

WIRRAL COUNCIL

CABINET

13 MARCH 2014

SUBJECT:	<i>FEES FOR RESIDENTIAL CARE AND NURSING HOMES - 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 with regard to 2014-15 care home fees.
- 1.2 To recommend the fees for 2014-15.

2.0 BACKGROUND

- 2.1 Wirral care homes are a mix of purpose built homes and adapted large private houses. The Council's strategy for 2014-15 is to set fees that maintain capacity for people with dementia. The Council is not seeking to encourage growth in general residential provision as there is currently overcapacity in the residential market. The Council wants to see the development of viable alternatives such as extra care housing. There is however increasing demand for provision to respond to dementia and complex needs. This is reflected in the Council's Market Position Statement. Care home fees are set with due regard to providers' actual costs, the Council's duty to achieve best value, and other local factors.
- 2.2 The proposal is calculated using the Efficient Wirral Care Home model, as used in the last two years and further refined based on provider feedback. The model aims to make due allowance for actual costs and market returns. It 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	
29 th October 2013	Presentation to providers summarising key issues for 2014-15 fee setting and inviting actual cost returns in standard format
December 2013	21 actual cost returns received. The cost information represented approximately 20% of providers.

17 th January 2014	Provider forum to share 2014-15 fee proposals for further consultation following analysis of actual cost returns. The fee proposal put out for consultation populated the model by reference to objective costs data and professional judgment and experience. The full model and analysis of actual costs versus model released.
7 th February 2014	Final consultation closed.
28 th February 2014	Consideration of further evidence and comments completed.
6 th March 2014	Final proposal issued to providers
13 th March 2014	Cabinet consider fee proposal.
7 th April 2014	Subject to Cabinet agreement the new proposal is implemented for all categories of provision.

2.4 The rates offered in the proposal are summarised in the table below. The detailed calculations are provided in Appendix 1 to this report. It should be noted the 2014-15 proposals are based on forecasts of future costs. Wherever possible authoritative and independent sources have been relied on including HM Treasury, Office of National Statistics (ONS), and the Royal Institute of Chartered Surveyors (RICS).

Summary of 2014-15 Care Home Fee Proposal	Residential	Residential EMI	Nursing*	Nursing EMI*
2013-14	£397.00	£430.00	£433.00	£451.00
2014-15 now proposed	£402.00	£444.00	£436.00	£456.00
Change 2014-15 v 2013-14	£5.00	£14.00	£3.00	£5.00

In addition Wirral CCG will pay a fixed nursing contribution. For 2013-14 this was set at £109.79 a week. The amount for 2014-15 has not been determined.

2.5 The rates offered in the proposal are rates for older people's provision. Consultation is continuing with Mental Health and Learning Disabilities residential providers. Fee proposals for these providers will be reported to Cabinet on 13th June 2014.

2.6 Appendix 2 shows how rates paid to care homes by Wirral in 2013-14 compare to other North West social services authorities. Comparisons are not available for 2014-15 because authorities have not yet set rates.

3.0 RELEVANT RISKS

3.1 The Council has shared the fee model and actual cost comparisons with providers. It has responded to the issues raised during the consultation period reflecting on the proposed changes and stating the reasons for its decisions. Accordingly the final proposal is reasonable and well considered.

3.2 The Council has endeavoured to maintain a considered balance between best value and local factors, quality and meeting need. It seeks to ensure quality standards are maintained whilst at the same time working to achieve best value.

4.0 OTHER OPTIONS CONSIDERED

4.1 Not applicable.

5.0 CONSULTATION

5.1 The sources of comments were:

5.1.1 Two provider fora were held during the consultation. The first was to request actual cost information and share preliminary views on key issues. The second was to reply to consultation comments at that stage and issue a fees proposal; the fee model; and a comparison of actual costs with model calculations. Providers were offered advice and support from Adults on how to operate the workbooks containing the information.

5.1.2 One to one sessions were offered to all providers with homes in Wirral.

5.1.3 Written or email responses

5.1.4 A visit to a residential home to discuss finance issues directly with a representative owner from the Wirral Care Homes Association Ltd. Some one to one sessions were also held directly with owners.

5.2 All comments received during consultation have been carefully considered by officers. Comments and the responses are summarised in the table below. A response has been provided to consultees as quickly as possible.

Consultation issues	
A provider operating two homes provided a calculation of costs £43 and £73 per resident week higher than the model	<p>The calculation included an additional overhead allowance of 16%. The Wirral model already recognises the overheads required to operate a home.</p> <p>Statistical variation around the model assumption would be expected over a range of homes. The model does not appear to be fundamentally inconsistent to providers' actual costs based on returns received.</p>
One provider pointed to recent increases in the rates paid to qualified nurses. The provider also questioned whether it was lawful for nursing costs to be excluded from the model on the grounds that they are payable by the NHS.	The contribution for funded nursing care is an NHS responsibility.

<p>Alison Castrey Limited questioned the proposed management and administration allowance on the grounds set out in the succeeding five rows(*):</p>	
<p>*The original base figures used in 2013-14 were wrong</p>	<p>The current consultation is for the 2014-15 rates. The model has been revised for this year's fee setting.</p> <p>The 2013-14 figures were reasonable and correct and were set taking account of all factors available at that time. They were approved by Cabinet in September 2013.</p>
<p>*The inflation index of 2% used was inappropriate. The National Minimum Wage is planned to increase from October 2014 by 10%. Actual inflation experienced by providers has not been taken into account by the Council in previous years.</p>	<p>The 2% is an HM Treasury forecast. If a significant increase proves to be made in the National Minimum Wage during 2014-15 the rates will be given further consideration. The current Wirral consultation is for the 2014-15 rates. A higher wage rate already applies for catering. Inflation was applied where appropriate in previous years and took account of actual cost information available at that time.</p>
<p>* The £10,000 addition made in 2014-15 is an arbitrary increase</p>	<p>The increase is made in response to comments made by providers in response to the 2013-14 settlement on the cost of externally purchased administration. The allocation for externally purchased administration now represents 30% of the internal provision assumption.</p>
<p>* The Council made no allowance for the provider's working time</p>	<p>It is not considered appropriate to make a separate allowance in the model. The return on business activity is a statistical measure that by definition comprises all aspects of return.</p>
<p>*The figure proposed did not match the survey data</p>	<p>The actual costs sample is not sufficiently at variance with the proposal to demonstrate the model is misconceived. The survey data provided wide variations both above and below the Wirral model. The model is intended to calculate a fair and reasonable weekly rate. It is not reasonable to expect the model to calculate an exact figure to match each individual home due to the varying business models for each home.</p>

<p>Alison Castrey Limited welcomed the inclusion of VAT on utilities, and repairs and maintenance. They are seeking full disclosure of the Royal Institute of Chartered Surveyors model used.</p>	<p>The Council is a subscriber to the service. The formulae underlying the model are not disclosed by the Royal Institute of Chartered Surveyors to subscribers. However the Council considers it is reasonable to rely on the model produced by this authoritative organisation.</p>
<p>Alison Castrey Limited questioned the return on business set at 15.7% on the grounds below (*)</p>	
<p>*Insufficient provision for loan repayments</p>	<p>It is not considered appropriate to make a separate allowance in the model. The return on business activity is a statistical measure that by definition comprises all aspects of return. An authoritative external source was used to derive this figure.</p> <p>It is impossible to calculate a standard figure for a parameter that varies so widely from proprietor to proprietor, and arises from individual business decisions.</p>
<p>*Insufficient provision for tax and provider time</p>	<p>It is not considered appropriate to make a separate allowance in the model. The return on business activity is a statistical measure that by definition comprises all aspects of return. An authoritative external source was used to derive this figure.</p> <p>It is impossible to calculate a standard figure for a parameter that varies so widely from proprietor to proprietor, and arises from individual business decisions.</p> <p>Some providers are not-for-profit.</p>
<p>*The survey data used for setting the return is two years old and the wrong category of the survey was used.</p>	<p>2011 is the latest available data. The category used is appropriate. The fee settlement incentivises certain categories of provision in accordance with the Market Position Statement, and this represents an additional return.</p>

Alison Castrey Limited commented that there was no provision in the model for homes' accumulated deficits	This is not considered to be a relevant consideration in the model as it is not an element of actual costs. The purpose of the current report is to set an annual fee for 2014-15. It is impossible to calculate a standard figure for a parameter that varies so widely from proprietor to proprietor, and arises from individual business decisions.
Alison Castrey Limited would regard 92% as a correct occupancy level.	The 95% assumption is reasonable. Some current vacancies are due to home suspensions. It is reasonable for the Council to set a limit on how far it will support empty places.

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 £0.405m in 2014-15. This can be contained within the £0.835m inflation growth allocated for Adults contracts in the 2014-15 budget.

7.2 The fees paid by Adults are used to determine client financial contributions in accordance with CRAG (Charging for Residential Accommodation Guide) issued by the Department of Health and local CRAG discretions as approved by the Cabinet. 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 There have been a number of high profile judicial review cases where it has been held that local authorities have made unlawful decisions on care home fees e.g. because they have failed to conduct appropriate consultation or have set costs to meet budget targets. Alison Castrey Ltd act for five providers and have raised a number of concerns .The main concerns are summarised in the table at 5.2 and the concerns have been responded to by separate letter .

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 assessments are included.

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 2.4.

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 Ltd and other home owners and believes its proposal is reasonable.

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APPENDICES

Appendix 1 – detailed calculations
Appendix 2 – fee comparisons

REFERENCE MATERIAL

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

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet - Fees for Residential and Nursing Home Care	November 2013
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 - Fees for Residential and Nursing Home Care	11 March 2011