

## **Cabinet Report**

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**Date of Meeting:** 10 April 2018

**Report Title:** Accommodation with Care: Care Fees Review

**Portfolio Holder:** Cllr Janet Clowes, Adult Social Care and Integration

**Senior Officer:** Mark Palethorpe, Acting Executive Director of People

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### **1. Report Summary**

- 1.1. The Care Act 2014 places a duty on local authorities to “promote the efficient and effective operation of a market in services for meeting care and support needs.” In delivering this obligation, councils must ensure the sustainability of the market and that there are sufficient high quality services available to meet the care and support needs of adults in the area.
- 1.2. The Council spends approximately £49 million on Accommodation with Care (residential and nursing care) services. Care fees were last reviewed in 2015/16 when they were uplifted to the current levels.
- 1.3. In November 2017, the Council commissioned an independent review of care fees for Accommodation with Care (residential care) sectors. The review was undertaken by independent care consultancy C.Co which is a subsidiary of the Chartered Institute of Public Finance and Accountancy.
- 1.4. At its meeting of 5th December 2017 Cabinet approved the commissioning of Accommodation with Care services in collaboration with East and South Cheshire Clinical Commissioning Groups supported by a review of Care Fees for the sector.
- 1.5. The purpose of this report is to inform Cabinet of the findings of the review for Accommodation with Care. The report will present an outline of the review undertaken by C.Co, their findings and the impact of those findings both in terms of financial considerations for the Council and on the sustainability of the market.

## 2. Recommendation/s

That Cabinet:

- 2.1. Note the findings of the Care Fee Review for Accommodation with Care.
- 2.2. Endorse a 6% increased contract rate for Accommodation with Care at an estimated increased gross cost of £1.5m per annum. It is intended that the proposed fee increase would be met from the Improved Better Care Fund for 2018/19 and 2019/20.
- 2.3. Approve the approach to fund the forecast financial implications on the Adult Services Commissioning Budget through the allocation of Adult Social Care Support Grant (held within the Transforming Services Earmarked Reserve) in 2018/19 and from the Improved Better Care Fund in 2018/19 and 2019/20.
- 2.4. Note that the financial implications of this report present a risk to the current estimates for the 2020/21 Budget, as contained within Medium Term Financial Strategy 2018/19 to 2020/21.

## 3. Reasons for Recommendation/s

- 3.1 It is recommended that the Accommodation with Care fees are uplifted by a **maximum of 6% from the current contract rates at an estimated cost of £1.5m per annum**. The following table illustrates the impact for each placement/ bed type. It should be noted that these rates do not include the Funded Nursing Care element paid to the homes by the Clinical Commissioning Groups. This rate is £155 per week in addition to the below.

Table 2 – Current and proposed contract rates for Accommodation with Care

Care Type	Current rate (per week)	Uplift by 6% (rate per week proposed)
Nursing Dementia	£489.86	£519.25
Nursing Standard	£474.53	£503.00
Residential Dementia	£515.34	£546.26
Residential Standard	£435.68	£461.82

- 3.2 The recommendation to uplift the fees by 6% aligns to the above if the fees had been uplifted for 2016/2017 and 17/18. It is proposed that the fee increase is applied to all current placements that are below the new proposed rates for Accommodation with Care and future placements.

- 3.3 As part of the recommissioning options and development of the new terms and conditions for the Accommodation with Care options are being explored in relation to a Dynamic Purchasing System (DPS) within the E-Brokerage system. The Dynamic Purchasing System acts as an electronic framework that providers are able to join at any time subject to meeting minimum requirements. It is envisaged that the new rates above will be published as a guide within this system and Accommodation with Care providers will be invited to submit bids for placements that include their costs. This will allow for increased transparency and accountability, support market competition and sustainability as well as increased choice and control for service users. Within this, an option currently being explored is whether service users can be asked to provide a “top up” payment if they chose a care home which exceeds the lowest bid.
- 3.4 Officers have considered in full the information contained within the report presented by C.Co and described under Section 5 of this report. It is clear that there is a need to increase the level of fees for Accommodation with Care services for the reasons outlined below.
- 3.4.1 Accommodation with Care providers report that current fee levels are not sustainable and a number of existing providers have indicated concerns in relation to financial viability and sustainability to meet on-going costs of service delivery.
- 3.4.2 Insufficient fee levels can have an impact on the quality of care provided to residents and can lead to poor CQC ratings. This has implications for the authority in terms of costs associated with intensive contract management support, the need to deploy in-house staff, commissioning of emergency care often at higher rates as well as an increase in safeguarding risks and referrals.
- 3.5 In establishing recommended fee uplift for Accommodation with Care that is both affordable for the Council while providing a greater degree of financial viability for providers and therefore greater market stability, the following has been taken into account.
- 3.5.1 The benchmarking exercise undertaken by C.co indicates that current contract fee levels paid by the Council are lower than the average paid by comparator statistical neighbours and neighbouring authorities.
- 3.5.2 The actual cost of fees paid by the council for more recent placements in care home settings is on average higher than the current contract rate levels offered by the council. Over 50% of care providers do not currently accept the Council’s contract rates and some providers are already paid

more than the proposed new rates. The fee increase would not affect rates for providers who are currently paid more than the proposed new rates.

- 3.5.3 A significant number of Accommodation with Care providers have approached the council requesting annual uplifts for both 2016/17 and 2017/18. The uplift requests have ranged from over 2% up to 7% for each financial period to be applied year on year.
- 3.5.4 Feedback in the cost of care fee review for Accommodation with Care indicates an average annual 5.51% uplift requested by the providers who did engage with the process. (16 responses were received in relation to this question and responses ranged from 3% to 10% for annual uplifts as part of contract terms).
- 3.5.5 The number of council placements within the Accommodation with Care settings across the borough is not high at only 33% of the total number of beds. This means that many providers are not reliant on the local authority as an income source due to a high number of self funders across the local population. Notably self funder placements that have been arranged by the individual/family are usually at a much higher cost to that of a council placement.
- 3.5.6 Providers with low or no self funders have raised significant concerns in relation to their financial viability and sustainability if current contract rates remain in place.
- 3.5.7 The level of funding necessary to implement the proposed fee uplift is available to reinvest in Accommodation with Care services via the Improved Better Care Fund.
- 3.5.8 The current contract terms include a clause to uplift fees in line with inflation on an annual basis (to be considered at the council's discretion annually). The proposal to increase the standard contract rate fees by 6% is in accordance with this clause and allows for a consistent approach.
- 3.5.9 Accommodation with Care fees were reviewed in 2015 and uplifted in April 2016 with no further uplift since. One option, in recognition of the continued increased costs associated with staffing (including the national minimum wage, pension costs and apprenticeship levy) alongside the core business infrastructure and building costs, is to include an option within the contract of an annual uplift in line with inflation (at the discretion of the council). This will be considered as part of the recommissioning process for the new contract terms and conditions.

## **4 Other Options Considered**

- 4.1 An alternative option would be to maintain current fee levels. However this carries a risk in terms of provider financial viability and quality of care as outlined in the report.
- 4.2 The impacts and financial cost of implementing the report findings from the local cost of care exercise have been considered. This would result in an additional cost to the authority of £18 million per annum. Officers have concluded that this option is not affordable for the local authority and that the services can be commissioned more effectively to provide better value for money.

## **5 Background**

### **5.1 Local context**

- 5.1.1 There are 96 Care Quality Commission registered care homes within Cheshire East Council. The Council has pre-placement agreements in place with 95 of these care homes, 49 of these homes are registered to provide residential care and 47 are registered to provide nursing care. Of the 31 July 2017 Cheshire East Council had placements in 88 of these care homes. The accommodation with care market in Cheshire East is composed of a good mix of small and medium sized providers (SMEs) as well as a number of large, national organisations.
- 5.1.2 Currently Accommodation with Care providers are signed up to standard terms and conditions called a 'Pre Placement Agreement' and receive individual placement agreements for each resident placed by Cheshire East Council.
- 5.1.3 The current contractual arrangement has been in place since 2013 and is a joint contract with Cheshire East Council and Eastern and South Cheshire Clinical Commissioning Groups. There is one standard service specification covering all types of regulated activities undertaken within care homes and care homes with nursing.
- 5.1.4 The Council's current approach to commissioning Accommodation with Care is very traditional. Cheshire East Council currently offer four levels of care and support within a care home setting: residential, residential dementia, nursing and nursing dementia. The recommissioning will explore the use of accommodation with care providers delivering a range of short term as well as long term care provision such as discharge to assess, step up, step down beds and rehabilitation services.

## 5.2 Methodology

5.2.1 C.Co was commissioned to undertake an independent analysis which adopted a collaborative approach with providers and a consistent approach across all provision. Specifically, the brief was to:

- Establish a means to arrive at an understanding of the local cost of care;
- Undertake cost modelling that is locally informed, based on the actual costs incurred;
- Lead a collaborative approach that engages providers in the design and data collection;
- Ensure a consistent approach across all services;
- Support providers in undertaking the exercise;
- Ensure the approach supports the Council on its journey towards open book accounting;
- Undertake benchmarking analysis with comparator authorities and North West councils;
- Develop, for consideration by the Council, appropriate local cost of care that will support internal decision making and modelling of future care fees.

5.2.2 The main focus of the review was to produce a local cost of care which reflects the actual costs of delivering care within Cheshire East from a provider perspective. As such engagement with providers was essential to arrive at this figure. The input of operational teams and service users was not sought at the review stage although there will be additional engagement with social workers, operational teams, service users and carers on the proposed fee increase as part of the ongoing communication and engagement activity on the commissioning process.

5.2.3 The approach taken by C.Co was to give providers the opportunity to be involved in all aspects of the project including the design of a questionnaire through a number of co-design sessions which would then be sent to all providers for completion and returned to C.Co for analysis. A total of 9 providers attended a co-design session on 15<sup>th</sup> November at Macclesfield Town Hall. Two previous planned sessions were cancelled due to limited bookings and providers who had booked attended the session on 15<sup>th</sup>.

5.2.4 All care home providers were given the opportunity to engage in the exercise and a variety of methods were used to encourage engagement and boost response rates including briefings, reminder emails, telephone calls from C.co and Council and letters distributed to care homes by Quality Assurance Officers as part of their regular visits to care homes. These attempts helped to improve engagement but, unfortunately response rates

remained below anticipated levels, particularly from those care homes who have a low proportion of self funders.

5.2.5 The questionnaire was sent to providers on 13th December 2017 with an initial return date of 26th January 2018. A six week period was given for responses due to the intervening Christmas period. During this period two reminder emails were sent and providers were contacted by telephone to remind them to complete and return the questionnaire. At the request of providers the return date was extended for a further week.

5.2.6 The methodology for Accommodation with Care services was supported by property assessments to assess the quality of property. Some providers participated in the property assessments but did not return the questionnaire, some questionnaires were incorrectly completed and others did not give a full breakdown of percentage of type of care provided and/or the hourly rate as indicated in the table below.

Table 3 – Response rate to Care fee review

Questionnaires issued	88
Property surveys conducted	31
Property survey with no questionnaire return	14
Questionnaire returns	27
Void (empty or incorrect format)	3
Returns including breakdown of the %type care provided	12
Returns including hourly rate % breakdown for type of care	5

5.2.7 The types of care provided by respondents to the questionnaire are:

Table 4 – Types of care provided by respondents

Type of Care	Number of respondents who deliver this type of care
Residential	21
Residential nursing	18
Residential EMI	9
Nursing EMI	4
Palliative	0

5.2.8 C.co report that only those providers who have council commissioned clients engaged in the exercise. Where Accommodation with Care providers are not reliant on the council the engagement was limited.

5.2.9 For all services the response rate to the questionnaire was low despite numerous attempts to engage providers in the exercise and C.co advise that

it cannot be concluded that responses are reflective of the entire provider market in Cheshire East.

5.2.10 Only 5 care home providers responded with a breakdown of the care provided across the five categories in the table above. This allows for limited analysis across categories, although no analysis is available on the Palliative category as the data received was insufficient to draw robust conclusions.

### 5.3 Benchmarking

5.3.1 In addition to the methodologies set out above, C.Co undertook a benchmarking exercise with comparator and neighbouring authorities to provide further context and understanding of the cost of care.

5.3.2 C.Co benchmarked costs for residential and nursing care with CIPFA statistical neighbours.

5.3.3 Cheshire East is currently in the lower range of costs for both residential and nursing care when compared to our statistical neighbours.

## **Implications of the Recommendations**

### **6.1 Legal Implications**

6.1.1 The Care Act places a duty on local authorities to facilitate and shape the whole publically-funded and self-funded care and support market. The legislation also requires authorities to provide choice that delivers outcomes and improves wellbeing. Relevant features of the Act include obligations on Councils to:

- Promote the efficient and effective operation of a market in services for meeting care and support needs;
- Ensure sustainability of the market;
- Ensure that sufficient services are available for meeting the care and support of adults in its area.
- When commissioning services councils must assure themselves and have evidence that the contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care.
- Understand the business environment of providers offering services in their area and seek to work with providers facing challenges and understand their risks.”
- Not undertake any actions which may threaten the sustainability of the market as a whole, for example, by setting fees below an amount which is not sustainable for the provider in the long term



- 6.1.2 The Care Act places an expectation on the Council that the fees for all types of care should take account of both the actual cost of good quality care and the need to ensure a diverse provider market. It is clear that fees need to be set at such a level to allow providers to recover reasonable costs and remain competitive.
- 6.1.3 The sustainability duty created by the Care Act sits alongside other statutory duties and is summarised as follows: -
- a) Local Authorities are under a general duty to implement preventative services that reduce the need in adults for care and support and the need for support to carers (Section 2 Care Act 2014). Whilst there is no statutory duty within the Care Act, supporting people to live as independently as possible for as long as possible is a guiding principle of the Care Act (paragraph 1.19, Revised Statutory Guidance).
  - b) Statutory guidance accompanying the Care Act 2014 is clear that the way services are commissioned has a direct impact upon 'shaping the market' (Paragraph 4.4) and requires that Local Authorities must 'consider how to ensure that there is still a reasonable choice for people who need care and support' (Paragraph 4.39) and to ensure that their fee levels do not compromise the service providers' ability to employ people on at least minimum wage with sufficient training (Paragraph 4.31).
  - c) Section 9 of the Care Act places a duty on the Council to assess adults triggered by the appearance of need. It then places a duty to meet the needs of adults meeting the eligibility criteria (Sections 18-20). Detailed Assessment regulations, statutory regulations and case law underpin this duty.
- 6.1.4 In summary therefore, the legal implications of these proposals are likely to contribute to the sustainability of the care market locally. However, the sustainability of the market is not the only duty arising and does not take precedence over other statutory duties. Recent case law confirms this (Care England (R, on the application of) v Essex County Council [2017]).
- 6.1.5 The Council's Public Sector Equality Duty extends beyond service users to residents of Cheshire East, some of whom pay for their own care and who may be impacted by the Council's decision to increase its fees and the level of that increase. Consultation should include all groups potentially effected by the review.
- 6.1.6 It is proposed that the Council will provide Accommodation with care services in conjunction with Eastern and South Cheshire CCGs, that the Council leads on the commission but the CCGs remain in control of their own budgets and call off their own provision. If a closer collaboration (whereby the Council controls the collective budget and commissions services on behalf of the CCGs) then a more formal partnership arrangement would need to be entered into a Memorandum of Understanding to set out the obligations of the parties in relation to the provision of services and confirm the funding contributions and the responsibilities of each party in delivery of such a service. Appropriate

authority to enter into such a partnership would need to be sought in accordance with the Council's Finance Procedure Rules.

- 6.1.7 The aggregate value of the accommodation with care provision is such that a fully OJEU complaint procurement exercise is being carried out. It is proposed that the Council set up a Dynamic Purchasing System (DPS). This is an open arrangement which allows providers to join at any stage (or at pre-determined points) of the lifetime of the Contract. The Council can then compete each package of care across the providers on the DPS and select the winning bidder using pre determined criteria (including an element of service user choice).

## **6.2 Finance Implications**

- 6.2.1 The Council spends c.£100m on commissioning services from a range of Adult Social Care providers to provide the best outcomes from adults who need support. This report relates to the commissioning of Accommodation with Care services which includes payments to providers for long term Residential and Nursing Care. The approximate annual spend on commissioning the Accommodation with Care elements of care is £49m, and the proposal is to uplift these costs by £1.5m (full year effect)
- 6.2.2 Based on the modelling assumptions, the recommendation to uplift fees by 6% as part of the recommissioning process is estimated to cost £0.75m in 2018/19 due to a part year impact as the uplift will be effective from 1<sup>st</sup> Oct 18. The full year effect of the uplift will be £1.5m from 2019/20 onwards.
- 6.2.3 Expenditure on Accommodation with Care services is contained within the Adult Social Care – Commissioning budget, but the cost of these increases will be funded from a matched allocation of the Adult Social Care Support Grant (held within the Transforming Services Earmarked Reserve) and the Improved Better Care Fund (IBCF). The IBCF conditions include ensuring that the local social care provider market is supported, and the increase in fees is intended to stabilise the market.
- 6.2.4 There is a separate report that relates to commissioning of Care at Home services which include payments to Domiciliary Agencies, both directly from the Council and via Direct Payment clients. The approximate annual spend on commissioning the Care at Homes elements of care is £18.3m, and the proposal is to uplift these costs by £3.52m (full year effect).
- 6.2.5 The total proposed increase from these two reports is therefore £5.02m full year effect. All increases will be implemented from the 1st October 2018 meaning the total increase in expenditure would be an additional £2.51m in 2018/19 and a further £2.51m in 2019/20.

6.2.6. The net impact of the uplift in fees, on the MTFS, will be nil in 2018/19 & 2019/20 as the costs will be funded from existing balances (either earmarked or IBCF). However the increase in care fees across the sector does present a financial risk to the Council's MTFS. In 2020/21 balances from earmarked reserves or IBCF are not expected to be available and the potential gap in the MTFS would therefore increase by up to £5.02m, compared to the current estimates.

Table 6 – Financial modelling for proposed uplift in fees at 6%

	<b>Proposed new rate</b>	<b>Estimated additional cost per annum</b>
Nursing Dementia	£519.25	£251k
Nursing Standard	£503.00	£362k
Residential Dementia	£546.26	£392k
Residential Standard	£461.82	£462k
Total additional cost		£1,467k

6.2.7 The increase in care fees across the sector does pose a financial risk to the council's overall budget position. Risk mitigation steps include:

- Implementation of the Dynamic Purchasing System. This will allow for increased transparency and accountability, support market competition and sustainability as well as increased choice and control for service users. Within this, an option currently being explored is whether service users can be asked to provide a "top up" payment if they chose a care home which exceeds the lowest bid.
- Improved commissioning and contract arrangements with the Care at Home market to offer increased stability and sustainability. This will provide residents with greater choice and control to remain living as independently as possible within their own home and communities, whilst also ensuring that the market has the required capacity to meet the care demand. This should impact on the number of admissions into Accommodation with Care settings, aligning with the Better Care Fund and Improved Better care Fund national metrics.
- Development of the Homefirst model in partnership with CCG's to ensure that patients are returning home from hospital settings and bed based provision with effective support and reablement. This model is currently being developed as a means of enabling people to be as independent as possible as a result of an expectation that patients are discharged to the place they call home as soon as possible. This should

impact on the number of long term residential and nursing admissions, alongside the level of care required within the home in the longer term.

- Service model requirements that ensure the market supports an outcome focused and enablement approach to care delivery that promotes independence and wellbeing (this is being adopted within the service specification requirements as part of the current recommissioning activities).
- Review of the councils Older people's housing strategy taking into account extra care and other housing options that will support people to remain living for longer independently within their own communities.
- Commissioning of the 'Early Help' framework which aims to co-ordinate support for non personal care within community settings. It is anticipated that this will release capacity within the Care at Home market and lead to positive outcomes for independence which in turn reduces reliance on the Accommodation with Care sector.
- Further embedding of asset based approaches to meeting residents care and support needs, building and on the assets of both the individual as well as the wider network and community to promote independence and reduce reliance on statutory services where appropriate.
- Consideration and development of other transformational and prevention options that offer alternatives to 'traditional care' services and models.

### **6.3 Equality Implications**

- 6.3.1 In considering an appropriate level of fees for Accommodation with Care, the Council has had due regard to the Public Sector Equality Duty as set out in S149 of the Equality Act 2010. An Equality Impact Assessment is being completed and will include service users and carer considerations.

### **6.4 Human Resources Implications**

- 6.4.1 While the proposals do not envisage any HR implications for the Council, it is anticipated that the recommended fee uplift will help to sustain recruitment and retention of staff within provider organisations. The new contract will also ensure that the provider is paying staff the national minimum wage.

## **6.5 Risk Management Implications**

- 6.5.1 The proposals seek to mitigate the risk of market failure for Care services and the disruption to continuity of care that this can bring. It also seeks to improve recruitment and retention within the sector.
- 6.5.2 Future changes to national policy such as increases in the National Minimum Wage could impact on provider viability. The Council will continuously monitor market conditions through regular contract management and Provider Forums.
- 6.5.3 Officers meet regularly with Operational teams, Procurement and Legal to anticipate, mitigate and manage risks as part of the mobilisation to the new contracts via a risk register.
- 6.5.4 The commissioning of the new contracts is not a competitive process; however, providers will need to meet minimum standards to be awarded a contract. The main risk to the process is that providers may not apply for a new contract before the anticipated contract start date of 1st October 2018. Provider steering group meetings have been set up but to date these have not been well attended. Officers are in the process of undertaking one to one meetings with providers at their premises to explain and to engage providers in the process. Officers are also planning to provide support for providers in applying for contracts via the Chest e-procurement system through “bidders” days shortly before the dynamic Purchasing System goes live.

## **6.6 Rural Communities Implications**

- 6.6.1 It is expected that the flexible approach to fee setting as set out in this report will ensure market viability and sustainability allowing for varied locations across the borough for Accommodation with Care that meets the preferences of rural residents. The proposal will, therefore improve or maintain access to services for those living in rural communities.

## **6.7 Implications for Children & Young People**

- 6.7.1 The proposal will ensure that the Council is meeting its duty under the Care Act to support families with children.

## **6.8 Public Health Implications**

- 6.8.1 The control of infectious diseases in residential care settings is an important consideration in the quality of care provided. Accommodation with care

providers will be expected to comply with and implement findings of audits undertaken by the Council's commissioned Infection, Prevention and Control provider as well as any CQC recommendations regarding infection control.

## **7.0 Ward Members Affected**

7.1 All wards affected.

## **8.0 Consultation & Engagement**

8.1 Providers played an integral role in the Care Fee review. All were given the opportunity to attend questionnaire co-design sessions on the following dates and all providers were sent a copy of the questionnaire for completion.

8.2 At the time of writing the report Accommodation with Care providers have yet to be consulted on the proposals. Consultation will begin with a meeting to be held on 27th March 2018.

## **9.0 Access to Information**

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

9.2 Further supporting information can be found in:

Care Act 2014 - <http://www.legislation.gov.uk/ukpga/2014/23/enacted>

Cheshire East Joint Strategic Needs Assessment -  
[http://www.cheshireeast.gov.uk/council\\_and\\_democracy/council\\_information/jsna/jsna.aspx](http://www.cheshireeast.gov.uk/council_and_democracy/council_information/jsna/jsna.aspx)

Cheshire East Health and Wellbeing Strategy -  
<http://moderngov.cheshireeast.gov.uk/documents/s34638/Health%20and%20Wellbeing%20Strategy%202014%20-%202016%20version%205%20-%20Final.pdf>

Cheshire East Commissioning Plan -  
<http://moderngov.cheshireeast.gov.uk/ecminutes/documents/g6580/Public%20reports%20pack%2012th-Sep-2017%2014.00%20Cabinet.pdf?T=10>

Cheshire East Market Position statement -  
<http://www.cheshireeast.gov.uk/livewell/care-and-support-for-adults/working-in-partnership/market-position-statement-for-adults-social-care.aspx>

Local Government Association/NHS Clinical Commissioners “Integrated Commissioning for Better Outcomes: A Commissioning Framework”

## **10.0 Contact Information**

10.1 Any questions relating to this report should be directed to the following officer:

Name: Nichola Glover-Edge

Job Title: Director of Commissioning

Email: [Nichola.glover-edge@cheshireeast.gov.uk](mailto:Nichola.glover-edge@cheshireeast.gov.uk)