

SOCIAL CARE, HEALTH AND INCLUSION OVERVIEW AND SCRUTINY COMMITTEE

Tuesday, 5 May 2009

<u>Present:</u>	Councillor	A Bridson (Chair)	
	Councillors	D Roberts G Watt IO Coates	P Reisdorf S Taylor
<u>Deputies</u>	Councillors	L Rowlands (in place of S Clarke)	
<u>Co-opted Members:</u>		Sandra Wall (OPP)	Audrey Meacock (LINKs)

83 **CALL-IN OF CABINET MINUTE 441 (9/4/09) - FEES FOR RESIDENTIAL AND NURSING HOMES**

At its meeting on 9 April, 2009 the Cabinet considered a report of the Director of Adult Social Services which set out additional options for consideration regarding revised fees payable to residential and nursing homes.

The Cabinet (minute 441):

Resolved – That Cabinet agrees:

- (i) to implement Option 5 as set out in paragraph 2.6 of the Director's report.
- (ii) that where home owners refuse the new rates, contracts will be terminated (with 3 months' notice) with new placements being made at homes that accept the new rates with effect from 1 April 2009.
- (iii) that all placements in homes that do not accept the new rates will be reviewed and alternative accommodation options explored on an individual basis.
- (iv) that all contracts will need to be terminated or varied by agreement during 2009/10 to build in the results of the Quality Premium review, incorporate a range of health standards, an appropriate inflation clause and measures required to ensure the principals of "personalisation" are embedded.

Cabinet minute 441 was called in by Councillors Watt, Clarke, Taylor, Green and Rennie, on the following grounds:

"(1) The Registered Nursing Home Association (RNHA) report that one third of care home residents who are moved to alternative accommodation suffer negative outcomes as a direct result of such a move.

(2) We believe that the 'Take it or leave it' approach adopted by Cabinet and the threat to care homes and their residents - that contracts will be terminated and, at those homes that do not accept such changes, all residents will be removed and

moved to homes that do accept reduced fees and changes to their contracts - are unreasonable and may breach the Council's duty of care.

(3) It is unclear from the proposals put to the Cabinet whether the individual residents who will be affected by these changes have been consulted. If this has not happened, we have concerns that the respect and dignity owed to such residents has been denied to them by Wirral Council.

(4) We believe that the option put forward by speakers at the Cabinet on behalf of care homes, their residents and their families (option four in the Director's report), which, it was argued, will meet the Cabinet's savings requirement and prevent the negative outcomes referred to above, is worthy of further consideration prior to the Council acting precipitately."

84 CHAIR'S OPENING REMARKS

The Chair welcomed everybody to the meeting, made introductions and explained the procedure which the meeting would follow.

85 DECLARATIONS OF INTEREST / PARTY WHIP

Members were asked to consider whether they had personal or prejudicial interests in connection with the item on the agenda and, if so, to declare them and state what they were.

Members were reminded that they should also declare, pursuant to paragraph 18 of the Overview and Scrutiny Procedure Rules, whether they were subject to a party whip in connection with the item to be considered and, if so, to declare it and state the nature of the whipping arrangement.

No such declarations were made.

86 EXPLANATION OF THE CALL-IN BY LEAD SIGNATORY

Councillor Watt, as lead signatory, addressed the Committee on the call-in. He detailed the timeline of the matter of residential and nursing home fees from the report on savings to the Overview and Scrutiny Committee on 11 February, 2008 to the report to Cabinet on 9 April, 2009. He suggested that the only time the issue had been scrutinised was at the September 2008 meeting, when a report on 'Transforming Adult Social Services' had been considered and he had moved an amendment which was lost, which included the wording "This Committee supports the modernisation of Adult Social Services but cannot agree with changes that put budgetary cuts ahead of personal care."

Councillor Watt referred to the adverse consequences which could be suffered by those care home residents who had to be moved to alternative accommodation. He suggested the need for proper consultation with care home residents and stated that Cabinet had overlooked the better option for savings.

Lin Cooke – Chief Executive, Hoylake Cottage Hospital

Mrs Cooke remarked that she had presented views of care providers at the Cabinet meeting in April. She stated that one third of residents who had to be moved from their care home would die and that this was a passive attempt to reduce demand for care homes. She detailed the figures in option 4 of the report and suggested that this option would achieve the savings required. The figure of £637,000 savings for unbudgeted contract inflation suggested that the Council had no intention of honouring the home care contract. No residents at Hoylake Cottage Hospital had been consulted and she stated that they were entitled to have a say. The exercise was purely financial.

Responding to questions she commented that nursing homes had already lost £13.48 per resident per week with the contract changes in November. 60% of her occupants were social services residents and 35 would be likely to have to move out, of whom she would expect at least 10 to die in the very near future after being moved. She stated that it was likely the home would have to close as she wouldn't be able to fill the spaces.

Sean Kirkby – Tree Vale Limited

Mr Kirkby stated that fees paid to nursing homes were reduced in November 2008 without any proper consultation. He referred to the Laing and Buisson report on fees and remarked that their figures showed that Wirral paid below many other authorities and that providers on Wirral were paid substantially below cost. He stated that a report from Age Concern and Help the Aged had shown that there would be 15 million over 65s in the UK by 2030 and there was a moral duty to look after those in need and fund this adequately.

Responding to questions he gave details of figures for nursing and residential care home fees outside London. He stated that if the 1.3% cut in fees went ahead it would clearly have an effect on his business. He had invested heavily in his business and achieved an excellent rating.

Jasper Bartlett – Woodheath Care Limited

Mr Bartlett stated that all homes had been promised an inflation increase and he did not see why this could not be the case with the Council having increased Council Tax by 4.6%. He suggested that only 3 star homes were included in the comparisons in the report and that comparisons should have been based on average fees paid. He remarked that this was only one of three cuts imposed, the first being in November 2008, the second being that the promised inflationary increase was not being paid and the third being the 1.3 % cut.

Responding to questions Mr Bartlett said that he had 38 beds out of 42 currently occupied. His business was suffering because of high energy costs. He agreed that it was a good thing that people should be able to live in their own homes as long as possible but there would always be vulnerable people who would need to go into homes. He felt that contracts were being broken.

Maureen Morton – Community Caring Limited

Mrs Morton stated that she had two companies which ran three nursing homes and a community caring business, employing 230 staff. She remarked that it was not their wish to be in conflict with the Social Services Department. Her business had seen overall costs increasing by 40% due to rising energy costs and also increased spending on training, encouraged by the Social Services Department. The proposal to remove residents was immoral as they had chosen to live in these homes. She couldn't operate when contracts were changed to suit and said that this proposed additional reduction would be unsustainable.

Responding to questions Mrs Morton stated that her three homes had a total of 73 beds with 9 vacancies across the three.

David Rawlinson – Halliwells Solicitors

Mr Rawlinson stated that he represented a number of care homes. He recognised that the Council needed to balance its budget but it also had entered into contracts with homes. If contracts were terminated then he suggested that a breach of contract situation might arise.

Responding to questions Mr Rawlinson stated that clause 24 of the Council's contract would apply and termination with three months' notice could not be carried out without good reason or for no reason.

Farooq Bukhari – Englewood Residential EMI Care Home

Mr Bukhari outlined the development of his business at Englewood and the money that he had invested. He referred to the Adult Social Services' suspension of Englewood and the relegation to a one star rating. His business had been affected by rising fuel costs and more and more legislation introduced since 1997. He now had a 39% occupancy rate and his business was on the verge of collapse. He stated that if the cut in fees went ahead then his home would close down.

Responding to questions Mr Bukhari commented that there were now a lot more competitors supplying care for dementia sufferers. Other providers might only offer dementia care visits of two half hour sessions a day.

The Chair suggested that if Mr Bukhari had a genuine grievance against the Council's Adult Social Services Department he should contact the Council's legal department.

Darryl Milligan – Residential Home, New Brighton

Mr Milligan stated that he had a small family run home which catered for up to 8 adults with learning difficulties. His clients were some of the most vulnerable people in society. Currently there was one vacancy and the proposed cut in fees would make it impossible for his business to continue. There was no flexibility for him to shrink or expand his workforce like some larger homes and he could not afford to have a dedicated activities worker.

Responding to questions Mr Milligan stated that there were very few family run single units. He speculated where his current clients could end up if his home had to close and wondered whether they could remain in the local area.

Mr R Carter – Richmond Residential Home

Mr Carter stated that he had two homes for adults with mental health problems, one for 18-65 year olds and one for 35 -75 year olds. He remarked that banks were totally unsympathetic as without knowing what the business was going to earn it was impossible to produce a business plan. It was essential that there were homes for those with mental health problems, as the numbers of people with such problems were increasing. He outlined the risks that could arise if people were left to fend for themselves in the community having previously being cared for in a home.

Responding to questions Mr Carter said that if option 5 in the report was pursued then there would be an erosion of the system

Councillor Tony Pritchard (Ward Councillor New Brighton)

Councillor Pritchard stated that the Council appeared to be bullying businesses with threats. Many of these businesses were struggling to remain viable and he expressed his concern that many excellent homes in his ward could be forced to close. Three had already closed in one road in his ward. He did not believe that there would be a need for fewer homes in the Wirral. 157 places had already been lost for Alzheimer sufferers over the last four years. He stated that Cabinet should think again and agree to option 4.

Responding to questions he remarked that he was not aware of the reasons for the home closures on Seabank Road, New Brighton. He wasn't aware of how many vacancies homes across the Wirral had. Homes represented at the meeting were from across the Wirral.

The Chair adjourned the meeting for 5 minutes at 7.25pm.

88 EVIDENCE FROM CABINET MEMBER'S WITNESSES

John Webb, Director of Adult Social Services

The Director stated that Wirral Council had moved from a low paying fees authority to a higher paying one. There had not been a detailed negotiation as this was not for a new contract but rather a reduction in fees paid under the existing contract. A full contract review was scheduled for April 2010.

There was an overprovision in the sector with approximately 400 empty beds at present. There was no suggestion that people would have to move but an expectation that colleagues in the independent sector would work with the Department as there was a need to ensure there was good quality, sustainable care in Wirral. He suggested that it was unreasonable to have a 4.7% inflation increase and the Cabinet proposal was a reasonable and fair offer. Informally the Department of Health appeared to be satisfied with the proposal. He reminded the Committee of the award winning assistive technology service and many other services helping people to remain in their own homes.

The Government was due to publish a Green Paper in June when the whole issue of funding of Social Care would be taken forward.

Responding to questions the Director stated that three star rated homes received an additional £60 per resident per week. Fee rates were now about 12% above the regional average and he acknowledged that a four star rating, which would bring a further reward, had not been introduced. People wanted to remain in their own homes as long as possible and this was a consistent message nationally.

There were important safeguards for people who did not have sufficient mental capacity and needed protection and this needed to be balanced with the rights of people to take risks and make their own choices. The Green Paper would be a major review though the Director had no idea when this might become a White Paper and decisions over fees could not wait for the publication of a Green Paper.

The Director remarked that his department had no control over planning applications for nursing homes, although his advice to anybody considering developing a nursing home on Wirral was don't. The Department had closed a number of its own homes over the past 12 months as it recognised alternative provision could be offered and new developments had added some additional capacity.

Consultation had taken place with home owners about how a price reduction could be applied and comments had been noted. The consultation was genuine and meaningful as proposals had been revised. The Director also referred to training issues and assessments being made in conjunction with the health service.

Rick O'Brien – Head of Access and Assessment, Adult Social Services Department

Mr O'Brien stated that there was no requirement for people living in homes to have to move. If providers made a request to move someone then his branch would make an assessment. Assessments would be undertaken in a holistic way involving all health professionals and include a full and comprehensive risk assessment with a detailed care plan. He commented that he did not recognise there was a correlation between people having to move out of a nursing home and deaths.

Responding to questions Mr O'Brien outlined the many elements of the assessment process. For those with a reduced capacity to make informed choices social workers could act in the capacity of advocates and cases could be referred to advocacy services.

Tina Long – Director of Strategic Partnerships, NHS Wirral

Ms Long commented on her role with NHS Wirral and that she led on integrated commissioning. As a registered nurse she always had the interests of patients at heart. The Care Quality Commission had stated that people with long term care needs should be supported to live as independently as possible for as long as they could when it was clinically safe and appropriate to do so. The direction of travel for social care was to deliver services which delivered these outcomes and she outlined some examples how this was happening. Investment in services for those suffering

from strokes and falls had taken place and work was being undertaken with the Department of Health on dementia services.

Health and Social Care staff were working closely together and an additional £8m was being invested into mental health services. A scheme of locality based care beds would be starting later in the year.

Responding to questions Ms Long stated that the number of emergency bed days for fractured neck of femur had continued to drop following investment in the 'falls' service. There was a real opportunity to develop integrated intermediate care services with the independent care home sector.

Chris Batman – Deputy Director of Adult Social Services

Mr Batman outlined the consultation process which had taken place including a meeting to which all home owners had been invited when the original proposals had been published. Home owners were invited to respond with any concerns and evidence. Mr Batman stated that it would not have been appropriate to consult with residents as the consultation was regarding a contractual matter between the Council and proprietors of homes.

Responding to questions Mr Batman stated that a letter had been sent out to all care home owners inviting them to a meeting at the Town Hall. He did not have the consultation information with him. He remarked that the Cabinet had listened to the views of the consultees because it had deferred a decision pending revised options being brought back by the Director.

Steve Rowley – Acting Head of Finance and Performance, Adult Social Services Department

Mr Rowley stated that 19 councils across the North West had been contacted about their rates of fees. With an assumed rate of return of 5% a 35 bed residential care home would break even with an 80-85% occupancy level. This would mean that with 28-30 beds occupied home owners could make a 5% return on investment. A nursing home of 40 beds would break even with a 75-80% occupancy rate. The fees paid by Wirral were more than sufficient for this rate of return. He referred to the savings in the Director's report and the fact that £637,000 represented an additional commitment if the contract inflation clause was implemented.

Responding to questions Mr Rowley stated that the figure of £637,000 did not exist within the Adult Social Services Department budget. The total number of care home beds supported by the department was 1547 of which approximately 400 were vacant. He gave a breakdown of the numbers of people funded by Wirral in 3 star homes which was 57%, 19% were in 2 star homes, 11% in 1 star and 13% in homes without star ratings.

The Cabinet had received details of the consultation with 20 pages of data but the information was exempt as it was deemed commercially sensitive, some homes having indicated they would agree to the proposed cut and others not.

Ray Williams – Corporate Procurement Manager, Finance Department

Mr Williams stated that Corporate Procurement had acted in a consultative role throughout and that the process followed by Officers was fair, transparent and did comply with the Council's contract procedure rules and UK procurement legislation. The process had been conducted over a lengthy period and Members regularly informed of progress. Corporate Procurement believed that the option recommended by Officers and approved by Cabinet delivered the correct balance between service standards for the service user, a fair price for the Council and providers, and was consistent with the duty of 'value for money' that the Council was required to achieve.

Ken McDermott – Wirral Older People's Parliament

Mr McDermott commented upon the need for the status of domiciliary care to be raised as older people wanted to remain in the community where they were. If people did need to be moved from residential or nursing homes he suggested that the Older People's Parliament would like to be involved in their sensitive resettlement and delivery of this service.

Responding to questions Mr McDermott stated that his former professional experience included teaching, the probation service and over 20 years ago as an Assistant Director of Social Services in Wirral. Since his time in social services, there was now a far more effective use of resources, analysis was now more scientific and focused. The OPP had not had a chance to consider the proposal in detail.

89 SUMMING UP BY MOVER OF THE CALL-IN

Councillor Watt thanked all the witnesses and stated that it had been a very worthwhile exercise in scrutiny. The Committee had heard some very conflicting views; care home owners believed the fees were below average and the officers believed that they were above average. He suggested that great difficulties might arise if the decision of Cabinet was implemented and that a less aggressive resolution might be the best solution.

90 SUMMING UP BY CABINET MEMBER

Councillor McLaughlin, Cabinet Member for Social Care and Inclusion stated that the Council spent £46 million on fees annually to care home owners and the Department of Adult Social Services' resources were strained. All political parties, including the Conservatives, had put forward budget proposals which included £1.79m savings from fees to care home owners. Older people want to remain in their own homes as long as possible and the Council and its partners were investing in services such as assistive technology and extra care housing to achieve this.

A reduction of 1.3% was far less than the original proposal of 5% and equated to £5 a week rather than £20. It was inappropriate to expect fees to subsidise over provision and the Council shouldn't use council tax payers' money to subsidise empty beds.

Councillor McLaughlin did not underestimate the pressure which home owners were facing and suggested that the Cabinet proposal was fair and would best serve the

long term interests of all concerned. She hoped that the Committee would endorse the Cabinet decision.

91 COMMITTEE DECISION

It was moved by Councillor Watt and seconded by Councillor Rowlands that –

“This Overview and Scrutiny Committee asks Cabinet to reconsider its decision in minute 441 and in particular it considers adopting option 4 in paragraph 2.6 of the report and continues consultation with home owners with a view to achieving a satisfactory outcome for the benefit of their vulnerable residents.”

It was moved as an amendment by Councillor Roberts and seconded by Councillor Coates, that –

“(1) Committee is aware that money paid in fees to residential and nursing homes in Wirral, which is around £46m annually, represents a very large part of the Adult Social Services and Council budget, and that contracts between Council and homeowners must be constructed, as with all contracts, in a way that makes best possible use of constrained resources and Council Tax payers money.

(2) Committee is also conscious that some homeowners are experiencing difficulties because of pressures on their businesses, and that they have made strong representation to Cabinet to recognise those difficulties in fee levels.

(3) Committee believes that option 5, which was approved by Cabinet, represents a fair compromise, which balances the priorities of both parties, including that of providing services which meet the care needs of older people in Wirral at present, and in the longer term.

(4) Committee believes that this is the responsible way forward and that it is in the best interests of all parties to adopt the recommendations in option 5, thereby avoiding unnecessary distress to service users and relatives.

(5) Committee therefore endorses the Cabinet decision.”

The amendment was put and carried (4:3).

Resolved (4:3) –

(1) Committee is aware that money paid in fees to residential and nursing homes in Wirral, which is around £46m annually, represents a very large part of the Adult Social Services and Council budget, and that contracts between Council and homeowners must be constructed, as with all contracts, in a way that makes best possible use of constrained resources and Council Tax payers money.

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