

# CHESHIRE EAST COUNCIL

## Cabinet

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| <b>Date of Meeting:</b>  | 2 April 2013  |
| <b>Report of:</b>        | Strategic Director Children, Families and Adults                          |
| <b>Subject/Title:</b>    | Adult Social Care Fees  |
| <b>Portfolio Holder:</b> | Councillor Janet Clowes<br>Portfolio Holder for Health and Adult Services |

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### 1.0 Report Summary

- 1.1 Cheshire East Council (CEC) currently spend over £37 million per annum with the residential and nursing care market for older people. Like many other authorities, CEC is facing a significant financial and demographic challenge which will impact on the future demand for residential and nursing care and consequently the ability to fund it.
- 1.2 What this has meant in practice for a number of authorities is the need to freeze or, in some instances, cut fees to residential and nursing homes. A number of local authorities across the country have, however, been subject to successful judicial reviews by care providers who felt changes to fees were being implemented unfairly and without proper consultation. In these cases it was found that the Local Authorities had not given enough regard to the costs incurred when supporting people in Care Homes and that many Local Authorities could not demonstrate that the fees they had implemented were appropriate.
- 1.3 In Cheshire East, whilst demand management is helping to avoid future high cost interventions, inevitably there will still be a residual need for accommodation-based care. It is therefore essential that the council obtains maximum value for money whilst ensuring the quality of care is maintained and care markets are sustainable.
- 1.4 The work to achieve this has been two-fold - firstly the council's terms and conditions of contract for residential and nursing care have been re-written and secondly an independent assessment of the social care fees paid by CEC has been commissioned to assess if these are 'fair'.

#### Terms and Conditions of Contract

- 1.5 The former Cheshire County Council terms and conditions of contract for Residential and Nursing Care have been used to date but are no longer fit for purpose. New terms and conditions of contract have been written by the Legal Services Department to reflect changes in both legislation and practice. Key changes to the contract to note include the removal of the clause relating to a review of the fee on an annual basis and provision for the Council to move to net payments (CEC currently pays providers gross of client contribution) to allow this to be introduced if the pilot scheme is successful. The new proposed terms and conditions of contract have been

subject to ongoing provider consultation and it is proposed that the finalised version of the contract is issued to come into force from 1<sup>st</sup> April 2013.

#### Independent Assessment of Social Care Fees paid by CEC

- 1.6 In June 2012 CEC competitively tendered (Request for Quote) to appoint a suitably qualified consultant to undertake an independent assessment of adult services business planning and policy proposals and a review of social care fees. This included an independent assessment of the prices paid by CEC to external providers for the delivery of care services to ensure that these are both appropriate and sustainable. The services specified for inclusion in the review were home care, direct payments, and residential and nursing care services.
- 1.7 Red Quadrant Consultants successfully bid for this work and were appointed to examine the costs incurred by Care Home providers when supporting CEC funded service users in their Care Home and then compared these findings against the rates that CEC pay to determine whether CEC rates are 'fair'. The fees paid by CEC for home care and direct payments have also been independently assessed by Red Quadrant. As part of this process Red Quadrant Consultants consulted with providers on the fees being paid by CEC by means of a series of workshops.

#### **2.0 Decision Requested**

- 2.1 That the new terms and conditions of contract for Residential and Nursing Care are approved for implementation from 1 April 2013;
- 2.2 That the conclusions of the independent assessment of social care fees conducted by Red Quadrant Consultants are accepted.
- 2.3 That the Council retains fee levels for care services at current levels in 2013/14.
- 2.4 That the Council is prepared to listen to individual requests from providers for increases where these have been assessed as justified following an open book exercise.

#### **3.0 Reasons for Recommendations**

- 3.1 To ensure that the council obtains maximum value for money, whilst maintaining the quality of care provision through sustainable care markets.
- 3.2 To ensure that the Council's terms and conditions of contract for Residential and Nursing Care are fit for purpose.
- 3.3 To ensure that the fees paid by CEC to external providers for the delivery of care services are appropriate and sustainable.

#### **4.0 Wards Affected**

- 4.1 All

## **5.0 Local Ward Members**

- 5.1 All

## **6.0 Policy Implications**

- 6.1 The recommendations within this report support the delivery of priority two of the Cheshire East Council Three Year Plan,– Developing affordable and sustainable local models of care for vulnerable children and adults.

## **7.0 Financial Implications (Director of Finance and Business Services)**

- 7.1 There are no immediate financial implications for the council.

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 Statutory guidance by the Department of Health in respect of care home fees imposes a duty on local authorities to ensure that:

“..such accommodation should not require the council to pay more than they would usually expect to pay, having regard to assessed needs (the 'usual cost'). This cost should be set by councils at the start of a financial or other planning period, or in respect to significant changes in the cost of providing care, to be sufficient to meet the assessed care needs of supported residents in residential accommodation... In setting and reviewing their usual costs, councils should have due regard to the actual costs of providing care and other local factors. Councils should also have due regard to best value requirements under the Local Government Act 1999".

- 8.2 There has recently been a number of successful challenges against local authorities in respect of setting of care home fees. The challenges have centred upon Authorities having failed or failed properly to assess and take into account local factors relevant to the provision and cost of care, failing properly to balance these factors against budgetary considerations, being driven purely and to an improper degree by budgetary considerations, and being unable to demonstrate that the fee rates they have set are sufficient to allow them to meet assessed care needs in the absence of the possibility of any resident or third party contributions. Red Quadrant has undertaken a comprehensive piece of work that would appear to deal with many of these issues appropriately.
- 8.3 In setting these fees, the local authority is under a duty to consult and issues have arisen in the recent cases referred to above in respect of failure to properly consult. The report provided by Red Quadrant and attached to this report, sets out that consultation has been undertaken and officers dealing with this matter state that such consultation has been appropriately carried out. The Legal Department has not seen the consultation documents.
- 8.4 Members are reminded of the requirements of consultation, the need for them to be satisfied that consultation has been appropriate and to ensure

that the results of consultation are taken into account by the decision maker. The four requirements of consultation are:

- (a) that consultation is undertaken when the proposals are still in a formative stage;
- (b) that adequate information is given to enable consultees properly to respond;
- (c) that adequate time is provided in which to respond; and (d) that the decision-maker gives conscientious consideration to the response to the consultation.
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- 8.5 In making the decision requested in this report, members are reminded of the need to have due regard to the Public Sector Equality Duty. An Equality Impact Assessment is usually provided to members to assist with this.
- 8.6 In respect of the new terms and conditions of contract for Residential and Nursing Care that members are being asked to approve for implementation from 1 April 2013, Legal Services has worked with Adult Social Care since 2010 to produce the new terms and conditions. The service is not procured by way of tender as there is no requirement to do so due to the fact that the contract is offered to all accredited service providers in the Borough.
- 8.7 Reference is made in this report to the fact that the terms contain a provision for the introduction of net payments. Should the provision be invoked further consultation will be required. Further documentation will require drafting to address the legal practicalities of privity of contract and to seek the service user's agreement to the collection by the providers. Provision allowing for annual review by reference to the Council's budget has been removed because recent case law has held that Councils have failed to have due regard to the actual cost of providing the care when setting rates.

## **9.0 Risk Management**

- 9.1 Delegated Decisions have already been obtained which allow CEC to re-issue the new contract with existing providers, rather than going through a formal procurement exercise.
- 9.2 As outlined earlier in the report a number of local authorities across the country have been subject to successful judicial reviews by care providers who felt changes to fees were being implemented unfairly and without proper consultation. CEC competitively tendered to appoint a suitably qualified consultant to undertake an independent assessment of social care fees paid by CEC. Red Quadrant Consultants have consulted with providers and due regard has been given to the costs incurred when supporting people in care services. The recommendations made by Red Quadrant Consultants on fee levels for care services in 2013/14, if adopted by CEC, could therefore be demonstrated as appropriate.

## **10.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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Appendix 1 – Cheshire East Council Residential and Nursing Care Contract

Appendix 2 – Red Quadrant Consultants -Fees Report and Provider Consultation Notes