

WIRRAL COUNCIL

CABINET

19 SEPTEMBER 2013

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?	<i>YES</i>

1.0 PURPOSE OF REPORT

- 1.1 To report the outcome of consultation with care home providers on 2013-14 care home fees
- 1.2 To recommend the fees for 2013-14.

2.0 BACKGROUND

- 2.1 The Council commissions a range of community based social care services. The primary aim of commissioning is to support vulnerable people to be as independent as possible. The commissioning strategy is therefore focused on supporting people more effectively in their own homes. In relation to care homes in Wirral, the Councils intention for 2013/14 is to set fees that maintain capacity in the nursing sector, whilst recognising that there is a need to reduce reliance on general residential provision. The strategy promotes a shift towards more specialist dementia care provision, and the development of extra care housing and alternatives such as intermediate and domiciliary care. This approach is reflected in the Councils market position statement and commissioning strategy. Care home fees are however set with due regard to providers actual costs as well as commissioning intentions. The Councils duty to achieve best value is a factor.
- 2.2 The proposal is calculated using the Efficient Wirral Care Home model. The model aims to make due allowance for actual costs and market returns. The model is intended to calculate a fair and reasonable weekly rate for the four different categories of care home placement.
- 2.3 The chronology of arriving at the proposal is set out below.

Chronology	
April 2013	2013-14 fee proposals issued for consultation. The fee proposal put out for consultation populates the model by reference to objective costs data and professional judgment and experience
May to July 2013	Provider forums, individual responses and consultation

Chronology	
	with the Wirral Care Home association to collate comments and receive costs data to inform final proposal
19 th September 2013	Cabinet consider fee proposal
	Subject to Cabinet agreement the new proposal is implemented with effect from 1 st April 2013 for residential and from 19 th September 2013 for nursing

2.4 In the 2013-14 iteration of the model, the contribution for funded nursing care has been removed as these costs are an NHS responsibility. It is not lawful for the Council to pay NHS nursing costs.

2.5 The rates offered in the proposal are summarised in the table below. The detailed calculations are provided in Appendix 1 to this report.

Summary of 2013-14 Care Home Fee Proposal	Residential	Residential EMI	Nursing	Nursing EMI
2012-13 weekly rates	£395.00	£425.00	£537.00	£552.00
2013-14 proposed weekly rates now subject to consultation	£397.00	£430.00	£433.00	£451.00
The nursing component will be paid by the NHS			£109.79	£109.79
Total including nursing component where applicable	£397.00	£430.00	£542.79	£560.79
Increase 2013-14 v 2012-13	£2.00	£5.00	£5.79	£8.79

2.6 It was previously planned to make a net payment incentive offer to providers. It is not proposed to make such an offer at this stage. It is considered more appropriate to align any changes with the introduction of the new social services IT system. The incentive offer was never formally part of the 2013-14 fee proposals.

3.0 RELEVANT RISKS

3.1 The Council has shared the model with providers. It has considered and responded to information requests and feedback where required. Accordingly the final proposal is considered to be reasonable and well considered.

3.2 The Council has endeavoured to maintain a balance between cost and quality and meeting need. It seeks to ensure quality standards are maintained whilst at the same time best value is obtained.

3.3 There is a risk of judicial review. A number of homes across the range of type have indicated (through solicitors) that they believe the consultation process is flawed. The Council has however shared its model and has had due regard to costs data both in its initial proposal and in the revised proposal now the subject of this report.

4.0 OTHER OPTIONS CONSIDERED

4.1 Not applicable.

5.0 CONSULTATION

5.1 The source of comments was threefold:

5.1.1 Three provider fora were held during the consultation. The first was to launch the proposals, and the second two to reply to consultation comments at that stage and costs data received.

5.1.2 Written or email responses

5.1.3 A series of regular meetings with the Wirral Care Homes Association who represent a proportion of the Wirral care homes.

5.2 All comments received during consultation have been carefully considered by officers. A response has been provided to consultees as quickly as possible. A general log of comments and responses has been maintained and circulated to all providers as and when updated. The log does not state the source of comments.

5.3 In some cases the comment was a request for further information or clarification of the Council's fee proposal. This information or clarification has been provided.

5.4 Other comments suggested amendments to the proposal. The suggested amendments have been considered. Providers have been told whether or not the suggested amendment is accepted and the reason for officers' decision.

5.5 As referred to in 3.3 a number of homes have made comments through a firm of solicitors representing them.

5.6 Appendix 2 sets out the comments received from all these sources, and officers' responses that have informed the final 2013-14 proposal. Where detailed working papers are relevant, these are referenced on Appendix 2 and provided in Appendix 3.

5.7 A summary of the main issues raised in consultation is set out in the table below

Consultation issues	
Nursing	❖ Consultees were advised nursing costs are a matter for the NHS.
Management	❖ Comments were received from the WCA and a small number of providers on this area. ❖ The main comment was the level of remuneration in the Wirral model. The model already allows a significant increase between 2012-13 and 2013-14 and it is not proposed to make any further adjustment.
Administrator and bought-in administration	❖ Comments were received predominantly from the WCA but also a small number of providers on this area. ❖ The main comments related to the cost of externally purchased administration, including payroll and accountancy.

Consultation issues	
	<p>The model already allows a significant increase from the 2012-13 position and takes account of actual costs. It is not proposed to make any further adjustment.</p>
Catering hours and costs	<ul style="list-style-type: none"> ❖ Only the WCA and one other commentator commented on this area. ❖ The comments related to the hours allowed in the model and the hourly rate needed to recruit and retain catering staff <p>It is proposed to apply a catering hourly rate to £7 in response to these comments.</p>
Domestic hours	<p>Only a few comments were received on this area and it is not proposed to amend the proposed fee.</p>
Care hours	<ul style="list-style-type: none"> ❖ Comments were received predominantly from the WCA but also a small number of providers on this area. <p>The Council has considered an increase in the care hours during the consultation process, but on further consideration this would not be justified by the evidence available.</p>
Domestic and care wages	<ul style="list-style-type: none"> ❖ Comments were received predominantly from the WCA but also a small number of providers on this area. <p>An increase has been made in accordance with the minimum wage and this is considered to be sufficient provision.</p>
Catering and domestic on-costs	<ul style="list-style-type: none"> ❖ A small number of information requests were received <p>No evidence produced to necessitate change of the model assumption, but see general comments row at end of table.</p>
Care agency oncost	<ul style="list-style-type: none"> ❖ A small number of information requests were received <p>No evidence produced to necessitate change of the model assumption, but see general comments row at end of table.</p>
Agency staff enhancement	<ul style="list-style-type: none"> ❖ A small number of information requests were received <p>No evidence produced to necessitate change of the model assumption</p>

Consultation issues	
Training backfill	<ul style="list-style-type: none"> ❖ A small number of information requests and one comment were received from the WCA. <p>No evidence produced to necessitate change of the model assumption.</p>
Training costs	<ul style="list-style-type: none"> ❖ Information requests were received predominantly from the WCA but also a small number of providers commented on this area. <p>The overall cost of training includes training back fill (see previous row) and is considered to be sufficient provision.</p>
Annual recruitment costs	<ul style="list-style-type: none"> ❖ A small number of information requests were received <p>No evidence produced to necessitate change of the model assumption</p>
Maintenance costs	<ul style="list-style-type: none"> ❖ A number of requests for information and comments were received from the WCA. <p>The comments identified that BCIS indices normally exclude VAT and suggested VAT at the relevant rate should therefore be added to the model provision. However a 4% increase in the total residential components and a 12% increase in the total nursing components compared to 2012-13 is a reasonable determination. No evidence on actual costs of maintenance was offered by commentators. BCIS indices are based on actual costs surveys.</p>
Handyman and gardener	<ul style="list-style-type: none"> ❖ Requests for information and a few comments were received from the WCA and a provider on this area. ❖ The main comment was the level of remuneration in the Wirral model. One comment identified a cost less than the Wirral model. <p>It is not proposed to make any changes in this area.</p>
Insurance	<ul style="list-style-type: none"> ❖ Requests for information and a few comments were received from the WCA and a provider on this area. ❖ The main comment was the level of provision within the Wirral model, and the rates of increase experienced by providers. <p>It is therefore proposed to increase provision by 5% in this area</p>
Registration and CRB	<ul style="list-style-type: none"> ❖ Requests for information and a few comments were received from the WCA and a one provider on this area. ❖ The main comment was the level of remuneration in the Wirral model. One comment identified a cost less than the Wirral model.

Consultation issues	
	<ul style="list-style-type: none"> ❖ It is not proposed to make any changes in this area.
Other non-staff expenses per client	<ul style="list-style-type: none"> ❖ A small number of information requests were received <p>No evidence produced to necessitate change of the model assumption</p>
Utilities per client	<ul style="list-style-type: none"> ❖ Comments were received predominantly from the WCA but also a small number of providers on this area. ❖ The comments were about the level of price increases experienced <p>The Council has already increased provision by the CPI, and it is considered this is sufficient increase.</p>
Medical supplies	<ul style="list-style-type: none"> ❖ Requests for information and a few comments were received from the WCA and a provider on this area. ❖ The main comment was the level of provision the Wirral model, and the rates of increase experienced by providers. <p>It is not proposed to increase provision in this area. The Council has already increased provision by the CPI, and it is considered this is sufficient increase.</p>
Domestic and cleaning supplies	<ul style="list-style-type: none"> ❖ Requests for information and a few comments were received from the WCA and a provider on this area. ❖ The main comment was the level of provision the Wirral model, and the rates of increase experienced by providers. <p>It is not proposed to increase provision in this area. The Council has already increased provision by the CPI, and it is considered this is sufficient increase.</p>
Trade and clinical waste per client	<ul style="list-style-type: none"> ❖ A small number of information requests were received <p>No evidence produced to necessitate change of the model assumption</p>
Market value per bed	<ul style="list-style-type: none"> ❖ A small number of information requests were received <p>No evidence produced to necessitate change of the model assumption</p>

Consultation issues	
Return on buildings	<ul style="list-style-type: none"> ❖ A number of requests for information and comments were received from the WCA and other commentators ❖ Some comments were that rate was too low and did not encourage new provision or investment in existing properties. ❖ We have considered feedback provided and reviewed the capital value of care homes in the Merseyside region. The Council believes the increase from the 12/13 model is sufficient in the current market. <p>The return on buildings component of the model is the product of the market value (see later row) and the rate of return. The market value has been increased. The rate of return has been maintained in nursing provision and slightly reduced (0.25%) for residential to reflect market conditions. It is considered that no further adjustment is required. Whole –life provision for maintenance is already made in the maintenance elements of the model.</p>
Number of employees	<ul style="list-style-type: none"> ❖ A range of comments were received as to whether 28 was a reasonable figure <p>The comments have been taken into account and the proposal in the original model has been recalculated and has separate figures for residential and nursing homes. The care, domestic and catering hours per client based on bed size were divided by an assumed working week of 36 hours FTE. A further 2 posts were added for management and administration. The result now informs the model provision of 27 employees and 35 employees respectively.</p>
Return on Business Activity	<p>A number of representations were made relating to the return on the activity component of the model. Other costs have been increased in many areas. It continues to be the interim Director of Finances expert opinion that 3% is a reasonable rate. It is considered that no further adjustment is required.</p>

6.0 **IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

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

7.0 **RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

7.1 The cost of additional provider payments in implementing the proposal is £0.211m in 2013-14. The cost in a full year is £0.276m

7.2 The fees paid by DASS are used to determine client contributions in accordance with CRAG guidance. It will be necessary to revise the financial assessments of all clients in care home placements. Some clients' financial assessments will not increase in line with the fee increase. It is not expected there will be any significant variation in assessed client contributions.

8.0 LEGAL IMPLICATIONS

8.1 During 2011, and more recently, there have been a number of high profile court cases against local authorities which ruled that fees had been set without **due regard** to the actual costs of care and that authorities had failed to consult with home owners, failed to have regard to actual costs, and set costs to meet budget targets. One local authority 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. Wirral is also aware of judgments against Local Authorities where fees have been set in order to fit the budget available, thereby predetermining the outcome of the consultation. In a number of cases the Local Authority has been held to have failed to pay due regard to actual costs, including return on capital, and failed to consult adequately, and failed to comply with its duty under s149 of the Equality Act 2010. Departure from proposals without adequate explanation has also been held to be unlawful.

8.2 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.

8.3 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 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.

8.4 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.

8.5 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.

8.6 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.

9.0 EQUALITIES IMPLICATIONS

9.1 The potential impact of the proposal has been reviewed with regard to equality and the equality impact assessment is included with this report.

10.0 CARBON REDUCTION IMPLICATIONS

10.1 None.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

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

12.0 RECOMMENDATIONS

12.1 It is recommended that Cabinet agrees the implementation of the final proposal as set out in 2.5.

13.0 REASONS FOR RECOMMENDATIONS

13.1 The Council must set fees that enable homes to meet the CQC Essential Standards of Quality and Safety Regulations 2010 and determine its usual cost.

13.2 The Council has reflected changes in prices in accordance with the 2013 iteration of the model and has done a sense check of its proposal via its Equality Impact Assessment .

13.3 The Council has taken into consideration the costs data supplied by and views of WCA and other home owners and believes its proposal is reasonable.

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APPENDICES – available online in the document library -

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

Appendix 1 2013-14 fee proposal calculation

Appendix 2 Consultation comments and responses

Appendix 3 Working papers relevant to Appendix 2

Appendix 4a Destination chart for existing framework contract

Appendix 4b Proposed 2013-14 framework contract

REFERENCE MATERIAL

Comments from home owners during the bilateral discussions on the preliminary proposal held in Contracts Section DASS.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet - Fees for Residential and Nursing Home Care	20 December 2012
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