

## **BARNSELY METROPOLITAN BOROUGH COUNCIL**

**This matter is a Key Decision within the Council's definition and has been included in the relevant Forward Plan**

**Report of the Executive  
Director People**

### **Older People's Residential and Nursing Care Home Fees**

#### **1. Purpose of report**

- 1.1.** The purpose of this report is to present the outcome of the fair fee setting exercise undertaken with Residential and Nursing Care Home providers in 2014 along with the overall state of the market in terms of supply and demand, within the context of the current financial position, and to recommend a revised fee rate from 2017 along with proposals for voluntary sector contracts and Personal Assistants.

#### **2. Recommendations**

- 2.1.** Note the position regarding the state of the Residential and Nursing care market for Older People across Barnsley;
- 2.2.** Approve an uplift of 6.45% on current fee levels for 16/17 to take account of the Fair fee exercise undertaken in 2014 and the impact of National Living Wage on Older People Residential and Nursing Care Homes in Barnsley;
- 2.3.** Consider the need to further progress to an increased fair fee level in line with work undertaken on behalf of the Council from 17/18;
- 2.4.** Recognise the partnership work with Barnsley CCG in developing a fee setting and uplift agreement for Older People's Residential and Nursing Care Homes;

#### **3. Introduction**

- 3.1.** Section 5 of the Care Act establishes a duty on local authorities and Directors of Social Services to ensure a sustainable market of care in their areas. This covers all care sectors and providers of care. The main areas of care provision are care homes and home care with a smaller sector of voluntary sector provision and a growing sector of individual service users using personal budgets to employ Personal Assistants.
- 3.2.** The Council historically aligned its fee rates for residential and nursing care to the indicative rates published annually by the Department of Social Security

(DSS). In 2001 with the creation of the Department for Work and Pensions (DWP) the Council built into its contract arrangements a provision to adjust its fee rates annually in consultation with care home providers but subject to budgetary considerations. This approach has worked well for the Council for over 10 years.

**3.3.** Compared to other Councils across the region Barnsley is currently one of the lowest in terms of fee rates for residential care as set out in the table below.

	<b>2015/16 Fee Per Week Barnsley £</b>	<b>2015/16 Fee Per Week Regional Average £</b>
Residential	376.78	406.97
Residential (higher dependency)	407.86	432.86
Nursing (based on standard free nursing rate)	488.73	518.97

**3.4.** The Council resisted a formal challenge in 2013/14 by a national care provider with regards to Barnsley's fee rates, largely as a result of an improved offer on the previous year linked to improvements in quality and the Council committing to commission external consultants to review the Councils current fees with a view to establishing a fair but affordable framework for setting fees in the foreseeable future including a sound commercial methodology for adjusting fees in line with the cost of living.

**3.5.** Cabinet approved a scheme in October 2013 (Cab 9.10.2013 10.1) to review the current fee rates for residential and nursing care for Older People, resulting from Barnsley being one of the lowest in the Yorkshire and Humber region in terms of fee rates and concern over potential legal challenge from providers, which largely focus on Councils not taking into account the actual cost of providing care in the local area alongside other factors including the state of the overall market when determining the fee levels payable.

**3.6.** A company called Core Assets were engaged to work with the Council to deliver the following key phases of work:

- Develop a sound methodology for the assessment of the cost of care in the Borough, mindful to mitigate the range of potential current and future financial risks to both care providers and the Council.
- Develop an agreed protocol for agreeing any future adjustments to the fee values.

- Quantify BMBC current provision and future requirements for residential care provision and consider the impact for any fee structure proposals
- Develop a sustainable, long term approach to managing quality and cost in the residential and nursing care market.
- Develop an agreed fee structure for the provision of residential and nursing care for 3-5 years that is aligned to the medium term commissioning intentions and considered against the cost of providing care and the level of overall available funding.
- Develop an agreed quality framework linked to fee values.

**3.7.** The work was concluded in late 2014 and the timing of the outcome of the work meant it was not able to be built into the Council's medium term financial plan. An inflationary uplift of 2% was applied to Older People's residential and nursing care fees for 15/16 with the acknowledgement of the sector's input into the fair fee work and the assurance that the findings would be taken into account in future years budget setting processes.

**3.8.** In order to avoid legal challenge, local authorities are expected to take account of the actual cost of providing care when determining fee rates for residential and nursing care. The Care Act 2014 has reiterated and strengthened this expectation with explicit requirements to maintain market sustainability and responsibilities for dealing with provider failure for both assisted and self-funding people.

**3.9.** Nationally, issues regarding the state of the residential and nursing care sector are being highlighted. Work undertaken by Laing Buisson to better understand the financial and sustainability risks in the market has concluded that in less affluent areas with less self-funders, whose fees can cross subsidise the gap between council rates and the true cost of care, there is a "severe" risk to the sustainability of the market. The profitability of the major companies involved in the sector has been demonstrated to be falling to below sustainable levels.

**3.10.** In the 2015 autumn statement the Government announced the introduction of the National Living Wage which will increase the National Minimum Wage to £7.20 per hour, from £6.70 (NMW October 2015 increase) for adults over 25. There is a commitment to increase the National Living Wage to £9.00 per hour by 2020.

**3.11.** The council works in partnership with Barnsley CCG via the Joint Commissioning Teams to achieve good quality value for money services for the people of Barnsley and the public purse. Contracting for Residential and Nursing Care Homes is undertaken on behalf of the authority by the Adult Joint Commissioning Team and the contracts in place also provide

assurance of quality and performance of services where funding is contributed by Barnsley CCG – i.e. Funded Nursing Care and Continuing Health Care.

#### **4. State of the Local Market**

**4.1.** Analysis of the current state of the Older Persons residential and nursing care market (refreshed January 2016) highlighted the following:

- There are currently 1965 beds available across the Borough, a reduction of 115 beds since the Core Assets fair fee work was undertaken and a several homes at risk at present.
- Of these 204 are nursing beds, 1614 are residential beds and 147 could be nursing or residential depending on need
- There is an average occupancy level of 90% however when broken down this equates to 37% nursing bed vacancy factor and 8% residential bed vacancy factor
- The Council purchases around 820 beds (42%)
- Barnsley residents paying for their own care purchase around 351 beds (18%)
- The NHS purchases around 90 beds (5%)
- The remaining 507 beds are purchased by other Local Authorities (25%)
- 43% of Care Homes in Barnsley charge third party top ups ranging from £20 to £300 per week, there is some evidence of a higher percentage of care homes now charging tops in order to meet the cost of care.

**4.2.** The analysis suggests a level of oversupply of beds compared to the levels required for Barnsley residents. While it is difficult to be accurate, this places the overall market in a vulnerable position and will inevitably bring into question the financial sustainability of some care homes that cannot fill their available beds.

**4.3.** This pressure on care home providers will be worsened if the current Council strategic direction of travel is realised and more people are supported to remain within their own homes or alternative provision such as Extra Care, reducing demand even further for residential beds.

**4.4.** A case audit was undertaken of people who were recently admitted to residential care to consider if an alternative could have been offered were those options available. This highlighted that were appropriate alternative options to residential care available up to 50% of the individuals could have been accommodated in services other than residential care.

**4.5.** The audit also looked at the number of people going directly into residential care without any prior support suggesting that 4 in 10 people admitted to residential care were not receiving Council commissioned services in the 6 weeks prior to admission to care with 1 in 3 people admitted to residential care from hospital.

**4.6.** This is being considered as part of the wider commissioning opportunities that the findings have highlighted to reduce admissions to residential care beds, meeting people's care needs at lower cost in more community based settings and demonstrates the potential to reduce further the number of residential care beds the Council may require.

**4.7.** There have been representations from the care home sector concerning fee levels and financial sustainability. In Barnsley over the past two years there has been a steady reduction (115) in beds but this has not as yet created a significant problem due to the overall occupancy levels, however the Adult Joint Commissioning Team have been contacted recently by a provider regarding the potential closure of a large care home unless fees can be increased to meet their profitability gap. Adult Joint Commissioning have also been contacted by a large National Care Provider group (one care home in Barnsley) on a number of occasions during 2015, as part of what appears to be a national campaign to Local Authorities and the Government, with evidence and rational to support their case for fee uplift to maintain sustainability.

## **5. Current fee structure**

**5.1.** In 2015/16 a 2% uplift was made to residential care and the NHS applied 1% uplift to Funded Nursing Care. The Barnsley fee level and fee structure is shown in the table below.

<b>Need level</b>	<b>2015/16</b>	<b>Notes</b>
Standard Residential	£376.78	
Higher Dependency Residential	£407.86	
Nursing (standard rate FNC)	£488.78	FNC of £112 plus standard residential rate
Nursing (higher rate FNC)*	£ 530.92	FNC rate of £154.14 plus standard residential rate

\* Higher rate Funded Nursing Care is no longer applied to new cases. Of the people in receipt of FNC in Barnsley in 2015/16 5 people were receiving the higher rate and clearly this number will diminish further over time.

5.2. In addition to the above rates, for people with higher levels of health need and who are in receipt of full Continuing Health Care funding from the NHS Barnsley CCG pay:

Need level	2015/16	notes
Nursing	£502.97	No uplift for more than two years
Nursing Higher Dependency	£532.50	No uplift for more than two years

5.3. NHS Barnsley CCG are proposing to uplift their Continuing Health Care fees to support market sustainability as follows:

Need level	2015/16	2016/17
Nursing	£502.97	£535.41
Nursing Higher Dependency	£532.50	£566.85

5.4. This fee structure is consistent with the continuum of need of people requiring residential and nursing care and with the respective responsibilities of Health and Social Care for funding particular aspects of need.

Level	Standard residential	Higher dependency residential	Standard nursing care	Increased nursing care need	Higher Dependency Nursing Care Need
<b>Includes</b>	Personal care Hotel costs	Increased personal care support Hotel costs	Personal care Hotel costs Nursing Care	Increased Personal care Hotel costs Increased nursing care	Personal care Hotel costs Increased nursing care (bespoke need)
<b>Funding stream</b>	LA funded	LA funded	LA + FNC	CHC	CHC
<b>Agreed</b>	LA	LA	CHC	CHC	CHC

via	assessment	assessment	assessment	assessment	assessment
<b>2015/16 costs</b>	376.78	407.86	488.78	502.97	532.50

**5.5.** This structure reflects the acuity banding model provided by a large National Care provider, on which their service costs are modelled.

**5.6.** Whilst this report focusses on Barnsley Council funded provision, Barnsley CCG is undertaking parallel work to review their CHC funding levels and to maintain alignment with BMBC funding in order to provide one clear fee structure for the Care Home sector in Barnsley.

## **6. Quality of Care**

**6.1.** Care Homes in Barnsley are now subject to formal contract and performance monitoring. The quality of care provided in Barnsley Care Homes is variable, although the systems now in place are expected to support more consistent high quality care across all Care Homes. Regular performance monitoring reports are being made to the Safeguarding Adult Board regarding Older People's Care Home provision.

**6.2.** The Care Quality Commission (CQC) new inspection regime has inspected 21 out of 47 older peoples care homes in Barnsley since April 2015, of those 8 (38%) are 'Good', 10 (47%) 'Require Improvement' and 3 (14%) are 'inadequate'. The Council, through the Adult Joint Commissioning Team, work with the CQC and the Care Homes to put in place measures to improve poorly performing Care Homes and to mitigate the risks to the individuals who reside in them.

**6.3.** Fee levels may be a factor that impacts on Care Home quality in respect of maintenance of the physical environment and fixtures and fittings of a setting. Most importantly fee levels impact on the ability to recruit and retain a good quality workforce and then retain the workforce through appropriate supervision and training and adequate staffing levels.

**6.4.** Setting both Adult Social Care and Health funded fees consistently and fairly will enable further joint work to be undertaken to locally agree assumptions regarding staff skill mix inputs into care in nursing and residential homes as a basis for supporting a shared understanding of care quality and cost and to support matching of individual needs to the right type of support.

## **7. Proposal and justification**

### **7.1. Current rates plus uplift towards fair fee and a NLW element**

Using the current fee rates for residential and nursing care (basic residential rate £376.78) to offer an uplift of 6.45%, taking the basic rate to £401 per week that takes account of the cost pressures to providers including the national living wage.

This option is likely to have an adverse effect on those homes that are heavily reliant on Local Authority placed individuals rather than self-funders.

This option would still place Barnsley below the 15/16 regional average of £406.97 in 16/17.

### **7.2. Given the state of the market and the need to reflect the cost of care, a move further towards a fair fee rate is proposed and this is phased in from 16/17.**

### **7.3. Based on the generous uplift being offered in 16/17, higher occupancy levels and factoring in an element of fair fee, it is hoped that the Older People's Residential and Nursing Care Sector will continue to work positively with the Council. It is envisaged that long term sustainable and good quality provision will be maintained.**

## **8. Implications for local people / service users**

**8.1.** Service users will be safer and enjoy a better quality of life in care homes if the fee rates being paid are sufficient for providers to be able to deliver an effective service which meets all the expected quality requirements.

**8.2.** The continued linking of care home fees to quality expectations across all care homes in Barnsley will also maintain the choices available in Barnsley to local people (and their relatives) thereby avoiding the necessity of such people having to look outside the Borough for a quality care home.

## **9. Financial implications**

**9.1** Barnsley currently spends £17m (Net) on residential and nursing care on Older people who are largely accommodated in homes within Barnsley.

**9.2** One of the main drivers or considerations in determining the revised residential and nursing fees is, from April 2016 a new mandatory National Living Wage for workers aged 25 and above will come to effect at £7.20. This is expected to rise to £9.00 by 2020. The impact of this on provider hourly fee and therefore on the likely cost to the council will need to be considered.



**9.3** It is imperative that the revised weekly fee rate should be affordable to the council and within available resources (and financial constraints). The duty under the Care Act relating to market sustainability mean that regards would need to be given as part of the fee setting process to preventing provider failure, the quality of care they can offer and the circumstances of their workforce.

**9.4** A number of costing options have been considered in terms of setting residential and nursing fee rates, taking into account the project work undertaken by Valuing Care Financial Management (VCFM) and the introduction of the National Living Wage. The following table summarises the annual budgetary impact (FYE) for the recommended option.

	2016-17 £m	2017-18 £m	2018-19 £m	3 years £m
Option 1 – Fair Fee & NLW contribution	952	555	556	<b>2,064</b>

#### **Current rates plus uplift for a fair fee element & NLW**

**9.5** A standard average 6.45% uplift for inflation plus an element of fair fee would be applied to the existing residential weekly rate from April 2016.

**9.6** This would increase the weekly residential long term fee by £24.30 and the Residential Long Term with EMI by £26.31 in 2016/17. The proposed revised weekly fees as well as the financial implications are outlined in the table below:

	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
Residential Long Term	£376	£401	£417	£432
Residential Long Term with EMI	£407	£434	£451	£468
Residential Long Term with Free Nursing Care of £112	£488	£513	£529	£544
<b>Annual Increase</b>	-	<b>£0.9m</b>	<b>£0.5m</b>	<b>£0.5m</b>
<b>Total Annual Cost</b>	<b>£16.9m</b>	<b>£17.9m</b>	<b>£18.4m</b>	<b>£19.0m</b>

**9.7** The proposed uplifts would equate to a full year net cost of £0.952m (including the effect of increase in pension credit / income) for 2016/17. The estimated cost over the 3 years to 2018/19 is £2.064m.

## **Affordability assessment**

- 9.8** The ongoing pressure from providers to increase weekly fees to a level that reflects cost of care is growing and is further exacerbated by the introduction of the national living wage. However, any move to increase the weekly fee would need to be balanced / considered against the backdrop of the Council's resource constraints.
- 9.9** Whilst the flexibility to increase the Council Tax precept by 2% could potentially yield additional resources (estimated at £1.5m) in 2016/17, it should be noted that this is insufficient to mitigate identified cost pressures within Adult Social Care – currently projected in the region of £3.9m (such as NLW / voluntary sector contract fees, domiciliary hourly rates and demographic growth pressures, etc.).
- 9.10** To this end it is proposed that the current weekly fee rate is uplifted to reflect the NLW increase with an element of a fair fee in 2016/17. This would go some way in ensuring that providers can manage this additional cost pressure. The impact is an additional cost of £0.9m in 2016/17 rising to £2.1m in 2018/19 and can be funded from the additional precept funding.
- 9.11** Given the need to constrain overall cost pressures within available resources any further increase for the reflection of fair fee would be unaffordable in 2016/17. However, the proposal is to progress further to a fair fee basis. Affordability concerns could be addressed by a gradual phasing of any such increases over the medium term.

The Financial implications are summarised in the attached Appendix A.

### **10. Employee implications**

There are no implications for council employees associated with this report. The intended impact will be to improve the pay and conditions for those employed in the independent sector market.

### **11. Communications implications**

Residential and Nursing Care Home providers are expecting communication from the Council regarding fee setting for 16/17 and beyond by the beginning of March 2016.

### **12. Consultations**

Care home providers and home care agencies have been engaged with the Commissioning Team over fee levels and correspondence received from providers.

### **13. The Corporate Plan and the Council's Performance Management Framework**

The capacity in the market directly impacts on the ability of the council to make placements for vulnerable people in home providing good quality care. Admissions to care homes are an indicator in the corporate performance requirements for adult social care.

**14. Tackling health inequalities**

A fee level that is based on the actual cost of providing a quality level of care should help ensure that all providers are able to deliver a consistent level of care.

**15. Climate Change & Sustainable Energy Act 2006**

None applicable

**16. Risk management issues**

There are a number of risks in not paying 'fair fees' for the range of provision that the council commissions.

- Judicial review challenge in not having considered a fair fee for care, the associated legal costs, and reputational damage for having fees that are not representative of the actual cost of providing care.
- This would also prevent home closures that would result in frail and vulnerable people having to find an alternative place to live.
- There is a risk of providers leaving the care market and of provider failure and some evidence of this in the region and elsewhere.
- Should fee levels impact negatively on capacity then the council may not be able to fulfil its duties under the Care Act in maintaining a sustainable market to offer meet the care needs of the Barnsley population.
- Potential challenge from providers in other sectors of the care and support market where the Council has not uplifted fees and payments.

It is important to note that if legally challenged it is likely to be on the basis that we have not given the actual costs of providing care due consideration.

**17. Health, safety, and emergency resilience issues**

Sustainability and appropriate occupancy levels in the Residential and Nursing Care Home sector are monitored to ensure the council can fulfil its statutory duties to meet the needs of frail elderly people who require this level of care and support. The Council is responsible for dealing with provider failure and ensuring continuity of care.

**18. Compatibility with the European Convention on Human Rights**

Not applicable

**19. Promoting equality, diversity, and social inclusion**

Sustainable good quality Residential and Nursing Care provision should be available to all residents of Barnsley that need it, irrespective of individual financial circumstances.

**20. Reduction of crime and disorder**

Not applicable

**21. Conservation of biodiversity**

Not applicable

**22. List of appendices**

Appendix A – Financial Implications

**23. Background papers**

VCFM Fair Fee Report

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Financial Implications /  
Consultation .....  
*(To be signed by senior Financial Services officer where no financial  
implications)*