

WIRRAL COUNCIL

CABINET

20 DECEMBER 2012

SUBJECT:	<i>FEES FOR RESIDENTIAL AND NURSING HOMES CARE – RESPONSE TO CONSULTATION</i>
WARD/S AFFECTED:	<i>ALL</i>
REPORT OF:	<i>GRAHAM HODKINSON</i>
RESPONSIBLE PORTFOLIO HOLDER:	<i>COUNCILLOR CHRISTINE JONES</i>
KEY DECISION?	NO

1.0 PURPOSE OF REPORT

- 1.1 To report the outcome of consultation with independent residential and nursing home providers regarding the fees option proposals as agreed by Cabinet at its meeting on 18 October 2012.
- 1.2 To present a further revised option which has been developed in response to feedback received during the consultation period.
- 1.3 The proposals have been considered with due regard to the Council's priority to safeguard vulnerable adults and promote choice and control.
- 1.4 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 Care Quality Commission (CQC) Essential Standards of Quality and Safety Regulations 2010.

2.0 BACKGROUND

- 2.1 During 2012 extensive work has been undertaken with the local residential and nursing home care market to develop the Efficient Wirral Care Home cost model. The model has due regard to actual costs and market returns and determines a fair and reasonable contract rate. A report commissioned by the Wirral Care Homes Association from the market analysts Laing and Buisson submitted to the Council in 2011 has also been considered at the request of home owners. 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.

- 2.2 Home owners have been consulted in the development of the model 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 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
 - Consultation on the Option 2 proposal of 18 October 2012
- 2.3 The Wirral residential and nursing home market consists of 111 homes, 83 of which provide support to Older People and are subject to the standard fees set by the council.
- 2.4 The Council's overarching commissioning strategy "Shaping Tomorrow" clearly shows the need to reduce reliance on residential care services in order to offer more and alternative forms of support in peoples own homes. It is therefore planned to reduce the number of places purchased in residential and nursing care through expanding the range and capacity of community based services; this forms part of the current consultation on the 2013/14 budget options.
- 2.5 Formal consultation began in January 2012 a chronology of the process is set out in Appendix 1. 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. The Council did not make provision at that time for the cost of implementing any fee proposals. 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 have to be made for this contingency within 2012/2013 and in future years.
- 2.6 At its meeting on 18 October 2012, Cabinet were presented with a number of Options regarding the level of fees to be paid to providers with effect from 9 April 2012; the relevant Option which was agreed for consultation is set out in Table 1:

Table 1
Wirral Model – Option 2

	Option 2 50 Bedded Unit 90% Occupancy
Assumed levels of return	7% Return on Capital at Market Value 3% Return on Business Activity
Type of Establishment	
Residential	£389
Residential EMI	£419
Nursing	£529
Nursing EMI	£552
Total Additional Annual Cost	£757,473

3.0 FEEDBACK FROM CONSULTATION

- 3.1 The detailed correspondence and feedback from the consultation with residential and nursing home has not been made publically available at this stage, due to its commercial sensitivity. It will be agreed with home owners which of this information will be presented to members when the substantial decision on fees is made in the New Year. Included at Appendix 2 of this report, for members' consideration, therefore, is a summary of the feedback from consultation at this stage.
- 3.2 Appendix 3 which has been placed on the Council website library includes specific detailed service documentation such as the reports from Laing and Buisson and BUPA which Wirral Care Homes Association specifically wanted Cabinet members to be aware of.
- 3.3 Members of the Cabinet have received a pack of relevant background papers in hard copy for ease of reference to allow them to review in detail this area and the strength of feeling that have been expressed by home owners.

4.0 RELEVANT RISKS

- 4.1 There is a risk of judicial review in relation to the proposals: at this stage the Wirral Care Homes Association does not accept the consultation has been completed and has requested an opportunity to verify and agree the figures used and the methodology applied. The Association has also indicated its intention to legally challenge the Council if the proposed fees are implemented. It is hoped that this can be avoided and that the settlement of fees are not further delayed.
- 4.2 It is critical to obtain the correct balance between cost and quality to ensure quality standards can be maintained and Best Value obtained. The Council's preference is to support efficiency and have this represented in the market by homes of 50 beds or more. At present 66 residential and nursing homes (80% of capacity) are below the preferred 50 bed model. Feedback from providers has shown this as an area of concern with a larger proportion of provision under 50 beds. Homes that are highly dependent on the council, have a higher level of vacancies and have fewer than 25 beds would more exposed to risk
- 4.3 There are currently 50 homes (representing 60% of the market capacity) that have fewer than the average of 37 beds. By setting the fees based on this option (originally described as Option 3 in the report to Cabinet on 18 October 2012) there is potentially a lower risk of home closures and less chance of the quality of care being affected.

5.0 OTHER OPTIONS CONSIDERED

- 5.1 It was suggested by one home owner that a rate should be set between the two options proposed; this was rejected as there would be no rationale or basis on which to develop the option. It did indicate that there was flexibility amongst home owners in considering the fee levels.
- 5.2 Within the response to the consultation Option 3 (from 18 October 2012 Cabinet report) based on 37 beds with 90% occupancy has been suggested by a number of home owners as the most appropriate fee model.

- 5.3 Whilst no other options were developed into proposals, there is evidence within the sector that on average 95% of beds are full most of the time. It would be reasonable therefore to develop a model using this data as it reflects the market position. In addition using 37 beds as the home size would respond to the average number beds in the Wirral Care Home Market. **It is recommended this new Option is now taken forward for a short period of consultation with home owners.** The relative costs of this option are shown in Table 2:

Table 2
New Option

	New Option 37 Bedded Unit 95% Occupancy
Assumed levels of return	7% Return on Capital at Market Value 3% Return on Business Activity
Type of Establishment	
Residential	£393
Residential EMI	£423
Nursing	£533
Nursing EMI	£552
Total Additional Annual Cost	£985,169

- 5.4 The Council's current contract with home owners requires fees to be reviewed annually; the next revision would be due in 2013/14. It is proposed that the new increased offer is made to cover a period of two years and that home owners are, therefore, consulted on this approach.

6. CONSULTATION

- 6.1 This report is presented to show the outcome of a consultation process. It should be noted that the additional consultation on Option 2 was in addition to the extensive consultation exercise described in the report to Cabinet on 18 October 2012.

7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

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

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

- 8.1 The financial implications of implementing Option 2 in a full year would have been £757,473; any subsequent variations as outlined in this report with the New Option, would require additional resources.
- 8.2 No provision is available within the currently approved estimates of the Department of Adult Social Services to fund any increase in fees, as no specific provision was made when the Council set its budget earlier in the year. In agreeing 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.

- 8.3 The following table sets out the current budget and forecast expenditure within this area of activity. It can be seen that there is considerable pressure on this budget due to the demand levels within the service and the response to the rise in the elderly population. As stated above within the departmental strategy it is planned is to move away from the use of residential care over time

	Budget 2012-13 £	Forecast M7 (no increase in standard rate assumed 1.4.12) £
Independent Nursing Care	£14,258,300	£15,125,651
Independent Residential Care	£26,763,000	£30,976,426
NB - Not all the placements are paid at the standard rate now under consideration		

9.0 LEGAL IMPLICATIONS

- 9.1 During 2011, and more recently, there have been 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. Devon failed to identify any measures to mitigate the impact of people having to move despite the well-known adverse impact on health that this can have and the Equality Impact Assessment was not properly considered. The Council is, also, 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.
- 9.2 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.
- 9.3 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 their 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.
- 9.4 Statutory guidance given by the Department of Health in Circular LAC (2004) 20 provides that ‘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. Such requirements include the discharge of the Council’s functions having regard to efficiency and economy.
- 9.5 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.

9.6 In setting its fees the Council must comply with its duty under Section 149 of the Equality Act 2010 to have due regard to the need to eliminate discrimination, and advance equality of opportunity amongst elderly and disabled persons. The Council's Equality Impact Assessment should therefore focus on the likely impact of its proposed fees on the quality of care for the elderly and disabled differentiating where appropriate between different groups and defining any steps that mitigate any possible adverse consequences e.g. closures of homes.

10.0 EQUALITIES IMPLICATIONS

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

- (a) Yes - completed.
- (b) As stated in the report to Cabinet on 18 October 2012; the response of the market to the proposals cannot be forecast with any certainty. A revised EIA has, therefore, been produced following the latest consultation.

11.0 CARBON REDUCTION IMPLICATIONS

11.1 None.

12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

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

13.0 RECOMMENDATIONS

13.1 It is recommended that Cabinet;

- i) considers the new fee level Option, as described in section 5 of this report, that has been developed using a Model of a 37 bedded home and 95% occupancy that responds to the feedback from home owners
- ii) consults with home owners for a further four weeks to ascertain views on the New fee level Option including that the increased offer is made to cover a the period of two years i.e. 2012/13 and 2013/14
- iii) agrees to additional resources being allocated to the Department of Adult Social Services to take account of the costs of implementing the proposals.
- iv) adjusts the previously agreed recommendation to collect 'top ups' with effect from 1 April 2013 to 1 September 2013 in order to consider the debt management issues potentially raised by this policy.
- v) amends its resolution of 18 October 2012 so as to authorise the Director of Adult Social Services to serve not less than three months notice of termination of all contracts with homeowners for residential and nursing care at pre-April 2011 fee levels in those cases where the homeowners have accepted residents since April 2011 at the current fee levels (with or without third party top ups) on the Council's usual terms and conditions with the intent that the current contract at post-April 2011 fee levels should encompass all residents in the relevant home without differentiating between their date of entry into the home.

14.0 REASONS FOR RECOMMENDATION/S

- 14.1 The Council must set fees that enable homes to meet the CQC Essential Standards of Quality and Safety Regulations 2010.
- 14.2 The Council has listened to the market and proposes a Fees Level based on a 37 bedded home in line with the local average sized home. It has also responded to reflect an occupancy level of 95% which the sector has been indicating is relevant and in line with the efficient operation of the care homes in Wirral.
- 14.3 It is recognised that the Council has not previously consulted on this particular proposal and it will be necessary, therefore, to approach the market to ascertain its view. This will also give the sector the opportunity to respond to any concerns that might remain regarding the proposed level of fees.
- 14.4 The purpose of the recommendation, regarding the termination of all contracts at pre-April 2011 fee levels, is to ensure that the Council does not serve notice of termination of the existing contracts with residential or nursing homes which have no intention of accepting the Council's new fee levels but look after Council placed residents who were originally accommodated at the higher fee levels that operated prior to April 2011. The Council's intention is to remove the anomaly of two different fees being paid by the Council for the same cost of care and accommodation depending upon whether the resident began their stay in the home prior to or after 1 April 2011.

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APPENDICES

- Appendix 1 Communication/Consultation Chronology
Appendix 2 Feedback from Consultation
Appendix 3 Specific detailed service documentation, available in the Web Library, as referred to in 3.2 of this report: -

<http://democracy.wirral.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13118&path=12848>

REFERENCE MATERIAL

N/A

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet - Fees for Residential and Nursing Home Care	18 October 2012
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
To 26/11/2012	Consultation on Option 2 of Cabinet report 18 October 2012

Summary of Feedback from Consultation

- i) Five homes have informally indicated that they are willing to accept the fees proposed stating that they recognise the financial pressures on the Council.
- ii) A detailed response was received from the Wirral Care Homes Association. It specifically wanted Cabinet members to be aware of reports from Laing and Buisson and BUPA and for the figures they propose to be considered along side the regional information provided for context. In addition to carefully considering this information as part of the fee modelling exercise, as noted above, the documents have been included on the Council's website and passed in hard copy form to Cabinet members.
- iii) A number of homes, and the Wirral Care Home Association, made the point that the average number of beds for the Wirral Market is currently 37; Option 2 is based on 50 beds in recognition that this is an efficient home with economies of scale. LAC (2004) 20 states

“...in setting and reviewing their usual costs, councils should have due regard to the actual cost of providing care and other local factors. Councils should also have due regard to Best Value requirements under the Local Government Act 1999. Such requirements include the discharge of the Council's functions having regard to efficiency and economy.”

Home owners have contended that basing the model on 50 beds does not adequately represent the cost of running a small care home in Wirral. Feedback received during the consultation from smaller homes claim that the Wirral Model is therefore unfair. However, by setting the rate at the average number of beds in the Wirral Market the Council would be compensating for those homes that are operating without the benefits of economies of scale. The Council's duty to ensure economy and efficiency points to a fee level based on an efficient scale of operation for residential and nursing homes. It is the responsibility of each home to develop its business model to determine an acceptable profit level, whilst remaining attractive to potential residents.

- iv) It has also been suggested that if as reported on 18 October 2012 36% of homes charge a top up this is evidence that the current and proposed fees are inadequate. The latest information suggests that the practice of charging a top up for new placements has now increased to 50% of homes. However the Council's proposals have been made with due regard to actual cost and demonstrates that homes do not have to charge a top up. Homes take the decision to charge top ups for a variety of business reasons, including providing amenities beyond the CQC Essential Standards of Quality and Safety Regulations 2010. There have always been top ups present in the market and to date the Council has not experienced difficulties with regard to availability of bed places.
- v) There were a total of 16 responses to the consultation (two from the Wirral Care Homes Association and 14 individual homes owners). In terms of

challenges to the Efficient Wirral Care Home Model two individuals questioned the proposed 7% return on the market value of capital. However, this figure has been benchmarked against reported returns for the market including CBRE and Knight Frank and is considered to be reasonable. It is also worthy of note that research by Laing and Buisson corroborates this rate.

- vi) The Wirral Care Homes Association has argued that the return on business activity of 3% which is provided in the model after all running costs and the return on capital has been made is too low. This return has been proposed with regard to obtaining best value, in line with LAC (2004) 20 (see iii) above) and the Interim Director of Finance believes that this is reasonable in the current economic climate.
- vii) In addition four individual homes questioned the amount included in the model for staffing and 3 for the general running costs. It is noted that 2 homes felt their businesses would be at risk if the Option 2 fees were implemented. As part of the consultation the Department has offered to work with any homes that believes it will go out of business. The homes noted above will be contacted to ascertain how the Department can help them with their business model.
- viii) Wirral Care Homes Association made the specific point regarding “Empty Beds” and “Over Supply of Beds”. It has been acknowledged that the Council has referred to an over supply in the market when in fact it was referring to empty beds. The Association argues that every home will always have one or two empty beds as residents leave or die; however the number of empty beds has remained at approximately 200 for the last six months. Current vacancy information for the market confirms that occupancy is 93.9% and is consistently at 95%. Using the 90% figure in the model enables home owners to achieve a higher rate of return overall when they exceed this occupancy level. This can be seen as a significant factor affecting the Fee Model where the underpinning assumption is that a home will have 90% of its beds occupied. However the council’s strategy to move away from residential based care is likely to reduce the actual occupancy back towards 90% during 2013/2014.