



COUNCILLOR CHRIS JONES
CABINET MEMBER FOR ADULT
SOCIAL CARE

CABINET

6 JUNE 2016

SOCIAL CARE FEE SETTING PROPOSALS
2016/2017

Councillor Chris Jones, Cabinet Member - Adult Social Care, said:

“Our older and most vulnerable residents deserve high-quality, sustainable and safe care. That is why, even during a time of national austerity and financial difficulties for this Council, we believe it is right that we invest an additional £3 million to safeguard and help improve the quality of care available in Wirral.

This investment, coupled with our ongoing work to better join up our services with the NHS, means we can drive forward our work towards making sure that older people live well, and people with disabilities can live independently, both of which are key pledges within our Wirral Plan.”

REPORT SUMMARY

- To report the outcome of consultation with care providers with regard to 2016-17 fee rates for services provided for Adults in Wirral Council.
- To summarise local requirements to deliver a sustainable care market within the Care Act requirements, with a quality of care that reflects our local expectations
- Officers of the council have worked collaboratively with an independent agency to benchmark, consult and engage with the sector, and have provided independent oversight and objective review of processes.
- Proposals have been made in the context of significant financial pressures in relation to care costs for both providers and the Council.

- The consultation has covered services provided on behalf of Wirral ASC and Wirral CCG as part of its joint commissioning arrangements with service provision Wirral Wide in all wards.
- The report covers all sectors: Residential and Nursing (including Intermediate Care and specialist services), Domiciliary Care and Supported Living.
- Funding required to meet recommended increases is in excess of what the Council has budgeted for in 2016/17 and will require the transfer of £1.5 million from the revenue budget contingency plus an additional £1.5 million of balances to be used for 2016/17 to fill the gap with the commitment to build this into the 2017/18 Budget. To put this into context the 2% Adult Social Care precept raised £2.3 million and is already being used for Adult Social Care
- The following pledges are linked to and supported by the recommended increases.
 - ◆ Older People Live Well
 - ◆ People with disabilities live Independently
 - ◆ Young People are ready for work and adulthood
 - ◆ Wirral is a place where employers want to invest and businesses thrive
 - ◆ Greater job opportunities in Wirral Council
 - ◆ Thriving small businesses
 - ◆ Workforce skills meet business needs
- The report includes a set of numbered appendices providing the detail for each sector

RECOMMENDATION/S

- Cabinet approve the rate and fees recommended by officers within the report.
- Cabinet recommend to Council that the increased cost of £3 million be met by £1.5 million from revenue budget contingency and £1.5 million from balances during 2016/17.
- Cabinet approve to back date payments to providers to 1 April 2016.
- Approve the forward work plan with the independent agency to develop a new costed care model for specialist residential and nursing
- Approve the forward work plan to develop an outcome based model via the LCR model of care for the Supported Living Sector

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The council is required to maintain and support a local market to deliver care and support. The work undertaken by Officers with independent support has taken into account legal requirements and core standards of care and has provided a clear evidence base for the proposed fee increase.
- 1.2 The council has a duty to commission a range of provision of high quality, appropriate services, offering people choices. Looking after the care market as a whole and ensuring continuity of care. These proposals support the development of a decent quality care market for those that need it in Wirral, enabling providers to employ a workforce appropriately trained and remunerated to meet local need.
- 1.3 During the consultation period a set of previously agreed interim rates for each sector was shared with providers, effective from 1st April 2016, up until cabinet decision in June 2016.
- 1.4 The interim rates were set up as a means of assisting providers' cash flows over the Period April-June 2016, as the department recognised that additional cost pressures were imposed on providers from this date. The department felt it was fair to put an interim rate in position, rather than require providers to bear these additional costs without subsidy, until such a time as a cabinet decision was made on the new rates (June 2016).
- 1.5 A list of the interim rates for each service area is included in Appendix 1, included at the end of this report.
- 1.6 The market has responded positively to requests from officers of the council to provide information and data relating to direct costs and have shared these openly to inform the process. Information provided has been supported with evidence publicly available via the National Minimum data set returns from Skills for care.
- 1.7 Benchmarking exercises have been undertaken across Wirral, the Liverpool City Region, the Northwest finance group and also the Social Services Comparator Authorities nationally. Consideration has been given to the benchmarking data gathered to inform the proposed fee rates, a copy of which is attached in Appendix 2, included at the end of this report.
- 1.8 Provider views have been thoroughly considered in relation to their full range of costs and new legislative and national requirements. The 16/17 fee rates and the interim rates agreed from April 2016 have taken account of their views.
- 1.9 A full list of provider feedback, and an explanation of the consideration the department has given to each of these, is attached in Appendix 3, included at the end of this report.

- 1.10 In the previous 3 years the Council has raised fees for the residential and nursing sector based on the Wirral cost of care model that was developed and agreed with providers. Supported Living rates are proposed to increase for the first time since June 2011, both in relation to the hourly rate and also overnight rates to meet new living wage challenges.

2.0 OTHER OPTIONS CONSIDERED

2.1 Options & risks table;

Option	Risks (All High)
Pay the same rates as 2015-2016	<ul style="list-style-type: none"> • The council is currently not paying rates at a level sufficient to meet the new legislative changes as described • There is a risk to the council of Provider legal challenge • There is a risk to the council of Judicial Review, as experienced in two neighbouring authorities • There is a risk of market destabilisation and the council not being able to meet statutory duty under the Care Act 2014 • Potential for a “whole system” impact for services across the whole health and care economy
Decrease Fees for 2016-2017	<ul style="list-style-type: none"> • Providers would serve notice on existing clients and the council would be at risk of not meeting statutory duty • The local market collapses, and the council fails to provide, thereby not being able to meet its statutory duty under the Care Act 2014 • Potential for a “whole system” impact for services across the whole health and care economy
Ask providers to absorb costs of legislative increases	<ul style="list-style-type: none"> • Providers are unable to absorb the increased costs • Providers meet increased costs through reduction in profit affecting financial viability • Providers would be unable to provide cost effective or quality business to Wirral, and this would impact on ability to meet Regulatory Requirements • Changes to legislation outweigh the actual costs • Potential for marker collapse • Judicial Review • Potential for a “whole system” impact for services across the whole health and care economy • The Government have implemented changes to pay and national insurance which mitigate some of the costs for providers

BACKGROUND INFORMATION

- 2.2 Legislative changes have had a significant impact on the care sector regionally and nationally, and these have been taken in to account as part of

the Provider engagement process, both individually and in group settings. These legislative changes have resulted in some legal challenges from their own staff teams, including mass grievances and employment tribunals. The outcomes of these have prompted some providers to contact the department to inform that existing fees are no longer sustainable. Changes include:

- Impact of the introduction and increase of the National Living wage
- The requirement for providers to pay travel time
- Impact of employer pension contributions
- Introduction of apprenticeship tax for some larger providers
- Increase in fees for CQC and registration arrangements

2.3 The market is receptive to delivering new models of care, and co-producing this with the council and CCG representatives.

2.4 The council, From April 2016 has a new duty under the Care Act 2014 to shape and support the local market. Market shaping means local authorities working to ensure that the social care services in their area are diverse and of a high enough quality to meet the needs of the carers and people with care needs living in their locality. Under the Care Act, local authorities must ensure that any person looking to use local care services has a range of quality providers to choose from and sufficient information to help them choose between them.

2.5 The rates and fees paid by the council need to reflect both the requirements for providers to be able to meet quality and safety standards, and enable the council to maintain a stable market which can offer quality provision, whilst ensuring best value and consideration to local factors.

2.6 The council, as reflected in its pledges for Vision 2020 is committed to improving the outcomes for older people and people with disabilities in Wirral, and minimising future demand within a sustainable budget.

2.7 Several queries have been received from providers advising that the current reimbursement for nursing care does not sufficiently cover the cost of care, due to workforce shortage and agency staffing costs. The Funded Nursing Care (FNC) rate is set nationally and at the time of writing is not yet available, but imminently due for publication. The Clinical Commissioning Group (CCG) has advised that they will await the publication of the national rate and will at that point enter into discussions with providers if it is not considered that the rate negotiated at a national level is sufficient to meet the cost of nursing care locally. As such, and given that the Council is statutorily not able to pay for the delivery of health care, the Council has not taken into account the cost of nursing care as part of this fee-setting process.

3.0 FINANCIAL IMPLICATIONS

3.1 The fees and rates recommended for 2016- 2017 are as follows:

Service Area	15/16 Fee Rate	16/17 Fee Rate
Residential Care	£412/wk	£416/wk
Residential (EMI) Care	£449/wk	£458/wk
Nursing Care (excl. FNC)	£453/wk	£457/wk
Nursing (EMI) Care (excl. FNC)	£469/wk	£479/wk
Domiciliary Care	£12.28/hr	£12.92/hr
Supported Living	£12.28/hr	£13.02/hr
Supported Living Sleeping Nights	£39.41 (avg.)	£72.51/night
Intermediate Care	£643/wk	£647/wk
Specialist Residential/Nursing Care	Ad hoc	No Change

3.2 The financial impact on the council in 2016-2017 is;

Service Area	Full Year Increase
Residential Care	£120,000
Residential (EMI) Care	£110,000
Nursing Care (excl. FNC)	£60,000
Nursing (EMI) Care (excl. FNC)	£110,000
Domiciliary Care	£530,000
Supported Living	£1,020,000
Supported Living Sleeping Nights	£1,380,000
Intermediate Care*	£20,000
Specialist Residential/Nursing Care	-
	£3,350,000

*Intermediate Care is a Better Care Fund (BCF) project, and therefore joint-funded with the CCG. This increase therefore represents the cost pressure across both parties.

3.3 The largest contributing factor to the increased fee rates in 16/17 is the introduction of the National Living Wage (NLW) at £7.20/hr. The Chancellor of the Exchequer has made a commitment to increasing the NLW to at least £9.00/hr by 2020, and latest studies indicate that the actual NLW by 2020 could be as high as £9.35/hr. Consequently, the cost pressures faced by the department in 16/17 will be compounded in future years by any further increases to the NLW. The NLW is the equivalent of a new national minimum wage that must be complied with. It is not the same as the voluntary living wage. Accredited Living Wage employers will pay their staff at least the new voluntary Living Wage rate of £8.25 per hour.

3.4 In addition recent legal challenges within European Legislation have meant that all hours worked for overnight services, including sleeping and waking cover now have to be paid at a minimum of an hourly rate, and soon to be national living wage of £7.20.

3.5 In order to mitigate the increased costs, the department has been working proactively with providers of Supported Living sleeping night services, to find more cost-effective ways of meeting the night-time needs of service users. It is estimated that, by 1 July 2016, approximately 20% of all commissioned sleeping nights could be replaced with a more cost-effective mobile night service. The net value of this mitigating action is estimated to be £350,000, resulting in a net cost pressure of £3,000,000. This is displayed in the table, below:

3.6 Full year cost pressure for 16/17, this includes backdating of fees to 1st April 2016.

Service Area	Value
Cost Pressures from 16/17 Fee Increases*	£3,350,000
Mitigation - Replacement of Sleeping Nights	(£350,000)
Net Cost Pressure 2016/17	£3,000,000

*Intermediate Care is a Better Care Fund (BCF) project, and therefore joint-funded with the CCG. £20k of this £3.35m, therefore, represents the cost pressure across both parties.

3.7 In respect of residential services a greater % increase has been applied to EMI residential and nursing rates to incentivise the market to meet demand in this area.

3.8 The 2% Adult Social Care precept generated £2.3 million which has previously been allocated to Social Care Budgets to meet identified demand and cost pressures. Whilst an additional sum had been set-aside for 2016/17 within the Revenue Budget Contingency, the funding of the cost pressure in 2016/17 will require a contribution of £1.5 million from the Contingency plus a further £1.5 million from General Fund balances.

4.0 LEGAL IMPLICATIONS

4.1 Under section 18 of the Care Act 2014 and the Directions and Guidance made under it 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. The Care Act 2014 creates a free standing duty to promote wellbeing when the Council is carrying out care and support functions. The council has had regard to the wellbeing principle during the formulation of the residential nursing fee proposal.

4.2 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. The Care Act 2014 places a duty on the Council to promote effective care home provision and in accordance with that duty the Council has had regard to the actual cost of good quality care.

- 4.3 The Council is required to pay the amount it 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 expect to pay, having due regard to assessed needs. More than one cost should be set where the cost of meeting specific needs is different. In accordance with the Care Act 2014 the Council has had regard to the actual cost of good quality care and has ensured that particular types of accommodation reflect a fair cost of care.
- 4.4 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.

5.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 5.1 As part of the wider council transformation, Wirral ASC will work with an independent agency during 2016-2017 to further develop costed care models for both the Supported Living Sector and the Specialist Residential and Nursing Sector.
- 5.2 Officers of DASS, Finance, Legal and Wirral CCG will continue to work with the Local Market on an annual review basis.
- 5.3 In 2016/17, the Council will undertake a review of Intermediate Care Services with the CCG, and there will consequently be a new published model.

6.0 RELEVANT RISKS

- 6.1 As above, see 2.0

7.0 ENGAGEMENT/CONSULTATION

- 7.1 The council has undertaken a period of consultation and engagement with providers during March and April 2016. Prior to this engagement work was undertaken with a cross section of the supported living sector during January and February 2016. Discussions have been ongoing with both the domiciliary care sector and intermediate care sector during Autumn and Winter 2015-2016.

- 7.2 Consultation Events:

Initial Provider Forums and commencement of consultation process	
16 th March 2016	Supported Living Specialist Residential and Nursing Sector Domiciliary Care Sector

17 th March 2016	Residential and Nursing Sector Intermediate Care Sector
16 th March 2016 - 26 th April 2016	Opportunity to provide comment/request an individual 1:1 consultation
13 th April 2016	A second Intermediate Care consultation event
27 th April 2016	Revised fee rates , post initial consultation shared with both domiciliary and Supported Living Market
27 th April 2016	Opportunity for domiciliary care and supported living providers to feedback on the revised rates up to 5 th May 2016 Dedicated Email addresses were given to providers to submit in writing
Officers of the council and an independent agency offered individual meetings to providers to undertake an open book accounting exercise. Consultation closed 5 th May 2016.	

7.0 EQUALITY IMPLICATIONS

8.1 Equality Impact Assessments have been carried out.

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APPENDICES

1. *Interim rates*
2. *Benchmarking data*
3. *Summary of feedback received*

REFERENCE MATERIAL

N/A

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	7 th February 2013
Cabinet	13 th March 2014
Cabinet	13 th March 2015

APPENDIX 1

INTERIM RATES, EFFECTIVE APRIL 2016 – JUNE 2016

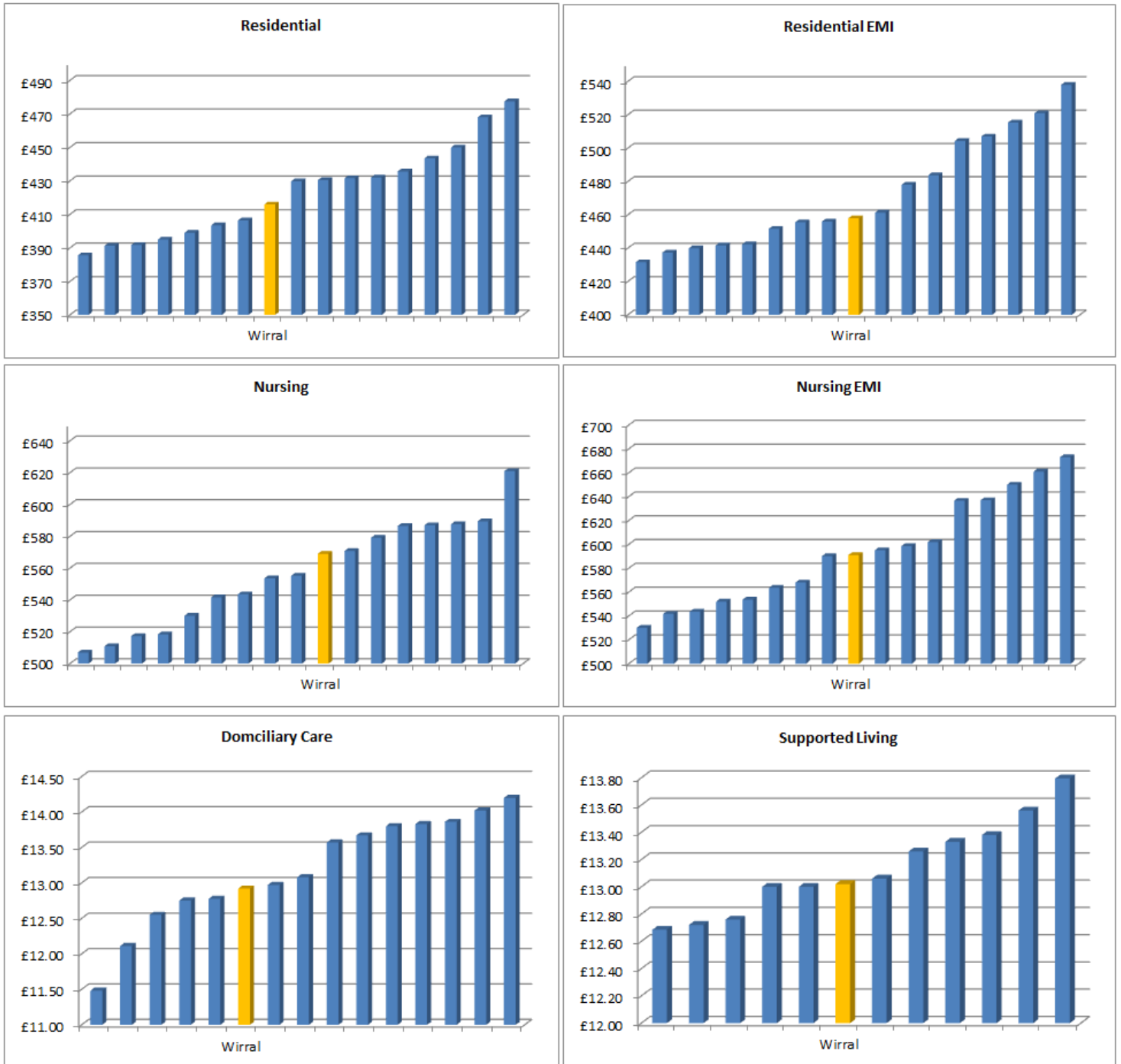
Service Area	Interim Rate
Residential Care	£414/wk
Residential (EMI) Care	£450/wk
Nursing Care (excl. FNC)	£455/wk
Nursing (EMI) Care (excl. FNC)	£471/wk
Domiciliary Care	£12.52/hr
Supported Living	£12.72/hr
Supported Living Sleeping Nights	£64.80/night
Intermediate Care	None set
Specialist Residential/Nursing Care	None set

- No interim rate was set for Intermediate Care, as the contract had only recently been awarded, and was therefore believed to sufficiently cover actual costs of care.
- No interim rate was set for specialist residential/nursing care, as these services are tendered with providers on a case-by-case basis, and it is therefore expected that the prices currently being paid are sufficient to cover the actual cost of care. These cases will be reviewed, as normal, at some point in the 2016/17 financial year, in line with the normal review timetable.

APPENDIX 2

WIRRAL'S PROPOSED RATES, BENCHMARKED AGAINST OTHER NORTH WEST COUNCILS (SUBJECT TO APPROVAL)

(Please note some local authorities operate different models of care to Wirral, therefore an element of 'blending' has been necessary to achieve comparable figures).



APPENDIX 3

CONSULTATION

CONSIDERATION OF FEEDBACK FROM PROVIDERS

The following aspects of the market place have been consulted upon:

Residential and Nursing Care
Domiciliary Care
Supported Living
Intermediate Care
Specialist Nursing

All providers in the market place were given the opportunity to provide feedback and were also provided with a cost model for completion. The number of fully completed cost models offered by providers were:

Residential and Nursing Care 10
Domiciliary Care 3
Supported Living 4
Intermediate Care 1
Specialist Nursing 0

Feedback and comments were received from the following number of providers:

Residential and Nursing Care 16
Domiciliary Care 12
Supported Living 9
Intermediate Care 2
Specialist Nursing 3

Some providers sent many comments but the list above reflects actual number of providers who responded.

Comment	No. of responses	Response
Residential and Nursing Care		
National Minimum Wage has placed an increased burden on care homes	4	The National Minimum Wage of £7.20 has been included within the residential and nursing care model.
Can you explain how the ROI was calculated	2	For consistency purposes we have calculated the ROI in the same way as we have for the previous two years. Source – Based on the Office of national Statistics. We are happy to meet with any provider to explain how this is calculated.
Concern raised regarding occupancy rate of 95%	1	We have reviewed our own records and processes and on average occupancy are still at 95% across most care homes within the borough. No changes have been made to our

		model.
The cost model must take into account payroll costs for all levels of staff employed within a care home.	2	The model has not changed since last year; rates included take into account all grades of staff and different roles performed.
Agency fees are increasing.	1	We have taken agency fees into account within the model.
Costs must include VAT	1	The actual cost of care including VAT is included within our cost of care model. We have considered all models received and have added VAT to ensure we are considering actual costs.
We will not be able to take placements at the Council rates and therefore we would have to charge top ups	1	The Council have set a rate that offers residential and nursing care homes a rate of weekly care that is comparable to nearby authorities and has been calculated using a tried and tested cost model. Any top up above the Councils usual rate must not be related to the cost of care but be related to additional quality aspects.
The council works on a 45 bed model for a nursing home. (Most providers are under 45 beds).	1	The Council have utilised data in relation to the number of nursing home beds within Wirral. For consistency purposes and to ensure fairness and transparency we have utilised the same cost model which has been approved by an independent agency.
Interim rate of an additional £1 not sufficient	2	The interim rate was based on all known changes pre consultation. Proposed increases of rates for residential and nursing (non EMI) are included in the body of the report. Changes to rates will be backdated to 1 April 2016.
Various requests for higher fees to be paid	2	The exercise carried out has taken into account provider feedback and determined the rates to be paid for 2016/17.
Domiciliary Care		
Issues raised re meeting requirements of National Minimum Wage	5	Cost model has been developed taking into account National Minimum Wage.
Have you taken in to account pension rates which come into effect on 1 September 2016	1	Pension rate of 1% has been included within the model.
The interim rate of £12.52 will not allow providers to operate in a sustainable business.	1	The cost model has been completed and a final rate of £12.92 has been offered to providers.
Have we taken into account travel time	1	Travel time has been included within the model.
Have you looked at guidance produced on what rates should be offered	1	Consideration has been given to all external sources as well as taking into account local factors including cost models offered by providers.
Has a decision been taken re direct payments and backdating	2	All rates will be backdated to 1 April and those direct payments currently being paid for domiciliary care and supported living at rates of £12.20 or £12.28 will be uplifted to reflect new rates backdated to 1 April 2016.
If fees are not set at a reasonable rate we will have to consider leaving the market	2	We have analysed returns provided and taken into account the UKHCA model and have

place		provided a model that is sustainable and can be used in future years. The model has been approved by an independent agency.
Can you explain the breakdown of fees within the cost models	2	We have been meeting with providers and continue to work with providers so they are able to understand how the models have been calculated.
Supported Living		
Is the National Minimum Wage being considered and will there be a differential between Team Leaders and Care Workers	3	National Minimum Wage has been considered within the model. Rates included take into account all grades of staff and different roles performed.
Cannot accept interim rate as currently is – require a rate of £13.20	2	We have reviewed the interim rate and have determined a rate of £13.02 is reasonable.
Sleeping rates must conform with National Minimum Wage	8	We have increased sleeping rates to take account of the National Minimum Wage.
Differences in cost models for Supported Living and Domiciliary Care	1	The domiciliary care model and the supported living models have been considered independently to ensure costs of both are accurately represented. A review of both models was carried out prior to dispatch to ensure consistency. The models were approved by an independent agency.
Provider would like to meet to discuss how model has been constructed	4	We have met with the providers and will continue to communicate with them to ensure they have an understanding of the model.
Will the model be used in future years to take, for example, increases in National Minimum Wage into account	4	The model has been developed so that it can be used in future years.
Intermediate Care		
General concern over the difference in cost between transitional beds and intermediate care beds.	1	A wider existing review of Intermediate Care is underway
Specialist Nursing		
One provider informed us that a fee increase would commence from 1 April	1	Provider informed this would not be acceptable as we are undergoing our own fee assessment and they will be notified when our review is complete.
Have we increased our council rates by 2%	1	Wirral Council have increased council rates by 2% and this has been directly attributed to Social Care.
How will we be helping existing cost pressures with providers	1	A full review of fees charged across the 5 themes has been carried out with support from an independent agency.