home and the decisions the Council needs to make in respect of self funders who subsequently apply for Council funding. The results were considered as part of the Equality Impact Assessment.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 8.1 There are no direct implications for voluntary, community and faith organisations.

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 9.1 The financial implications of the options set out in this report can be summarised: -

	Cost in Full Year
Option 1	£0
Option 2	£757,473
Option 3	£1,401,942

9.2 It should be noted that no provision is available within the currently approved estimates of the Department of Adult Social Services to fund an increase in fees. If Cabinet agree to any increase it will be necessary to fund this in 2012/13 from the Revenue Reserves of the Council; with subsequent years' costs being a call against any resources that are made available for Growth.

10.0 LEGAL IMPLICATIONS

10.1 Under section 21 of the National Assistance Act 1948 ("the Act") and the Directions made under it and LAC 93 (10), the Council has a duty to arrange accommodation for adults who by reason of age, illness or disability or any other circumstance are in need of care and attention.

10.2 The National Assistance Act (Choice of Accommodation) Directions 1992 allows the Council to fix a maximum amount or "usual cost" that it is prepared to pay for particular types of residential care. Paragraph 3(b) states that that the individual should be accommodated at a place of his choice (known as preferred accommodation) provided making arrangements at the individual's preferred accommodation would not require the Council to pay more than they would usually expect to pay having regard to the individual's assessed needs.

10.3 The Council is required to pay the amount it usually costs to meet the individual's objectives set out in the needs assessment and care/support plan [less any means tested contribution]. The Council is not required to pay more than it would usually expect to pay, having due regard to assessed needs. More than one usual cost should be set where the cost of meeting specific needs is different.

10.4 The Government issued statutory guidance Local Authority Circular - LAC 2004 (20) on setting the usual cost of care under section 7A of the Local Authorities Social Services Act 1970. By section 7 of the Act 1970, the Council, in carrying its functions, must follow general guidance issued by the Government unless it has cogent reasons for departing from the guidance and if it does so, the Council must not take a "substantially different course" of action.

10.5 On the setting of care home fees, paragraph 2.5.4 of LAC 2004 (20) states: "One of the conditions associated with the provision of preferred accommodation is that such accommodation should not require the council to pay more than they would usually expect to pay, having regard to assessed needs (the 'usual cost'). This cost should be set by councils at the start of a financial or other planning period, or in response to significant changes in the cost of providing care, to be sufficient to meet the assessed care needs of supported residents in residential accommodation. A council should set more than one usual cost where the cost of providing residential accommodation to specific groups is different. In setting and reviewing their usual costs, councils should have due regard to the actual costs of providing care and other local factors. Councils should also have due regard to Best Value requirements under the Local Government Act 1999."

10.6 Should the Council fail to discharge its obligations then it risks being challenged through Judicial Review. The Council must be able to demonstrate how it has arrived at fees being proposed and the methodology and process must be capable of standing up to scrutiny.

10.7 An important aspect of this process is the need to ensure effective and informed consultation which ensures all relevant and potentially affected parties and stakeholders are afforded the opportunity to engage in the process and have their views and contributions taken into consideration before a decision is made in relation to the fees being proposed and set. Failure to do so risks a challenge by Judicial Review.

10.8 Recent Judicial Review cases have highlighted the need to ensure that due process is followed when dealing with setting such fees. The courts have demonstrated a willingness to find against Councils if they feel all appropriate and relevant steps have not been undertaken fully or correctly.

11.0 EQUALITIES IMPLICATIONS

11.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(a) Yes - completed.

(b) The response of the market to the proposals made cannot be forecast with any certainty. It is therefore proposed to provide a revised EIA on 29 November following the consultation period.

12.0 CARBON REDUCTION IMPLICATIONS

12.1 None.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 There are no planning implications arising directly from this report.

14.0 RECOMMENDATIONS

14.1 It is recommended that:

- i) the fee framework reflecting actual cost as set out in Option 2, is presented to providers for consultation with a further report presented to Cabinet on 29 November taking account of the views of providers prior to final agreement and implementation
- ii) all old contracts based on 2010/2011 to be terminated by giving the required 3 months written termination notice and that all payments following this period are made at the fee level set for 2012/2013.
- iii) the Council only contract for residential and nursing care using the current contract.
- iv) once residential and nursing rates are agreed it is proposed that further work will be undertaken to establish variations to the model for specialist providers.
- v) the revised fees are back dated to 9 April 2012 and that financial contingencies are explored to allow this to be achieved within the Council's budget; as a consequence of this work it is proposed to build the agreed fee levels into the budget 2013/2014.

- vi all new top ups are made to be part of the contract and are managed by the Council with effect from April 2013.
- vii Service users are advised of the new rates and charges are adjusted with effect from January 2013.

15.0 REASONS FOR RECOMMENDATION/S

- 15.1 The Council must set fees that enable homes to meet the CQC Essential Standards of Quality and Regulations Safety 2010. The proposed option has been constructed using local market information and taking into account home owners' views in relation to the return on capital and having a separate fee level for nursing EMI care.
- 15.2 The Council also has a duty to obtain value for money for public funds which it can do by basing them on an efficient size of operator. Some homes due to their size can never be efficient; the Council cannot fund this inefficiency.

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APPENDICES

<i>Appendix 1</i>	<i>Communications Chronology</i>
<i>Appendix 2</i>	<i>Fee Models</i>
<i>Appendix 3</i>	<i>Weekly Fees Payable Options</i>
<i>Appendix 4</i>	<i>Changes in Fees 2009 to 2012</i>
<i>Appendix 5</i>	<i>Regional Comparisons</i>
<i>Appendix 6</i>	<i>Quality Premium Payments</i>

REFERENCE MATERIAL

N/A

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet - Fees for Residential and Nursing Home Care	2 February 2012
Cabinet - Transformation of adult social services, contracts for residential and nursing home care and personal support	11 March 2011

Communication Chronology

Date	Details
17/01/2012	Provider Forum Wallasey Town Hall
19/01/2012	Provider Questionnaire issued
10/02/2012	Provider Questionnaire deadline
02/03/2012	Provider Forum – Feedback from Questionnaire and Initial Efficient Wirral Care Home Model initial proposal outlined
05/03/2012	Efficient Wirral Care Home Initial Proposal circulated including detailed working papers and rationale
23/03/2012	Wider consultation with Older Peoples representatives
02/04/2012	Deadline for feedback on initial proposal
16/04/2012	Extended deadline for initial proposal
17/04/2012	Provider Forum meeting cancelled
May 2012	Ongoing correspondence with Wirral Care Homes Association
14/06/2012	Meeting with the Directors of Wirral Care Homes Association and their legal representative
27/06/2012	Follow up meeting with Chair of Wirral Care Homes Association re: data collection exercise to collect summarised actual costs
11/07/2012	Agreed data collection format
27/07/2012	Data collection exercise launched
6/08/2012	Data collection deadline
25/09/2012	Meeting with Chair of the Wirral Care Home Association to share results of data collection exercise
1/10/2012	Report and proposals shared with all the home owners
18/10/2012	Report presented to Cabinet

Fee Models

Wirral Quality Premium Model 2005 – 2011

Following work with Laing and Buisson in 2005 the amount each home receives per bed has been determined by the star rating the home has achieved against Wirral quality premium. This model set different payment levels for homes rated as 1, 2 or 3 stars in accordance with specific criteria and was originally designed to incentivise the market into meeting the National Minimum Standards for residential care (Care Standards Act 2000). In the main this model therefore rewarded homes for meeting standards that they had to meet anyway in order to provide compliant care in accordance with their registration.

The Laing and Buisson Model

The Wirral Care Homes Association (WCHA) commissioned Laing and Buisson to undertake a data collection exercise and produce a fee proposal based on their Fair Price for Care Model. The report was submitted to the Council in April 2011 after the fees for 2011/2012 had been set. During the initial consultation it was established that home owners wished the Council to take into consideration the Laing and Buisson Model and the commissioned report. This report was based on submissions from 58 homes but involved only the collection of staffing data with all non staffing data being pulled from Laing and Buisson's national model results produced in 2008 and inflated rather than actual costs for homes on Wirral in 2012.

The model is based on a notional 50 bedded home because this is considered to be a cost efficient size. Laing and Buisson state that they have found no evidence to suggest that care in smaller homes is of better quality and are clear that fees should not subsidise homes that are inefficient. The Occupancy level used in the model is 90% which compares favourable the Wirral Market figure of 93%.

The Laing and Buisson Model was developed when the national minimum standards were in place and identifies a fee level for a fully compliant new build home as a ceiling price and a base line fee for homes that do not reach this standard. This reflects the model introduced by Wirral in 2005. However whereas the Wirral Quality premium model was built around quality factors such as the number of qualified staff it is recommended that they should actually relate to the physical environment. The reason for this approach is to reflect the level of capital investment made to meet the new build standard defined under the National Minimum Standards 2000.

Developing the Efficient Wirral Care Home Model

An Efficient Wirral Care Home Model was developed using local information with consideration being given to the Laing and Buisson Fair Price for Care model. The Council's preference in developing this model was to adopt an open book approach and work in partnership with home owners to reflect actual cost information. However, in response to a questionnaire used during the consultation the 83% of home owners that took part said they were unwilling to provide actual cost information to the Council citing confidentiality and potential Freedom of information requests as the reasons for not wishing to take part.

The Council made a fee proposal using the Efficient Wirral Care Home Model on 17 April 2012 using the best information it had available from its own research. The room size requirements and the provision of en-suite bathrooms as specified in new build homes under the previous national minimum standards were used to differentiate payments between a floor and ceiling price.

Key areas of dispute

1. Environmental Cost differentials

Home Owners and the WCHA argue that it was inappropriate to use national standards that no longer apply to differentiate payments. Home owners have also highlighted that although en-suite rooms may be available in nursing homes; communal bathrooms are frequently used instead because of the level of support required during bathing. It is also acknowledged that some homes could never meet the physical requirements of a new build home and that their income would be disadvantaged by this approach. Some home owners believe it is unfair to pay different rates to different homes in a market that which is about service user choice. It is also recognised that the staffing is the major cost commitment in any care home provision and that smaller homes will be unable to invest in the quality of their service if they are paid lower fees based on the physical aspects of their home. Smaller homes that do not have economies of scale are more likely to charge top ups. These top ups are also likely to be larger where the home is also paid less due to the physical environment.

2. Nursing EMI

Home owners argued that a separate rate was required for nursing that support EMI needs. Although home owners preferred Laing and Buisson Model suggested that there were no additional costs for EMI and that nursing represented the dominant need that homes of this type needed to meet. Following a review of this position a separate rate for Nursing EMI has been built into latest proposal.

3. Efficiency

The Efficient Wirral Care Home Model is based on 50 beds in line with the home owners preferred Laing and Buisson Model. It is argued by the WCHA that this number should be reduced to the average number of beds that a Wirral Care Home has in order to be representative of the Wirral Market. The average number of beds for the Wirral Market is currently 37. However while the model aims to reflect actual costs in the market it has been based on 50 beds in recognition that this is an efficient home with economies of scale. Setting the rate at the average number of beds would mean that the Council would be subsidising inefficient homes and create excessive profits in homes with economies of scale. It is anticipated that this is an area where home owners will make further representations and therefore an option outlining the implications of adopting the market average have been included in this report for consideration.

4. Return on Capital

Home owners argue that the 6% return on Capital is too low and that it should be 13%. The Wirral proposal actually provides a 7% Return on Capital plus an additional 3% Business Activity Return; the composite return being between 14% and 20%.

5. Single rate payments

During the consultation home owners were asked if they felt a single rate would be preferable to a floor and ceiling model. The result was mixed with 28% of respondents saying they would prefer a single rate and 55% stating that it would depend on the rate offered.

Laing and Buisson point out that more Councils are adopting a flat rate and a move away from quality premiums in their annual market report dated June 2012.

The disadvantage of a single rate is that it does not recognise the Capital investment made by the home owner.

The benefits of a single rate are;

- Clearer to service users, homes and partner agencies what the Council rate is.
- Avoidance of disputes relating to premiums
- Potential reduction of top ups in smaller homes that lack the economies of scale but are popular and offer a good quality service.
- Quality Assurance time would be used to concentrate on the quality of care and the provision of safe services instead of premium reviews.

Weekly Fee Rates Payable Options

	Option 1 Current Levels	Option 2 50 Bedded Unit 90% Occupancy		Option 3 37 Bedded Unit 90% Occupancy	
Assumed levels of return		7% Return on Capital at Market Value	Overall % Return to Care Home Owner	7% Return on Capital at Market Value	Overall % Return to Care Home Owner
Type of Establishment		3% Return on Business Activity		3% Return on Business Activity	
Residential	£376.81	£389	20.2%	£399	19.7%
Residential EMI	£402.71	£419	18.8%	£429	18.4%
Nursing	£526.11	£529	15.1%	£539	14.9%
Nursing EMI	£552.01	£552	14.8%	£552	14.6%
Total Additional Annual Cost	£0	£757,473		£1,401,942	

Changes in Fees 2009 to 2012

The majority of homes on Wirral are rated as 3 Star under the Wirral Premium Model.

The overall reduction to residential and nursing care in 2011 was 9.5% but this was less in some case as the fees were brought in line with costs across the region in each category.

The recommended Option 2 is highlighted below.

			%	
Residential	3 Star		+	-
2009/2010	£416.29			
2010/2011	£416.29	0.0%		
2011/2012	£376.81			9.5%
2012/2013 Option 1	£376.81	0.0%		
2012/2013 Option 2	£389.00	3.2%		
2012/2013 Option 3	£399.00	5.9%		
Residential EMI				
2009/2010	£444.99			
2010/2011	£444.99	0.0%		
2011/2012	£402.71			9.5%
2012/2013 Option 1	£402.71	0.0%		
2012/2013 Option 2	£419.00	4.0%		
2012/2013 Option 3	£429.00	6.5%		
Nursing				
2009/2010	£569.93			
2010/2011	£569.93	0.0%		
2011/2012	£526.11			7.7%
2012/2013 Option 2	£526.11	0.0%		
2012/2013 Option 2	£529.00	0.5%		
2012/2013 Option 3	£539.00	2.5%		
Nursing EMI				
2009/2010	£598.56			
2010/2011	£598.56	0.0%		
2011/2012	£552.01			7.8%
2012/2013 Option 2	£552.01	0.0%		
2012/2013 Option 2	£552.01	0.0%		
2012/2013 Option 3	£552.00	0.0%		

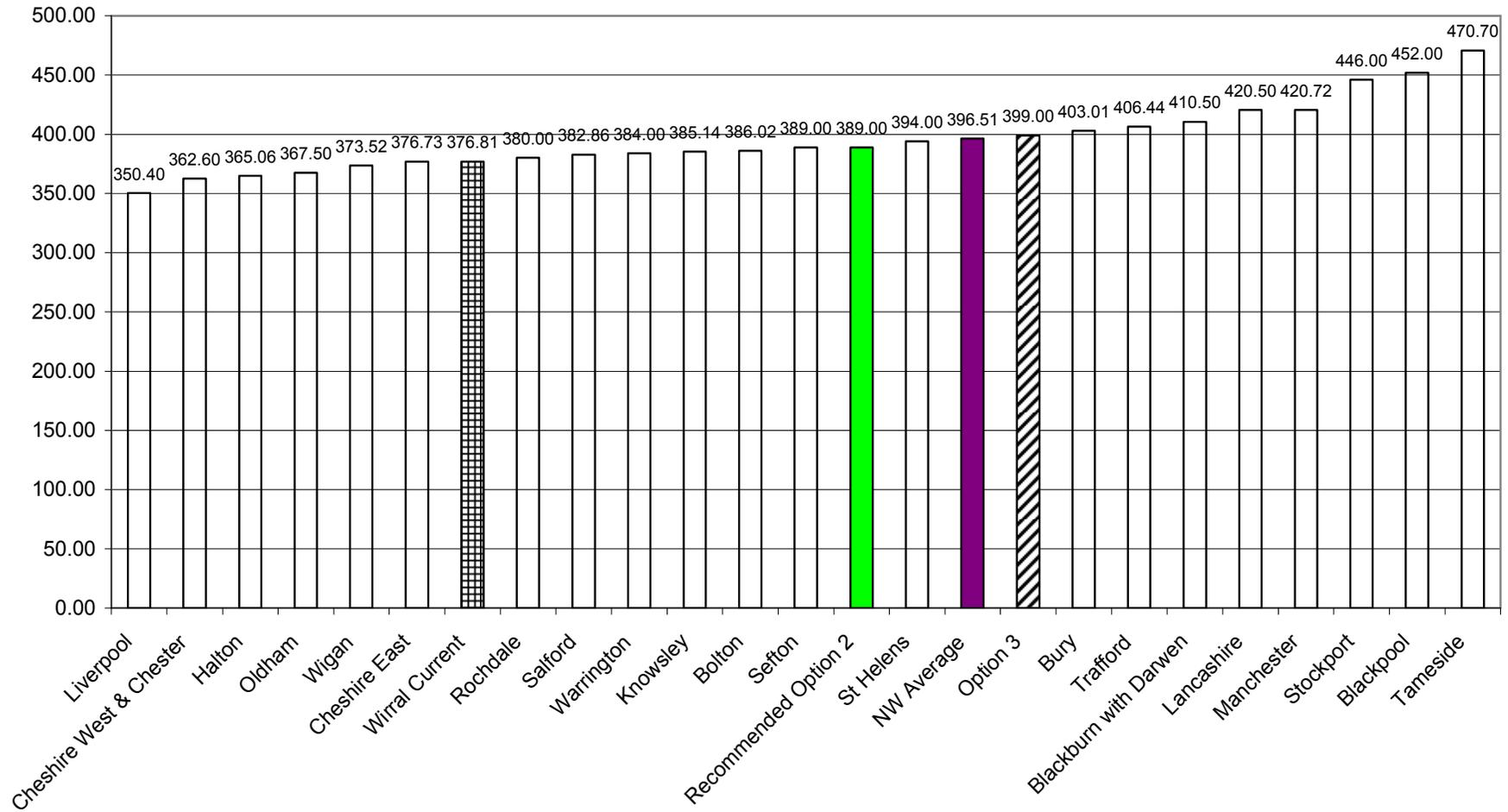
Both Option 2 and Option 3 are based on paying a single rate and therefore homes currently rated below 3 stars would receive larger increases as the inequities of the premium model are removed.

Regional Comparison.

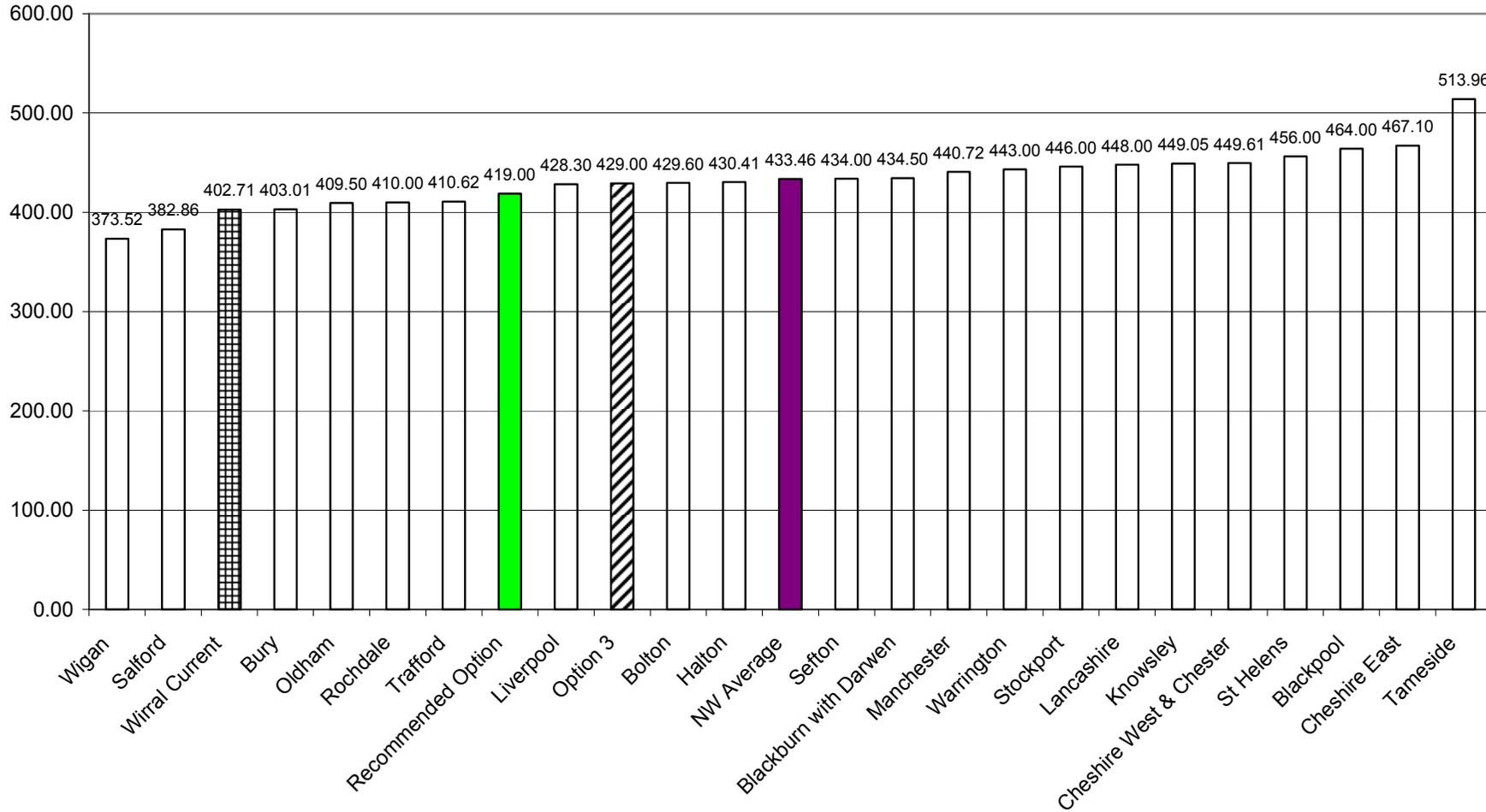
While the following information has not been used to determine fees it does provide some context as to how the proposed fees will compare with fees across the region.

All Wirral figures include the Registered Nursing Care Contribution (RNCC) element which is funded by the NHS at £108.70 per bed per week.

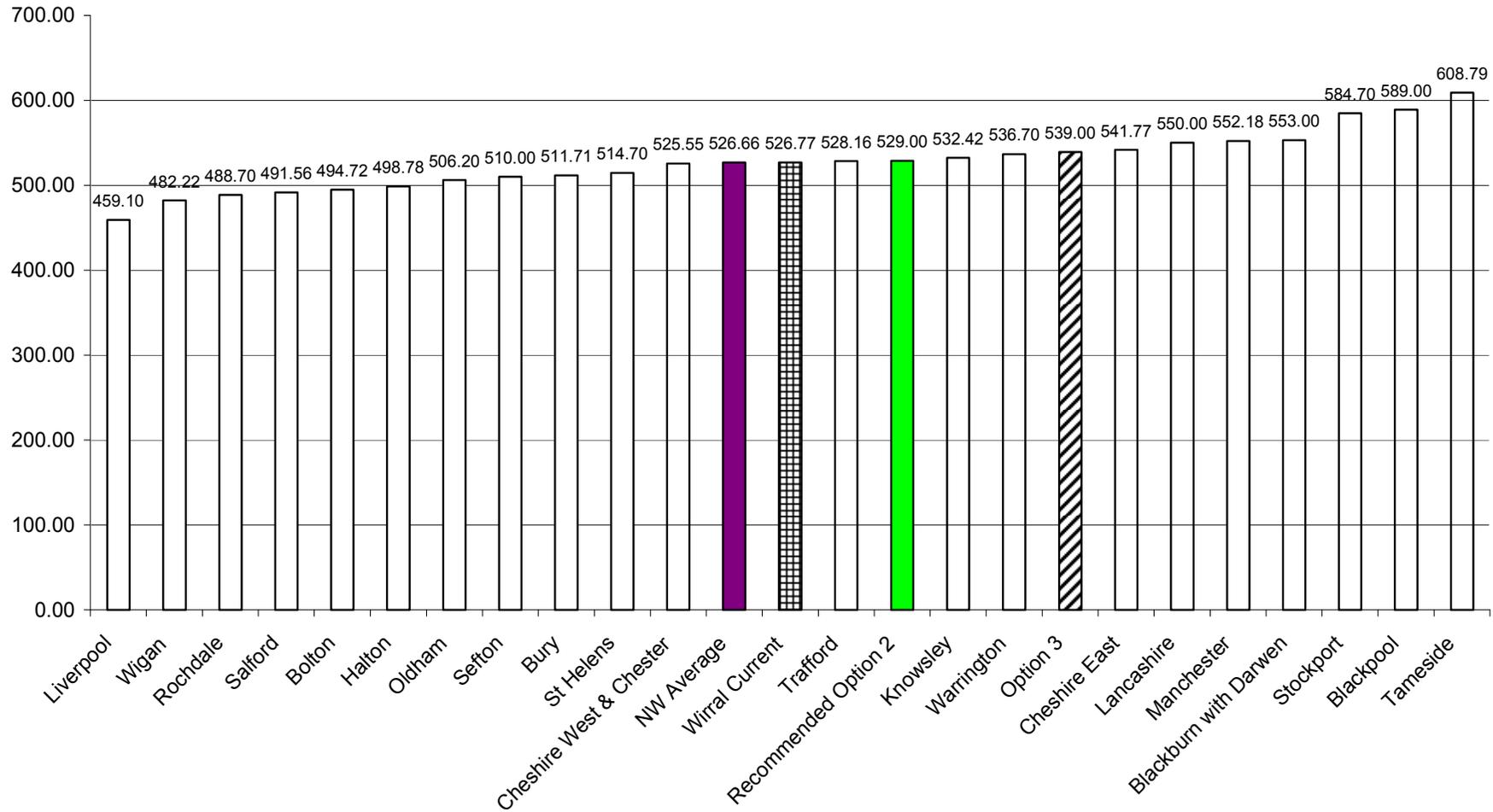
Residential Care - Maximum fee rates across the North West 2012/2013



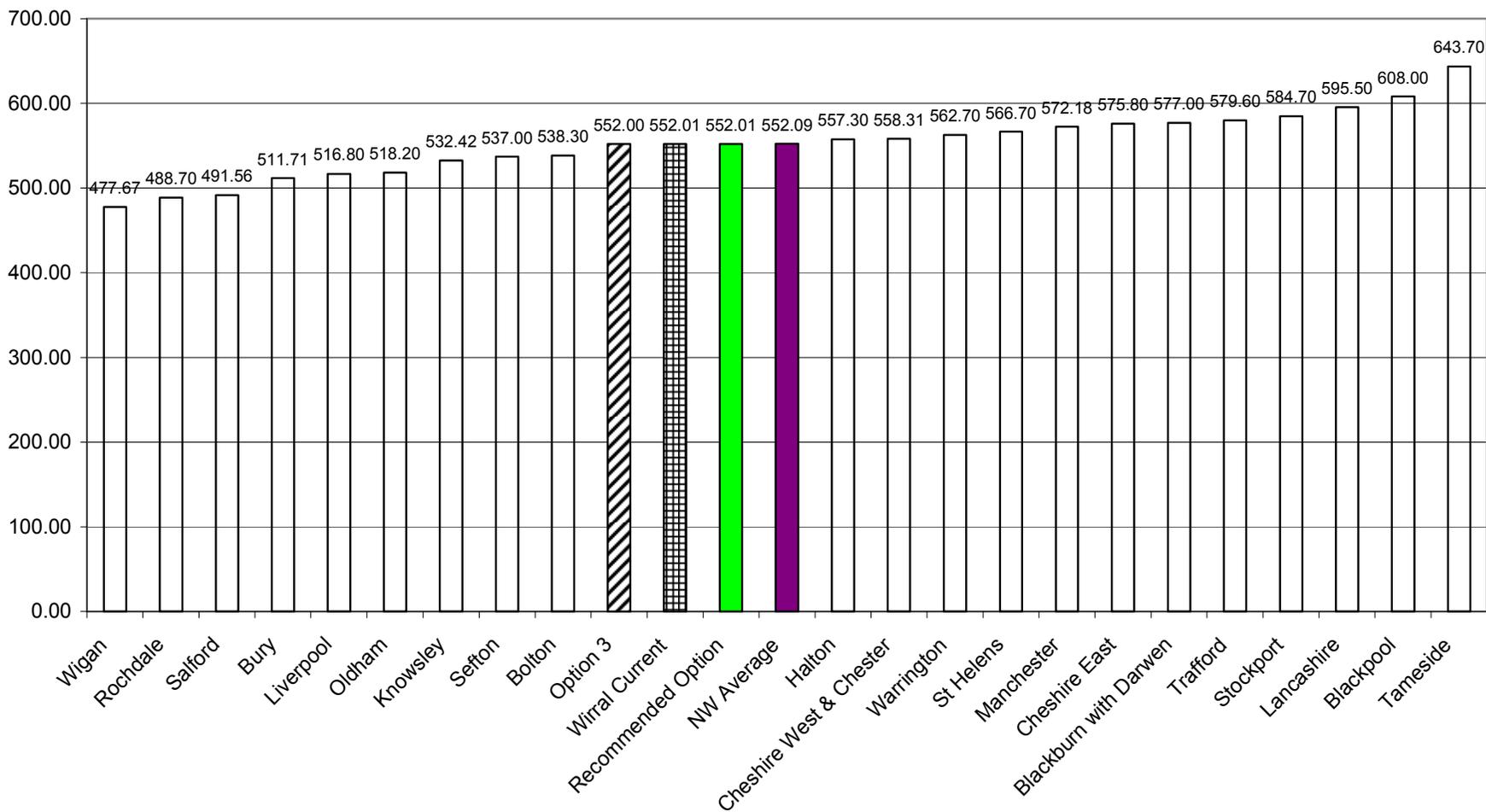
EMI Residential - Maximum fees rates paid across the North West



Nursing - Maximum fee rates paid across the North West (Includes RNCC)



EMI Nursing - Maximum fee rates across the North West



Quality Premium Payments

Wirral has since 2005 operated a three star quality premium model which rewarded homes for achieving national minimum standards. The new CQC Essential Standards of Quality and Regulations Safety 2010 which replaced the National Minimum standards in April 2010 and the need to pay due regard to actual costs have made this model redundant. The Council must now focus on compliant care by paying a fair rate.

Wirral Premiums

1 Star basis for payment at least 50% of its total employees are qualified to at least NVQ level 2 or an equivalent qualification

Issues: This is outdated because the CQC Essential Standards of Quality and Regulations Safety 2010 which replaced the national minimum standards in 2010 require homes to safeguard the health, safety and welfare of service users by taking appropriate steps to ensure that, at all times, there are sufficient numbers of suitably qualified, skilled and experienced persons employed for the purposes of carrying on the regulated activity. Regulation 22 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010.

It will be necessary for homes to demonstrate to CQC and the DASS Quality Assurance Team at inspection how the staffing level has been determined based on the current occupancy and their collective needs.

2 Star basis for payment evidence that residents are engaged in meaningful social activities in or out of the Home. For larger homes (of more than 20 residents) this shall be evidenced by the Provider employing for not less than 20 hours per week a dedicated member of staff for that purpose.

Issues: This is outdated because Under Outcome 4a of the Essential Guidelines the assessment, planning and delivery of people care, treatment and support must maintain their welfare and promote their wellbeing taking into account all their needs, including: -

- physical
- mental
- social
- personal relationships
- emotional
- **daytime activity**

Homes must demonstrate person centered positive outcomes. This means that individual service user files and care plans must evidence a personal choice in terms of activities which may not be part of a central programme.

3 Star basis for payment demonstrate it meets the Council's 2 Star criteria and have a current assessment by the Care Quality Commission as being an "excellent" Home.

Issues: This is outdated because the Care Quality Commission no longer publish their overall judgments for each home.