



**Author/Lead Officer of Report:** Joanne Knight –  
Commissioning Manager

**Tel:** 0114 2735060

**Report of:** Phil Holmes  
**Report to:** Cabinet  
**Date of Decision:** 15<sup>th</sup> March 2017  
**Subject:** Care Home Fees 2017/18

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
- Expenditure and/or savings over £500,000	<input checked="" type="checkbox"/>	
- Affects 2 or more Wards	<input checked="" type="checkbox"/>	
Which Cabinet Member Portfolio does this relate to? <i>(Insert title of Portfolio)</i>		
Which Scrutiny and Policy Development Committee does this relate to? <i>(Insert name of Committee)</i>		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If YES, what EIA reference number has it been given? <i>(Insert reference number)</i>		
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-		
<p><i>“The <b>(report/appendix)</b> is not for publication because it contains exempt information under Paragraph <b>(insert relevant paragraph number)</b> of Schedule 12A of the Local Government Act 1972 (as amended).”</i></p>		

**Purpose of Report:**

For cabinet to approve the annual uplift of care home fees in Sheffield for the financial year 2017/18.

There are 82 independent care homes in the city providing 3768 beds in total, 18 are voluntary/not for profit homes. The providers range from small, long established operators with a single care home in a converted property, to large national organisations that run many purpose-built care homes – typically focused on areas of the city where land costs are lower. Approximately 33% of the current

care homes in Sheffield are operated by large national organisations; however there are a growing number of more local organisations who have multiple care home ownership. Such a diverse range of ownership, brings with it different business models, some operate with significant debts whereas others may have very little. National providers will cross-subsidise across their homes to manage local variations in demand and profitability, these larger providers can also exploit economies of scale.

People living in care homes are often aged 85+ and are likely to be frailer and have greater care needs, currently 12,700 people in Sheffield are over 85 and this is expected to rise steeply bringing the population of the 85+ age group to over 20,000 by 2030. Although people are older and frailer when they enter a care home their length of stay still varies but national evidence<sup>1</sup> suggests it averages 2.5 years in residential and under 18 months in nursing. Many access care later in life after a spell in hospital or intermediate care hence their care needs maybe greater as a result.

The market in the city has remained fairly stable over the previous 12 months, however there continues to be a significant demand for places and the occupancy of care homes remains relatively high. If the demand increases or the capacity reduces there is a risk there will be insufficient places at the right quality and price for the people who need them

This report is designed to ensure that current funding arrangements and fees are uplifted to mitigate for the increase in the National Minimum Wage and other inflationary pressures.

---

<sup>1</sup> Laing & Buisson 2014

**Recommendations:**

*That in 2017/18 there is a 3.2% increase to the standard fee in residential and nursing homes.*

*That the fees for out of city placements are increased by the same amount provided they are at or below the standard fee rate.*

**Background Papers:**

*(Insert details of any background papers used in the compilation of the report.)*

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: Steve Scott
		Legal: Steve Eccleston
		Equalities: Liz Tooke
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>		
2	<b>EMT member who approved submission:</b>	<i>Phil Holmes</i>
3	<b>Cabinet Member consulted:</b>	<i>Cate McDonald</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	<b>Lead Officer Name:</b> <i>Joanne Knight</i>	<b>Job Title:</b> <i>Commissioning Manager</i>
	<b>Date:</b> <i>16<sup>th</sup> February 2017</i>	

## **1. PROPOSAL**

- 1.1 The proposal is to change the fee rates that the Council pays independent sector care home providers who are subject to standard fee rates (that is, rates that do not require assessment on a case-by-case basis) by 3.2%. These rates are to take effect from April 2017 as reflective of the cost pressures that providers will face in 2017-18 when delivering care of appropriate quality for some of Sheffield's most vulnerable residents.
- 1.2 The Council is legally required to consider these fee rates. The following report ensures they:
- 1.2.1 Are informed by the Council's established cost model for residential and nursing care
  - 1.2.2. Are informed by consultation with local care home providers
  - 1.2.3. Are informed by analysis of both local and national evidence
  - 1.2.4. Meet the Council's legal responsibilities by being sufficient to meet assessed care needs and to provide residents with the level of care services that they could reasonably expect to receive if the possibility of resident and third party contributions did not exist

## **2. HOW DOES THIS DECISION CONTRIBUTE ?**

- 2.1 This decision seeks to maintain and improve the experience that care home residents in Sheffield have of receiving satisfactory care and support.

## **3. HAS THERE BEEN ANY CONSULTATION?**

- 3.1 Care home providers have been fully consulted to help ensure recommendations support the Council's legal responsibilities.
- 3.2 Consultation has been organised as follows:
- 3.2.1 An on-line questionnaire
  - 3.2.2 A presentation/questions at care home manager's forum – October 2016
  - 3.2.3 A care home owners meeting – November 2016
  - 3.2.4 Individual meetings between providers and Council officers
  - 3.2.5 Further care home owner engagement- December 2016

## **4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION**

- 4.1 Equality of Opportunity Implications
- 4.1.1 An Equality Impact Assessment has been completed for the proposed fee increase. A full list of the equality considerations, impacts and actions can be found in the Equality Impact Assessment at Appendix 1.

## 4.2 Financial and Commercial Implications

4.2.1 The process used to arrive at the recommended fee uplift and the subsequent financial implications of the report have been assessed and agreed as acceptable by Sheffield City Council's Corporate Finance Section.

## 4.3 Legal Implications

4.3.1 Sections 7 and 7A of the Local Authority Social Services Act 1970 (LASSA 1970) require local authorities to act under the general guidance and directions of the Secretary of State in the exercise of their social services functions.

4.3.2 Circular LAC (2004)20 (Circular) replaced the guidance that accompanied the Directions 1992 and is issued under section 7 of the LASSA 1970. The Circular sets out what an individual should be able to expect from the council that is funding his/her care, subject to the individual's means, when arranging a care home place. The relevant parts of the Circular for the purposes of this case are: "*[The usual cost] should be set by councils at the start of a financial or other planning period, or in response 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 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.....When setting its usual cost(s) a council should be able to demonstrate that this cost is sufficient to allow it to meet assessed care needs and to provide residents with the level of care services that they could reasonably expect to receive if the possibility of resident and third party contributions did not exist*".

4.3.3 The Care Act came into force in April 2015. It sets out a range of measures, in order that local people can choose from a diverse range of high quality care services, to drive up the quality of care and put people's needs and outcomes centre-stage. The new legal framework reinforces the local authority's duty to promote a diverse, sustainable and high quality market of care and support services. Local authorities are required to ensure that there is a range of providers offering services that meet the needs of individuals, families and carers.

4.3.4 This duty requires local authorities to understand the level of risk and the quality support for care home residents to assure that services:

- Meet the minimum standards as set out by the Care Quality Commission
- Are sustainable
- Have sound leadership and that all staff are appropriately trained
- Are focused on delivering quality care that is evidence based

4.3.5 The Council must evidence that it has properly consulted with providers

during its process of setting fee levels to take account of relevant factors in understanding the actual cost of care to them.

- 4.3.6 Setting a proper level of fee will evidence that that council is delivering its obligations to support a sustainable market which is viable and enables people to have choice in the accommodation needs. That then delivers obligations as to respecting private, home and family life under the Human Rights Act and the Public Sector Equality Duty under S149 the Equality Act 2010
- 4.3.7 The council should also consider a number of recent high court judgments made as a result of challenges by Care home providers following the cut in fees as local authorities try to meet the demands of the demographic changes and budget cuts.
- 4.3.8 In 2010 Sefton Council was ruled to have acted unlawfully by freezing Care home fees for 2011-12. Judge Raynor ruled that Sefton Council "failed adequately to investigate or address the actual costs of care with the claimants and other providers", which was contrary to relevant guidance. The judge said setting fee levels significantly below actual cost would inevitably lead to a reduction in the quality of service provision which "may put individuals at risk".
- 4.3.9 Also in 2010 Leicestershire County Council attempted to freeze the fees it paid to Care home providers for the year 2011-12 at the rate it paid for the year 2010-11. Judge Langon agreed with the findings in Sefton (above).
- 4.3.10 In 2011 SW Care v Devon Council. A group representing Care home providers challenged the council's decision taken not to increase the fees in 2011/2012 also citing that the council had also awarded no increase in fees for the previous financial year. The Council agreed not to award any fee increase but instead enter in to further discussions with providers to address individual concerns. Concerns were expressed about the consultation process and the superficiality of the Equality Impact Assessment and the importance for local authorities to pay regard to their equality duty when setting fees.
- 4.3.11 On 18 October 2012 in Care North East Newcastle v Newcastle City Council the judge ruled that councils must have due regard to the actual costs of care, stating that, "In making the decision to set appropriate rates for Care homes the local authority is under an obligation to have due regard to the actual costs of providing care and other local factors". He emphasised the need for local authorities to ask themselves the right questions when considering fees and the need for it to use an evidence-based system to ascertain the actual cost of care.
- 4.3.12 In March 2012 Northumberland County Council was involved in a dispute over the level of fees to care homes for older people under a new three-year contract starting in April 2012. The local care home owners' trade association declined the terms offered by the Council and

applied for judicial review of the Council's decision.

The claim alleged that the Council had:

- failed to consult adequately
- failed to ascertain the "actual cost of care" provided by care homes
- made irrational assumptions
- unlawfully refused to make placements with the claimant

The judgement which of 15 February 2013 dismissed all four of the grounds of claim saying there was evidence of genuine consultation, that rational decisions had been made and that Northumberland acted lawfully in making placements. The judge rejected the claimants' argument that Government guidance required the Council to carry out research to set a figure for the "actual cost of care", and accepted the Council's view that it was reasonable to set fees based on what they knew about the care home market – which was that there is substantial excess capacity, with many homes carrying large numbers of vacancies, and that new providers are still wanting to build care homes. In effect the Court confirmed that the council had a wide discretion as to the factors which it took account of and how it did that provide that gave it the evidence it needed to make a proper decision.

#### 4.4 Other Implications

##### 4.4.1 N/A

### 5. **ALTERNATIVE OPTIONS CONSIDERED**

5.1 There were two options considered for the 2017/18 care home fee uplift with option 2 being the recommended option.

5.1.1. Use the same formula as 2016/17 with different staff: non-staff ratios for residential (63:37) and nursing care (70:30)

5.1.2. Use the higher nursing care ratio of (70:30) for all types of care.

5.1.3. The options were appraised taking into account the following:

- Provider feedback from engagement events & planned consultation
- Market factors as described in the appendix to this report
- Costs of care as calculated in the appendix to this report
- Current and projected supply and demand
- The financial position of the Council.
- National Minimum Wage (NMW) at £7.50
- CPI at 1%

**6. REASONS FOR RECOMMENDATIONS**

- 6.1 To ensure that fees paid for care and nursing homes in the City of Sheffield are uplifted in line with increases in the cost of wages and inflation for 2017/18.