

CABINET MEETING: 21 NOVEMBER 2019

**CARDIFF OLDER PEOPLES CARE HOME FEE SETTING
STRATEGY 2019/20 – 2022/23**

**SOCIAL CARE, HEALTH & WELLBEING (COUNCILLOR
SUSAN ELSMORE)**

AGENDA ITEM: 9

Appendix C (Legal advice) is exempt from publication pursuant to Paragraph 12.1 of Part 4 of Schedule 12A to the Local Government Act 1972

Reason for this Report

1. The purpose of this report is to present the outcome of a 'cost of care exercise' undertaken with Cardiff's care home providers for older people. The report recommends an evidence based approach to the setting of fees for care homes for older people based on an understanding of the usual cost of care home provision in the city. The approach to fee setting recommended has implications for the 2019/20 financial year and the 3 year period from 2020/21 to 2022/23.
2. The recommendations based on the outcome of the cost of care exercise are a reflection of the importance of effective commissioning of social care provision. The recommendations support compliance with the statutory duty on the Council to fund care and support services at a level that reflects a real understanding of the cost of provision, which is balanced by the availability of resources. This enables the Council to meet its statutory duties and ensure cost effective and quality services for its most vulnerable citizens.

Background and Context

3. The Council is committed to ensuring that older people receive high quality care and support in the most appropriate and cost effective way to meet their individual outcomes. The Council is committed to improving how people are supported to stay well and independent for as long as possible. This aim is being achieved through the provision of a range of services including community based models such as re-abling services, direct payments and domiciliary care. Doing the right thing for (and with) older people is reducing the need for long term care home services. It is, however recognised that when people do need care home services they are now older and frailer than before.

4. The Council is committed to stimulating a diverse, active market of provision where innovation is encouraged and people's right to exercise choice and control is respected.
5. Care homes for older people play a vital role in supporting the City's most vulnerable residents to live in their own communities near their families. Cardiff Council is committed to ensuring that the care and support commissioned from the care home sector for older people provides safe, personalised support.
6. In summary, the Council requires residential and nursing care services for older people to provide:
 - a safe, secure and stable environment, with onsite 24/7 hour access to care and support
 - the opportunity to promote choice, engagement and meaningful activities of its residents , carers and family members,
 - dignity and respect for all residents
 - a good quality of life for residents
 - an appropriately skilled and qualified workforce that is competent to meet the individual needs of residents.

The Strategic Context

7. Statutory guidance to Local Authorities on the commissioning of social care services is set out within Welsh Government statutory guidance '**Commissioning Framework Guidance and Good Practice. Standard 10 (2010)** This guidance sets out the factors a Local Authority should take into account when considering fees: The Guidance states,

'Commissioners will have to take into account the full range of demands on them and their strategic priorities, as well as the resources they have at their disposal in developing their commissioning strategies..

Fee setting must take into account the legitimate and future costs faced by providers as well as the factors that affect those costs and the potential for improved performance and more cost effective ways of operating. The fees need to be adequate to enable providers to meet the specification set by the Commissioners together with regulatory requirements.....

Commissioners must have a rationale to explain their approach to fee setting. The primary concern is that services operate safely and effectively to promote the welfare of the service users and carers and meet regulatory requirement.

National Drivers

8. **The Well-Being of Future Generations (Wales) Act 2015 ("The 2015 Act")** places a 'well-being duty' on public bodies aimed at achieving seven well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture thriving Welsh language, and is globally responsible. In discharging its duties under this legislation, the Council has set and published wellbeing objectives designed to maximise its

contribution to achieving the national wellbeing goals. The wellbeing objectives are set out in Cardiff Council's Corporate Plan 2018-21.

9. **The Social Services and Well-being (Wales) Act 2014 ("The 2014 Act")** came into force on 6 April 2016. This legislation provides the legal framework for improving the well-being of people who need care and support, and carers who need support, and for transforming social services in Wales
10. The Regulation and Inspection of Care Act (2016) ("**The 2016 Act**") provides the statutory framework for the regulation and inspection of social care in Wales including the care home sector. It reforms the regulation and registration of regulated services and enhances the regulation of social care workforce, including the adult residential workforce who must achieve registration with Social Care Wales by April 2021.

Strategic Priorities of the Council

11. Cardiff Council published its '**Capital Ambition**' strategy in July 2017, which sets out the vision for the City. Capital Ambition was followed by the Corporate Plan (2018-21) that set out how the Council would deliver the commitments made in Capital Ambition. Capital Ambition focusses on four key areas:
 - Working For Cardiff
 - Working For Wales
 - Working For the Future
 - Working For Public Services
12. Improving outcomes for older people is a key part of the Capital Ambition commitments:

The way we look after our older people is a message to future generations. Though Cardiff is a young city the number of older people is predicted to rise significantly. This administration is committed to finding working solutions to emerging social care pressures and support people to live fulfilled and independent lives in their communities.

13. Capital Ambition also makes the following commitment:

We will provide the highest quality of social care possible, in practice and delivery.

14. This statement and commitment give a clear direction for the Council. It commits to achieving a high standard in supporting older people in Cardiff to live fulfilled lives in their own homes and communities.
15. The steps within '**Delivering Capital Ambition: Corporate Plan 2018 – 2021**' reflect the Council's absolute commitment to supporting older people living in the City. They describe the detail of how these steps will be delivered and sets the specific objectives against which progress will be measured.

The Older People's Care Homes Market in Cardiff

16. The care home market is made up of a diverse mix of providers, ranging from small family run care homes operating in older buildings to purpose built large,

modern care homes with en-suite facilities run by large national and international companies.

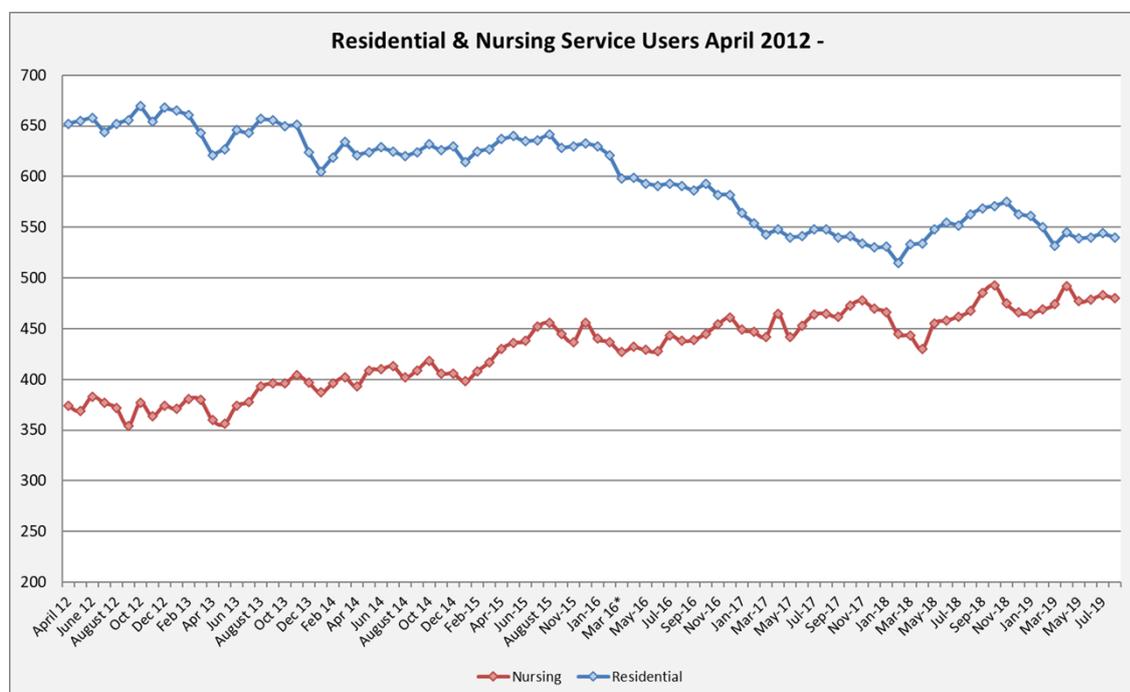
17. The Council does not currently have any internal care home provision for older people and solely relies on the external market to meet the care and support needs of people who require care home services. The Council commissions a mix of care home services to meet individual needs.

Issues

Analysis of Demand – Past and Current and Future

18. Cardiff Council collects detailed and robust information on the number of people who receive Council-commissioned care and support services. This information has been used to help inform expectations and predictions about the future need and demand for these services. **Charts 1** below shows the level of recent care provision.

Chart 1: Number of People Living in Residential & Nursing Care (All Ages and Client Groups): April 2012 – August 2019



Analysis of Demand – Future

19. There are two key documents on which Cardiff Council has based its analysis and expectations of future demand for care and support. Both of these documents have been produced by the Cardiff and the Vale of Glamorgan Integrated Health and Social Care Partnership (CVIHSCP), which is formed between Cardiff Council, Vale of Glamorgan Council (VoGC), Cardiff and Vale University Health Board (CVUHB) and 3rd sector partners. These two documents, should be considered together. They are:

- **The ‘Cardiff and Vale of Glamorgan Market Position Statement and Commissioning Strategy for Older People’s Services 2017-2022 – Me, My Home, My Community’.** This strategy will be referred to in this report as the ‘MPS’. It describes the challenges and opportunities facing commissioners, providers and those who receive care and support

services. It also sets out partner's responses to these challenges and opportunities and how this response will support delivery of the vision, priorities and objectives over the period 2017 – 2022. The document describes:

- A vision for how the partnership wish to respond to the changing needs for care and support in the future
 - Current and projected demographics, expenditure and activity levels
 - The types of services lone partnership we will be investing / disinvesting in
- The **'Cardiff and Vale of Glamorgan Population Needs Assessment'** is an assessment of the care and support needs of the population, including carers who need support. This document will be referred to in this report as the 'needs assessment'. It was undertaken between February 2016 and January 2017 with the aim of identifying needs of the population for health social care and preventative services.

20. In summary, projections in the needs assessment and MPS show that the population of Cardiff is growing, is growing older and is projected to have increasing health and social care needs in the next 20 years. Specifically;

- Cardiff's population is expected to grow at a faster rate than that of any other major British city, except London.
- The number of people aged 65-84 in the city is expected to increase by 45%
- The number of people aged 85+ in the city is predicted to increase by 88%

21. Charts 2 and 3 below further illustrate the challenge facing the health and social care sector and provide the data on which Cardiff Council's planning and expectations are based.

Chart 2: % increase in the population of Cardiff, by age group

Age Group	Projection Year		
	2019	2021	2026
0-4	1.1%	3.8%	11.7%
5-16	6.4%	10.3%	16.0%
17-64	1.5%	2.5%	5.4%
65-84	5.7%	9.5%	23.1%
>84	7.2%	12.5%	26.6%
All	2.7%	4.6%	9.8%

Chart 3: Number of people in each age group with dementia

Age Group	Projection Year				
	2015 No. of people	2020 No. of people	% increase from 2015	2025 No. of people	% increase from 2015
30-64	109	116	6.4%	121	11%

65-69	282	269	-4.6%	291	3.2%
70-74	465	576	23.9%	554	19.1%
75-79	813	894	10%	1110	36.5%
80-84	1262	1375	9%	1540	22%
85+	2565	2875	12.1%	3355	30.8%
65+	5387	5988	11.2%	6849	27.1%

Past, Present and Future Demand: Cardiff Council Conclusions

22. The demand for older person's residential care has remained reasonably consistent over the last 3 years. However, the Council expects the number of residential care services it commissions in the future to continue to reduce as housing with support is able to help more people with physical frailty and dementia to remain living in their own homes. It is the Council's intention to work with partners to meet the desire of many people to remain living at home for as long as possible. Furthermore, the Council is currently re-modelling community based provision, which it anticipates will significantly improve the ability of people to remain living in their own homes for longer, delaying or avoiding a move into residential care.
23. The Council recognises the value of residential care for people who can no longer continue to live in their own homes and understands that this will continue to be a vital service for people who need it. The Council is committed to providing the appropriate level of funding for these services and to support providers to deliver services of the highest possible quality. The Council will also be seeking to expand the provision of residential reablement provision and is investing Integrated Care Fund monies to this end. This will enable people who are unable to live in their own homes with domiciliary support to receive reablement services in a residential setting to support as many people as possible to return to live independently when they have recovered sufficiently to do so.
24. The demand for nursing home care has increased in recent years. Whilst the measures the Council will take to support more people to live in their own homes will have some impact on the number of people that require nursing home care in the future, the Council expects that this will be outweighed by the impact of demographic factors, leading to an overall net increase in future demand. Responsibility for Funded Nursing Care for funding Nursing Care is the responsibility of the NHS. Cardiff Council is responsible for the residential care element of nursing home fees. The challenge for the Health Board and the Council is how to effectively work together to commission quality and sustainable provision in a sector experiencing pressure retaining a nursing workforce.

Cardiff Council Current Approach to Care Home Commissioning 2014-2019

25. In 2014, the Council introduced a Dynamic Purchasing System (DPS) for the commissioning of care home services. A key feature of a DPS is that it requires providers to make an offer to take on a new package and as part of their submission, they must state the rate they will charge to deliver this care. This has given providers the flexibility and control over the rates they receive the care they deliver but it has also meant that Cardiff Council is in the minority in Wales

in that it has not published a standard cost of care for its homes for older people. There are currently 79 care home providers enrolled on the DPS.

26. One impact of this approach has been that the rates the Council now pays for services vary hugely across care types and even for similar types of care. Cardiff is different from other Local Authorities in Wales who do not use a DPS and do not commission at such varying rates. The figures below illustrate the variance as at September 2019:

- **Older People Residential Care:** Minimum = £469.73, Maximum = £1,600.00, Mean = £689.08, Median = £650.00
- **Dementia Residential Care:** Minimum = £465.93, Maximum = £1205 , Mean = £676.64, Median = £629
- **Older People Nursing Care:** Minimum = £485.93, Maximum = £1,556.00, Mean = £861.11, Median = £800.33
- **Dementia Nursing Care:** Minimum = £480, Maximum = £1556, Mean = £924.04, Median = £925

27. Whilst some of the different rates are for services to individuals that reflect specific needs, the majority of care home services the Council is paying very different rates for very similar types of service.

Resource Availability – Cardiff Council’s Financial Situation

28. Cardiff Council’s financial position in recent years has been dominated by increased budgetary pressures and the impact this has had on its capacity to invest in public services, which includes services that are delivered by external organisations on the Council’s behalf. The situation with Local Government funding is well known and there are numerous statistics that illustrate the challenge of decreasing (or static) budgets and increasing demand and expectations. However, what is most relevant for this report is the cost pressure the Council is facing in funding residential and nursing services.

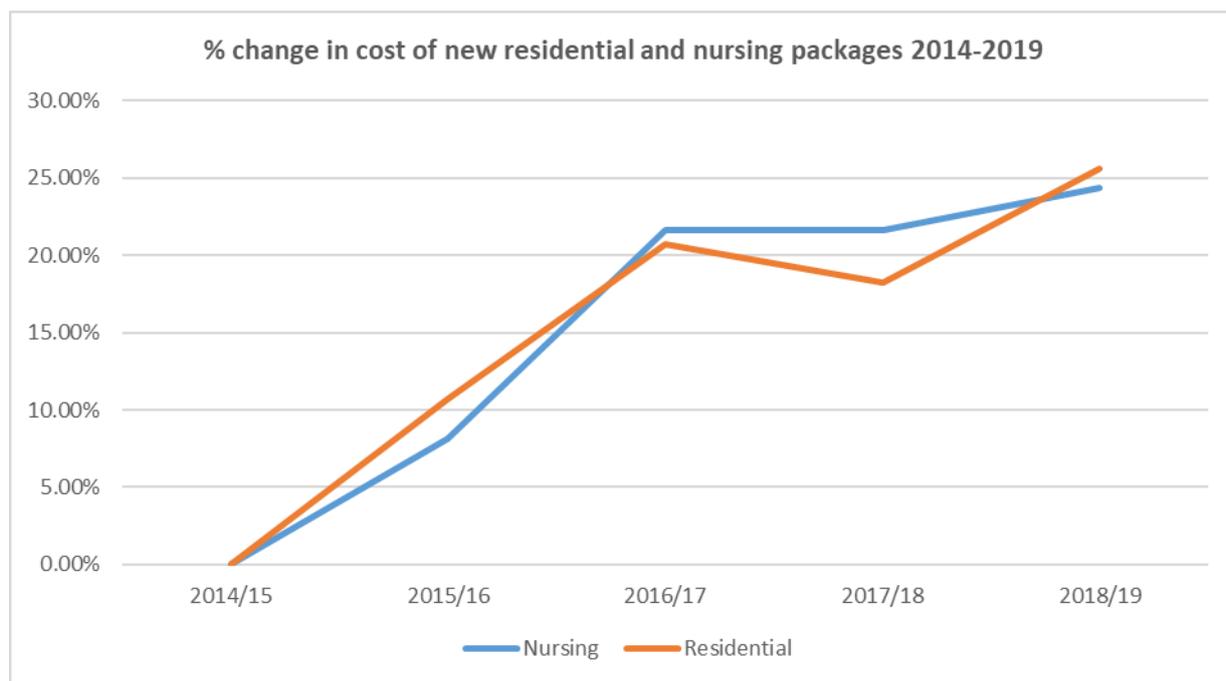
29. **Chart 4** below shows the actual net budget spend on older peoples residential and nursing care placements over the last three years.

Chart 4

Actual Net budget	2016/17 Years	2017/18 years	2018/19 years
OP Residential	£6,720,311	£6,653,896	£8,025,474
OP Residential Dementia	£2,094,808	£1,986,608	£2,096,740
OP Nursing	£12,264,596	£14,729,290	£15,966,926
OP Nursing Dementia	£2,519,207	£2,962,912	£3,216,800
Total	£23,598,922	£26,332,706	£29,305,940
Percentage Increase		11.6%	11.3%

30. The information provided in **Chart 4** shows that expenditure on care homes increased by a level in excess of 10% over the last two years. This greatly exceeded increases in the overall Council budget over the same period.
31. **Chart 5** shows that in recent years the average rates for residential and nursing provision have increased significantly.

Chart 5 – The percentage change in the average rate paid for new placements on Proactis, compared to a baseline of 2014 (Older People and MHSOP over 65)



Conclusions in Relation to the Current Spend on Care Home Provision for Older People.

32. A consideration of the information in the charts above has led to the following conclusions
- **Residential Care** – From 31st March 2014 to 31st March 2019 there was a decrease in the number of service users over the age of 65 in residential placements commissioned by the Council of 22.6%. Over this same period the Council’s overall spending on residential care showed a net increase with, the average rate of these placements increasing significantly (**Chart 5**). This increase in rate far exceeds any increase in cost pressures over this period that has been shared by providers or which the Council is aware of (e.g. legislative changes).
 - **Nursing Care** – From 31st March 2014 to 31st March 2019 there was an increase in the number of service users over the age of 65 in nursing placements commissioned by the Council of 19.7%. However over this period the Council’s overall spending on nursing care increased by a figure significantly in excess of this figure and the average rate of new nursing placements commissioned by the Council also increased by 24.3%. As with residential placements, and even when accounting for the slight increase in the number of placements commissioned, these funding increases are at a level that far

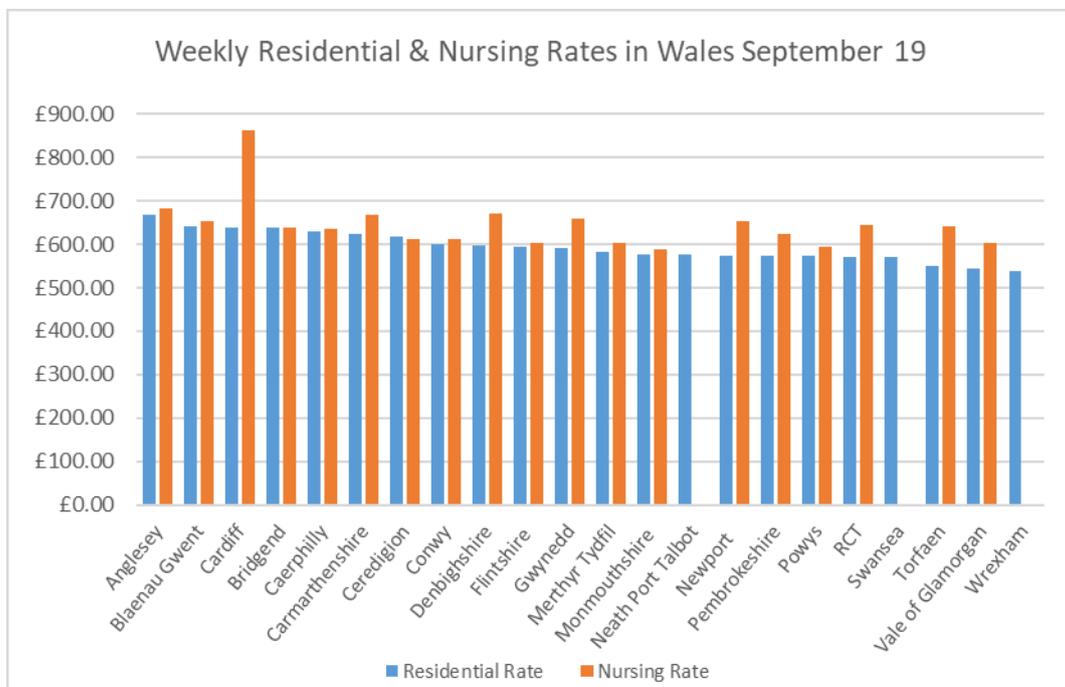
exceeds any increase in cost pressures over this period that has been shared by providers (e.g. rates of pay of nursing staff) or which the Council is aware of.

33. Whilst some of the different rates for care home services reflect different needs of residents, in the vast majority of cases the Council is paying highly valuable rates for essentially the same service provision.
34. The Council has undertaken further analysis to understand how this additional investment has been distributed, by looking at the change in the average rate received by individual providers since 2014. The conclusions are set out below:
 - **Residential Care (Cardiff homes only):** Between 31st March 2014 and 31st March 2019: 7 providers saw the average rate they receive increase by less than 20%; 8 providers saw the average rate they receive increase by between 20%-30% and 11 providers saw the average rate they receive increase by in excess of 30%. There is little correlation between the average rate a provider received in 2014 and the rate of increase in the following 5 years. There is no correlation between the level of increase and the levels of service provision. The annual rate of inflation(CPI) between Quarter 2 2014 and Quarter 1 2019 was 7.7%
 - **Nursing Care (Cardiff homes only):** Between 31st March 2014 and 31st March 2019: 2 providers saw the average rate they receive increase by less than 30%; 10 providers saw the average rate they receive increase by between 30%-50% and 6 providers saw the average rate they receive increase by in excess of 50%. There is little correlation between the average rate a provider received in 2014 and the rate of increase in the following 5 years. There is no correlation between the level of increase and the levels of service provision. The annual rate of inflation(CPI) between Quarter 2 2014 and Quarter 1 2019 was 7.7%

Regional Commissioning and the Cost of Care in Cardiff Compared to Other Welsh Local Authorities

35. The Social Services and Well-being (Wales) Act 2014 places a requirement on all Welsh Councils to take a regional approach to commissioning care home services for older people. Cardiff and the Vale of Glamorgan Councils and the Cardiff and Vale of Glamorgan University Health Board are working together to achieve this end through a pooled fund arrangement.
36. Whilst the Council understand there will be different factors in Cardiff, which contribute to the cost of care, and as such a comparative analysis cannot be determinative, the Council also believes some factors are the same in all parts of Wales. As such, an analysis has been undertaken to understand how the rates it pays for care home services compare to the rates paid by other Local Authorities across Wales for these services. **Chart 6** below show this information:

Chart 6 – The average rates for residential and nursing care paid by each Local Authority in Wales in September 2019 (This is the data as reported by each Local Authority and is for older people's care and excludes Funded Nursing Care)



37. Based on the data and commentary in paragraphs 29-33 of this report and knowledge of the care sector, most of which has been shared by providers themselves, the Council is of the view that the current fee setting policy should not continue, as it:

- Creates an inequitable set of arrangements for the payment of care home provision creating an ‘uneven playing field’ in the care home sector.
- Is financially unsustainable for the care home providers that receive lower rates than other providers. These providers could be at an increased risk of having to exit the market because they are not financially viable or being subject to sanctions because they have insufficient income to meet the standards of care required of them
- Is financially unsustainable for the Council, as the annual increases in rates far exceeds the annual increase in the Council’s budget
- Is an inequitable use of public funds and does not represent value for money.
- Does not take into account an analysis of the costs of care, which is required under the statutory commissioning guidance.
- Does not support a move to regional commissioning in accordance with the Social Services Well-being (Wales) Act 2014.

Quality and Market Stability

38. The Council recognises that across the care home sector the level and impact of financial challenges facing providers are increasing. However, Cardiff Council is not aware of any home in Cardiff that has closed in the last 3 years due to it having insufficient funds to operate.

39. The number of providers subject to provider performance procedures due to quality concerns has remained stable across the last 4 years. Of the organisations that are subject to performance measures, the rates they receive is not evidentially a significant factor.

40. The Social Services Contracts and Service Development Team carry out announced and unannounced contract compliance visits to Cardiff care homes. The standard of care provided by all care homes visited in 2018-19, in general showed that the privacy, dignity, rights, welfare and care of residents remains paramount for providers. Key findings from the visits are summarised below.
- Homes have sufficient staffing levels in order to have capacity to meet individual needs
 - Some care homes have invested in their buildings undertaking refurbishment /decoration of the building in the last year
 - Assistive technology is being used by some care home providers to increase efficiency
 - In all care homes there is support for individuals to maintain family/other relationships and
 - Training and development opportunities are offered to all staff
41. Whilst the operating conditions for providers can be challenging, the available evidence in terms of market stability is:
- Low numbers of care home providers closing, or selling their business at this time
 - Low numbers of care home providers are failing to meet the required quality standards and of those that do, no examples are linked to, or caused by, a lack of funds.
 - The Council is able to commission placements relatively easily for residential care but it is more challenging for nursing home placements.
 - Availability of the right leadership and management capacity and the right quality of registered nurses in the nursing home sector are key themes in provider performance processes. The Council is committed to working with Social Care Wales (to support improved management and leadership in the sector) and the Cardiff and Vale University Health Board (to address nursing workforce issues) to support the sector to improve.

Understanding Provider Costs – A Summary of the Cost of Care Exercise, Findings and Report on the Usual Cost of Care Home Provision in Cardiff

Context for the Cost of Care Exercise

42. The Council has routinely undertaken an annual rate review to identify, and understand the impact of, financial pressures facing providers, which are often a direct result of specific legal requirements. One such change was the announcement by the Chancellor of the Exchequer in July 2015 that with effect from 1st April 2016, all employers would be required to pay a mandatory National Living Wage (NLW) for workers aged 25 and above. Cardiff Council acknowledged that pressures such as this affect the cost of delivering the commissioned services. The Council also recognises that the impact and extent of these pressures is unique to each organisation, given the particular circumstances under which contracts are agreed and the different cost bases and income levels of providers.
43. Going forward, the Council is seeking to provide a level of funding that:
- Ensures the people of Cardiff are able to access and receive quality services through appropriately resourced contractual arrangements.

- Ensures providers are sustainable organisations and do not have to make changes that could affect or disrupt the provision of care and support to people that it need it.
 - Is fair and equitable across different types of service provision
44. In 2018/19, a modified approach to fee uplifts was proposed initially which targeted uplifts to certain packages, recognising the inequity in the fees paid. However, a pre-action letter in accordance with the Judicial Review Pre-Action Protocol was received on behalf of providers. This challenge was predicated on an assertion that the Council had not consulted effectively with providers on its fee setting process and therefore has acted outside of the Welsh Government Statutory Guidance.
45. A revised offer was made following a commitment that the Council would review its fee setting approach as part of further consultation with providers. The Council made a commitment to undertake a cost of care exercise to inform future decision making in setting fee levels for the older people care home sector. It also gave an undertaking that the fee settlement for 2018-19 would be reviewed in light of the findings of this exercise.
46. Early in 2019, Cardiff Council commissioned an independent expert to work with Council officers to establish the usual cost of care home provision in the city. The expert had undertaken similar work with a number of other Welsh local authorities. The exercise considered costs for older peoples' residential and nursing care under the following four categories of provision:
- General Residential Care
 - Residential Dementia care
 - Nursing Care
 - Nursing Dementia Care
47. The purpose of the cost of care exercise was to gain clear knowledge and evidence of the actual costs of older people's care home delivery in a residential setting within the Cardiff Council boundary.
48. At the time the exercise commenced, Cardiff had 35 care homes for older people providing a total of 1757 beds. Occupancy level were at 92% with 36.5% of beds commissioned by Cardiff Council (as at end of March 2019).
49. The remainder of beds were occupied by self funding individuals or were commissioned by Cardiff and Vale University Health Board for people with continuing health care needs. Cardiff Council commissioned a total of 277 residential beds at that time and 365 nursing beds from 28 providers.
50. The average number of beds per home was 50. 21 homes provided data for the exercise (although 2 homes were excluded because they did not provide care for older people so were out of scope of the exercise). The size of the participating homes ranged from 15 beds to 86 beds. By category, there were 13 homes that fell into the residential / residential dementia category (plus 2 mental health) and 6 were in the nursing / nursing dementia category.

51. Some providers submitted less comprehensive data than others, but agreed to reliance being placed on the data of others. Providers who elected not to participate did not raise any objections to reliance being placed on the data provided by the participating operators
52. Participating providers attended one to one meetings with the Council from February 2019 through to July 2019. Attendees discussed their operating models in detail including:
- Movement, if any, in working practices from 2018 to 2019
 - Staffing levels,
 - Challenges posed by movements in staffing levels, if any.
 - Establishment and financial overheads.
 - Capital employed – loan or rental arrangements
 - Quality Frameworks
53. The costs of providing care were analysed under the following headings:-
- Staff hours per person per week.
 - Blended wage rates plus on costs.
 - Variable expenses
 - Administration costs
 - Finance costs
54. The following is of note from analysis of providers costs:
- Providers employ diverse operating models including different management structure, wage rates, staff utilisation and funding mechanisms.
 - Occupancy levels appear stable across the sector at circa 92%.
 - Pressure on staffing levels is largely driven by location (urban/semi-rural), and can vary markedly between organisations.
 - Payroll costs accounted for between 74% and 82% of pre-finance costs
 - Across comparable service offerings, variation in costs associated with the number of beds within a care home were modest. More material issues appeared to reflect the providers preferred operating model.
55. The data set employed is the most comprehensive Cardiff Council has ever had available to understand the cost of providing care home service. The data reflects providers usual cost of providing care at the defined 92% occupancy level within Cardiff.

Fee Report Arising from the Cost of Care Exercise and Impact on Fee Uplifts Going Forward

56. The purpose of the cost of care exercise was to enable a judgement to be made on a fair fee for the different types of care home provision. The fee judgement arising from the Cost of Care exercise is set out in **chart 7** below:
- Chart 7**

£ per person per week @ 92% Occupancy	General Residential	Dementia Residential	General Nursing	Dementia Nursing
Wages	£447	£498	£441	£493
Variable	£45	£45	£45	£45
Establishment	£61	£61	£61	£61
Admin	£49	£49	£49	£49
Rent/Notional return/plus margin	£85	£85	£85	£85
Margin 3.5%	£21	£23	£21	£23
Total	£709	£761	£702**	£756**

Implications for Cardiff Council Approach to Care Home Fee Setting

57. The 'usual' costs of care indicated by the cost of care exercise and the Council's current average and median levels are shown below in **Chart 8**:

Chart 8

Cohort	Standard (as per cost of care exercise)	Current (Average)	Current (Median)
Older People Residential	£708.60	£689.08	£650.00
Dementia Residential	£761.19	£676.64	£629.00
Older People Nursing	£702.04	£861.11	£800.33
Dementia Nursing	£755.79	£924.04	£925.00

58. The standard cost of care is the rate that evidentially should form the fee paid to care home providers for different categories of provision.

Provider Feedback

59. The findings from the cost of care exercise were fed back to care home providers at an engagement session on 11th October 2019. 13 providers attended this event and were generally accepting of the judgement of the cost of care exercise and broadly in agreement with the proposed way forward set out in the next section.
60. The event was followed by a letter to all providers dated 14th October 2019, sharing with them the information that was cascaded at the session and seeking

further feedback by 24th October 2019 regarding the judgement and the Council's proposed way forward. No provider made representation for the timescales to be extended beyond 24th October. The following is a summary of the feedback received:

- Five responses were submitted. One came from the Cardiff Nursing and Residential Homes Association (CNARHA) and the other four came from individual providers. The submission from CNARHA was positive. It stated that the Council's commitment to incrementally uplift those fees that have fallen below the standard cost identified by the cost of care exercise is welcomed by the providers. However, it urged the Council to uplift incrementally over three years rather than five years and to make a strategic commitment not to purchase any new care placements at a fee level below the standard cost of care for each category, whilst encouraging market competition above that level. CNARHA felt that this would assist to stabilise the market, guarantee quality care provision, whilst bringing existing placement contracts that are currently below the standard fee to guarantee continuity of service provision and quality care. CNARHA also felt that it was laudable that the Council is committed to be a Living Wage employer but was disappointed that it continues to purchase placements at prices below the true cost of care which they felt does not leave the provider with any room to contemplate becoming a Living Wage Employer. CNARHA recommends that the Council makes a commitment to pay a "Living Wage Premium" over and above contracted rate for those providers.
- In respect of the representation made by four individual providers, this was on the whole, in relation to their own specific financial situations and how they felt the Cost of Care Exercise would impact on them. This feedback was received from some providers who had participated in the exercise and some who did not.

61. Officers are preparing detailed responses to each of the providers who have submitted individual feedback. Where significant concerns have been raised by providers in respect of financial sustainability, Officers have arranged urgent face to face meetings to better understand the challenges that the providers are facing and to consider how the Council may be able to support them going forward to mitigate the risks of home closure.

Review of Uplift for 2018-2019

62. In light of the findings of the cost of care exercise, a review was undertaken of the fee uplift decision for 2018-19. The review finding was that the overall uplift substantially took into account the cost pressures impacting on providers at that time.

63. The Council continues to stand by its judgement that the increases in the rates and overall funding for the care home sector for 2018-19 have been in line with the cost pressures facing the sector. The Council believes that in recent years, the level of funding for the nursing care sector and average rate of a nursing care placement have both increased by levels that are significant and unprecedented in Cardiff. In the Council's analysis, these increases have exceeded any reasonable calculation of cost pressures and any reasonable

expectation of providers, even when accounting for the increasing number of placements being commissioned and the increasing cost of the workforce.

64. The increases in the level of funding for residential and nursing care now means that the majority of these placements and the average rate of these placement types, are significantly higher than the rate paid by all other Local Authorities in Wales for this type of care. The Council has evidence that the proportion of its spending that goes on residential and nursing care has increased significantly in recent years, which has only be possible due to significant cuts in other Council budgets.
65. The Council recognises that the level of funding is not distributed across the sector in an equitable way. In the absence of a cost of care model or exact cost breakdown, the Council could not be specific about exactly which placements this applied to in the 2018-19 uplift process or what uplift was required to address this situation.
66. It is acknowledged that the settlement did not address the packages that fell below the standard cost of care because the standard cost was not known at that time. However, the proposal for 2019/20 fee up lift, and the strategy for the next 3 years, seeks to address this incrementally.
67. Feedback from CNARHA indicates that the Council's commitment to addressing the shortfall over the next 3 years is acceptable to providers. It raised concerns that a 5 year strategy would be more challenging for them to accept and the Council listened to the feedback and reflected this in its recommendation to implement the Fee Setting Strategy over a 3 year rather than a 5 year period.

Funded Nursing Care (FNC)

68. The rates for nursing care referred to in this report exclude the funded nursing care (FNC) component of the care package. The FNC is an additional payment made to providers, for each care package, in recognition of the input of a registered nurse in nursing homes. The FNC element increased from £149.67 per week in 2017/18 to £167.87 per week in 2018/19, (an increase of 12%) largely as a result of a Supreme Court ruling in 2017 that indicated that the FNC rate should be increased to reflect a wider range of nursing duties.
69. Prior to 2017, the FNC was funded wholly by the Health Service, albeit the payment was administered by the Council as part of the care package payment. However, the Supreme Court ruling in 2017 also indicated that the FNC should be increased by a further amount (c£6.80 per week in 2018/19) to reflect the care related (rather than medical) duties undertaken by the registered nurse in a home. This element is deemed to be a local authority responsibility and Councils have received additional funding from Welsh Government in order to make the further payment to providers. As a result of the changes in FNC, funding for individual care packages will have increased significantly in the last two years.

Cardiff Council Charging Policy

70. The Social Services and Well-being (Wales) Act 2014 provides a single legal framework for charging for care and support, or in the case of a carer, charging for support. It provides a Local Authority with the discretion to charge in either case. It also provides authorities with the discretion to require payment of a

contribution, or a reimbursement, towards the cost of securing care and support (or support to a carer) where a person receives direct payments to enable them to obtain this. Local authorities can exercise this discretion to charge, or to require a contribution or reimbursement, where they feel it is appropriate to do so and where they have established that the person required to pay any charge, contribution or reimbursement, has sufficient financial means to do so.

71. The charging and financial assessment framework introduced by the Social Services and Well-being (Wales) Act 2014 , the regulations and the Code of Practice Part 4 and 5 (Charging and Financial Assessments) are intended to make charging, where it occurs, consistent, fair and clearly understood. The overarching principle is that people who are asked to pay a charge **must** only be required to pay what they can afford. People who require care and support will be entitled to financial support from their local authority in certain circumstances based on their financial means and some will be entitled to care and support at no charge.
72. Save for the requirements of **The 2014 Act**, the Regulations and the Code of Practice Part 4 and 5, where a local authority decides to use its discretion to charge for care and support it provides or arranges the design and content of its policy for that charging is a matter for that authority.
73. Cardiff Council is currently updating its Charging Policy to reflect the requirements set out in **The 2014 Act** and the implications for the charging of individuals of the proposals contained within this paper. It is expected that the new policy will be presented to Cabinet in January 2020.

Cardiff Council Approach to Care Home Fees 2020/21 – 2022/23

74. The cost of care exercise identified the usual cost of care home provision in Cardiff, The intent of the Council is to use this understanding to set a standard set of care home fees in the City as it clearly reflects a fair price of care.
75. The intention is to implement the standard fees in a phased way over a 3 year period between 2020/21 and 2022/23, subject to the availability of resources to the Council.
76. The timeline for the incremental approach reflects CNARHA's request that implementation takes place over a 3 year period rather than a 5 year period.
77. Phased implementation will have the following features:
 - All new care home services for older people from January 2020 will be funded at the published rates
 - Services currently commissioned at rates significantly below the standard published will receive annual fee uplifts at a rate above the standard uplift from 2020/21 onwards
 - Services currently commissioned at rates significantly above the standard published fees will receive no uplift or an uplift below the standard fee uplifts
 - The exact uplifts will be determined on an annual basis, taking into account provider cost pressures and the resources available to the Council
78. The adoption of a standard fee for care home provision has implications for the use of a DPS in Cardiff. An options appraisal will be undertaken to consider the

most appropriate way of securing care home placements for older people going forward with an expectation that new arrangements that will be in place for a commencement date of 1 April 2020, which will remove the need for a DPS.

79. It is noted that a significant element of the costs included in the calculated standard/'usual' cost of care relate to staffing costs impacted by the National Living Wage. The standard rate is thus likely to increase annually by a level in excess of CPI (e.g. 3.4% as opposed to 2%) with a potential additional commitment of c£350-£400k per annum over and above the typical budget allocation for fee uplifts.

Scrutiny Consideration

80. The Community & Adult Scrutiny Committee considered this issue on 6 November 2019. The letter from the Chair will be circulated once received.

Reason for Recommendations

81. The reason for the recommendations is that the current funding situation for care homes for older people creates an inequitable market for provision and an 'uneven playing field' in the care home sector. There is concern that this inequity, where some providers receive lower rates than others for providing similar types of care, may lead to financial instability for some providers, and not represent cost effective use of public money in respecting other providers.
82. The high average rates that the Council is unsustainable and far exceeds the annual increase in the Council's budget.
83. The Cost of Care Exercise provides the Council with a standard cost of care that it had not previously understood and provides a platform for the Council to address the current inequity for providers whilst providing a more financially sustainable approach for the Local Authority.

Financial Implications

84. The report considers a new approach to fee setting for care homes for older people. This follows the completion of a 'cost of care' exercise undertaken with care providers.
85. Currently, care homes fees are determined via a 'dynamic purchasing system' whereby, care providers submit a separate price offer for individual care packages. Currently, therefore, there is no standard price for a care home bed and subsequently there is a wide range of different rates for similar types of package.
86. The report recommends acceptance of a specific set of standard rates for care home beds arising from the 'cost of care' exercise. The report further recommends that a phased approach is adopted towards uplifting packages that are currently below the 'standard rate' to the relevant level. In recognition of this, the report recommends that the fee uplift process for 2019/20 weights increases to those packages that are currently below the standard level.
87. In 2018/19 £29.3m of expenditure was incurred in the commissioning of care home places for older people. Expenditure in this area has increased significantly in recent years. As part of the annual Council budget process, an

additional allocation (largely reflecting CPI) is made to Social Services each year to support an uplift in care home fees. No uplift has to date been made in respect of care home fees in 2019/20, pending the outcome of the cost of care exercise.

88. The cost of bringing all packages currently falling below the suggested standard rate to the relevant level is projected as c£1.6m. This exceeds the level of additional funding (c£600,000) made available to the Directorate for fee uplifts in this area in 2019/20.
89. It is, therefore, proposed in the report that, subject to available resources, a phased approach is taken over 3 years to uplifting packages below the standard rate to the relevant level. Whilst, the proposed phased approach to uplifting package rates to a level suggested by the 2019/20 standard rates could largely be accommodated within existing MTFP assumptions, further consideration needs to be taken of the impact of increases in the standard rate itself in subsequent years. On a formula basis, the standard rate will increase each year to take account of inflationary factors including the NLW which may be in excess of CPI. This implies a further significant cost. Existing MTFP assumptions will therefore need to be re-visited in the short term to take account of the proposed change in approach.
90. It is assumed that annual fee uplifts, within the three year timeframe, will be restricted to those packages that are below the standard level, with no or limited increases given to those above. In the longer term, the adoption of and adherence to a standard rate would assist in limiting the costs of individual care packages and overall costs.
91. The proposed uplift proposal for 2019/20, contained in recommendation 2, can be accommodated within the allocation for fee uplifts provided as part of the 2019/20 budget. Fee uplifts for future years will need to reflect the level of available resources.

Legal Implications

92. Legal advice is located at Appendix C. It is exempt from publication pursuant to Paragraph 12.1 of Part 4 of Schedule 12A to the Local Government Act 1972

RECOMMENDATIONS

The recommendations set out below take into account the following factors:

- the available resources that the council has
- demand and priorities for care home services
- providers legitimate and future costs
- more cost effective operating models expected and commissioned services
- The investment needed here for providers to meet requirements of both commissioners and regulators (Care Inspectorate Wales)
- the acknowledgement that services must operate safely and effectively to promote the welfare of individuals in their care

Cabinet is recommended to:

- 1) accept the judgement on the standard cost of care homes for older people as set out in this report and agree that all new care home services for older people

will be commissioned at a standard published fee from 1st January 2020 at the rate set out below:

<u>Category</u>	<u>Costs per week</u>
• Older People Residential	£708.60
• Dementia Residential	£761.19
• Older People Nursing	£702.04
• Dementia Nursing	£755.79

- 2) Agree the fee uplifts for 2019-20 backdated to 8th April 2019, as set out below:
 - £40 per week increase for all care home placements below the standard cost of care set out in **Recommendation One** and
 - £10 per week increase to all care home placements within £100 of the standard cost
 - No uplift for those care home packages that are in excess of £100 above the standard cost.

- 3) Subject to available resources, agree a phased approach to uplifting care packages that fall below the standard price set out in Recommendation One over the next 3 years (April 2020 until March 2023). The incremental rise will need to appropriately take into account standard costs impact from increases in the National Living Wage that will exceed CPI rates, as well as the resources available to the Council.

- 4) delegate authority for the decision-making for fee uplifts from 2020 onwards to the Director of Social Services, in consultation with the Cabinet Member for Social Care, Health and Well-being, the Council's Section 151 Officer and the Director of Legal and Governance, using the approach set out in Recommendations Two and Three and subject to the availability of the required resources.

- 5) delegate authority for all decision making, related to the new approach to securing care home placements for older people, including the methodology for determining quality, to be implemented from 1 April 2020, to the Director of Social Services in consultation with the Cabinet Member for Social Care, Health and Well-being, the Council's Section 151 Officer and the Director of Legal and Governance.

- 6) note that it will be asked to consider a new Social Services Charging Policy that will be presented in January 2020.

SENIOR RESPONSIBLE OFFICER	Claire Marchant Director of Social Services
	15 November 2019

The following appendices are attached:

Appendix A – Equalities Impact Assessment

Appendix B – Summary of Cost of Care Exercise Findings
Appendix C – Legal Advice - exempt from publication pursuant to Paragraph 12.1 of
Part 4 of Schedule 12A to the Local Government Act 1972