

CABINET – 15 APRIL 2014

CARE HOME FEES

Report by Director for Social & Community Services

Introduction

1. The services that care homes provide within Oxfordshire play an important role in helping to meet the needs of vulnerable adults. The Council has to ensure that there is sufficient capacity within the social care market to meet its current and future commissioning requirements.
2. The cost of adult social care and how it should be funded has for many years been the subject of discussion and much media attention. These discussions have taken place at both a national and a local level and in many respects have focused on the cost of care home services.
3. At a local level the Council has stated that we are keen to ensure the sustainability of care home services in Oxfordshire to meet the assessed needs of vulnerable adults. We have also said that we are committed to work alongside providers to ensure that services are of the highest quality. The Council is also working to support more people to live at home in the community so that they do not need to go into a residential care home. Working with the District/City Councils and Housing Associations, we have embarked on a major expansion of Extra Care Housing. We are also discussing other housing options which help support people to live in their own homes.
4. In relation to care homes services for older people it has largely been providers who have expressed concern that prices paid by local authorities do not reflect the true cost of care. They have also argued that there is a “cross-subsidy” from care funded privately by individuals and families. Disagreements over fee rates are not new however, over the last three years there have been a number of legal challenges made by care home providers against the way that some local authorities have undertaken their annual reviews of the rates they pay for the services delivered.
5. This report is brought to Cabinet to
 - (a) describe the process the Council has undertaken to review the amount it pays for care homes this year and
 - (b) agree the Target Banding Rates to be applied for 2014-15

The Council's Obligations

6. Under Section 21 of the National Assistance Act 1948 the Council has an obligation to make arrangements for providing "residential accommodation for persons aged 18 or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them;...."
7. Local Authority Circular LAC (2004) states that when councils with social services responsibilities make placements in care homes or care homes providing nursing care, that, within reason, individuals are able to exercise genuine choice over where they live. Individuals have the right to move in to more expensive accommodation than they would otherwise have been offered in certain circumstances (if they chose to pay a 'top-up'). Individuals can therefore express a preference for their "preferred accommodation".
8. One of the conditions associated with the provision of preferred accommodation is 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').
9. If an individual requests it, the council must also arrange for care in accommodation more expensive than it would usually fund provided a third party or, in certain circumstances, the resident, is willing and able to pay the difference between the cost the council would usually expect to pay and the actual cost of the accommodation (to 'top up'). These are the only circumstances where either a third party or the resident may be asked to top up.
10. With regard to the usual cost the Guidance states that this 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.
11. Furthermore in setting and reviewing their usual costs, councils should have due regard to the actual costs of providing care and other local factors. Court cases elsewhere have reminded councils that as part of the fee setting process there is
 - (a) A need for councils to assess the actual cost of care in their local area.
 - (b) A need to consult with providers to hear their views on the same
 - (c) A need to consider local market factors
 - (d) A need to carry out an Impact Assessment as part of the decision making process.
12. In summary we have to provide residential or nursing care to those that need it. We have to meet individual preferences. People can chose to top up, or pay and additional amount, for a more expensive care home of their choice. Local Authorities have to set a rate for care annually. What we pay must be sufficient to meet assessed needs, and we must have due regard to the actual

costs of providing care and other local factors. A range of factors have to be considered in setting the rate including the cost of providing care and the resources available to the council. We are required to comply with Government guidance, consult with the sector and undertake an impact assessment when setting care home fees.

Purchasing Care Home Services for Older People in Oxfordshire

13. At the end of January 2014 Oxfordshire County Council funded 1,638 older people in care home placements. 489 of these were in placements covered by a block contract with The Orders of St John Care Trust and 1,149 were in spot placements.
14. 1,040 of the spot placements were permanent placements with 730 being in the nursing and 310 in the residential homes (a 70:30 split). The remaining spot placements were of a temporary or short-term nature.
15. There are 103 care homes in the county offering a total of c.4,200 placements. This means that 60% of places are occupied by private payers.
16. This Council has traditionally set Target Banding Rates on an annual basis in order to spot purchase care home placements for older people. The Target Banding Rates indicate the target funding level that the council will seek to pay for an individual person following an assessment of their needs. There is therefore a relationship between the rate paid (Target Banding Rate) and the level of need.
17. Officers from the council then use this guide to secure a care home placement at a funding level as close to the Target Banding Rate as possible. Within the process there is flexibility to fund above the Target Banding Rate should a person's assessed needs require additional funding. We also pay above the target Banding Rate where there is no alternative and we urgently need to find suitable accommodation that will meet someone's care needs. In this way the Council fulfils our obligation to ensure that the placement meets the individual's unique assessed needs.
18. The rates in place at 1st April 2013 covered 3 care categories.

Residential Care Home (Care without nursing)

Social Care - Extensive/Specialist	£452 per week
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Nursing Care Home (Care with nursing) *

Social Care - Extensive	£560 per week
Social Care - Specialist	£630 per week

(*The figures quoted for care with nursing include the single-rate Funded Nursing Care and Incontinence Payments)

19. Each year these banding rates are reviewed and decisions made about any change that should be made from one year to the next.
20. Our assessment is that we have Council funded placements in nearly all 103 care homes in Oxfordshire. However we estimate that only 22 care homes will accept people placed under spot arrangements and paid for at the level of our Target Banding Rates. This is a decrease from the 25 care homes that would accept the Council's Target Banding Rates at this time last year.
21. In summary the council purchases approximately 40% of the available care home places in Oxfordshire. We set a range of (target) rates to reflect different levels of need. In practice the actual amount paid can vary from these rates in order to meet the individual's assessed needs.

The Proposal for 2014-15

22. For 2014-15, the Council has again applied the Association of Directors of Adult Social Services (ADASS) cost model to calculate Target Banding Rates. This model was tested thoroughly for the 2013-14 Target Banding Rate setting and has been updated for 2014-15.
23. The reasons for using this model were covered in depth in the 2013-14 report but the key reason is that the model offers a cost of capital that reflects the Council's market view of no growth.
24. The Council has reviewed the banding rates generated by the model and applied an inflationary uplift to these rates, allowing for inflationary pressures. The composite inflation rate applied is 1.3%.
25. The ADASS model applies for Residential Care and makes the assumption that the allowance for Funded Nursing Care can cover the additional costs of a nursing establishment.
26. The Council has used the ADASS model with a £6.83 hourly rate for care staff to arrive at a weekly residential cost of £458. The Funded Nursing Care element of £109.79 is then applied to arrive at a Nursing Rate of £568.
27. The revised Target Banding Rates we have proposed were adjusted as follows:

Target Banding Rate	Current (less FNC) £	Inflation	Revised £	FNC* £	Target Banding Rate 2014-15
Residential	452	1.29%	458		458
Nursing Extensive	452	1.29%	458	109.79	568
Nursing Specialist	522	1.29%	529	109.79	639

*this is the 2013-14 rate and this will be revised on publication of the rate effective from April 2014

28. These Target Banding Rates will be used as the basis for agreeing the fee with the care home but, as stated above, the actual rate paid by the Council may differ in order to meet a person's specific or more complex needs.

Consulting with the Care Home Sector

29. As in the previous years, Oxfordshire County Council has carried out its own consultation with care home providers. In December 2013 the Council wrote to all contracted care homes to advise them of the proposed alteration to the Council's Target Banding Rates and invited comments.
30. At the same time and alongside this work to help identify provider operating costs we would consider a number of the usual associated market factors, including:
- (a) Market share
 - (b) New developments within the care home sector in Oxfordshire
 - (c) The financial health of the care homes sector
 - (d) The quality of care available
 - (e) Average length of stay
 - (f) The numbers of new placements that need support each year
 - (g) User experiences
31. To ensure that there were a number of opportunities to obtain feedback we
- (a) Embarked on an open consultation process that asked all care home providers to comment on our proposals and take part in a review of the cost of providing care home services in Oxfordshire. This formal consultation exercise was organised through the Council's website and ran from December 30th 2013 to January 31st 2014.
 - (b) Asked care home providers to upload (onto the website) their cost structures to support responses contained in the questionnaire; the format to be used being the industry recognised costing tool that has been used by Laing & Buisson (Healthcare consultants) for a number of years.
 - (c) Reminded providers of the consultation and the opportunity to take part.
 - (d) Offered to meet individual providers on a confidential basis to discuss operating costs and set up meetings at 3 venues (Oxford, Banbury and Abingdon) on 3 separate dates between 13th and 31st January in order to do the same.
 - (e) Reviewed the local market factors associated with care home provision in Oxfordshire.
32. The Council also contacted other stakeholders, including Age UK Oxfordshire, with an interest in Care Home placements to invite their comments on the Council's proposals.

Feedback from the Consultation Process

33. There has been a disappointing response to the consultation exercise.
34. There are 103 care homes that provide services for older people in Oxfordshire. 17 of these homes are operated by The Orders of St. John Care Trust and contracted to the Council through a long-term development arrangement that runs through to 2026. They, therefore, fall outside of this price review arrangement as provisions for price increases are contained within the contract in place. There are therefore 86 homes potentially affected by the Council banding rates.
35. Only 11 out of 86 providers responded to the web based consultation. 2 care home providers from Oxfordshire attended confidential individual meetings to discuss operating costs (one of which also completed the online consultation) Few providers were willing to share their costs. The Council has consequently received only 2 sets of operating costs.
36. Overall the general view from those providers that took part either through the consultation process or through individual meetings is that:
 - (a) The County Council's approach to consultation and the open dialogue is welcomed, but providers felt that in previous years the information supplied by providers had not been properly considered contributing to the disappointing response to this consultation.
 - (b) The Council should increase its Target Banding Rates. This is because providers feel there are cost pressures in all areas of their business and past fee decisions have not kept up with operating pressures.
 - (c) Our decisions have a much greater impact on those homes that are prepared to accept Council rates and those that have a high proportion of council funded residents in situ. The 2 sets of accounts received are from providers who accept a high proportion of Council residents. Both organisations feel that the Council should make a greater financial contribution to ensure quality and sustainability of these services.
 - (d) Providers are looking for ways to diversify their services. One provider raised with Council officers that they would like to increase the number of beds provided at their home, but without a higher income and earning potential from Council residents would not be pursuing this work.
 - (e) Concerns that historical increases in banding rates had been insufficient leading to an increasing shortfall in fees.
 - (f) Perceived unfairness that Council get the benefit of the increased client contributions (through increased pensions) but did not pass this on as part of the Target Banding Rate.
 - (g) Concerns that negotiating for fees above the Target Banding Rates (where the resident's needs warrant this) is time consuming, and therefore costly, for care homes. The two providers who met with Council officers stated that this process should be streamlined to reduce the staff time spent on these negotiations.

- (h) Comments that the withdrawal of free training for care providers is an added cost pressure and that providers must now fund training that was previously provided free of charge.
- 37. The Council has also received a response from the Oxfordshire Care Home Association regarding the Council's proposals.
- 38. The Association highlighted to officers their view that the ADASS model does not accurately reflect care home costs and that by using this model the Council does not seriously wish to engage in transparent consultation with providers. The Association also expressed a view that the care home market is diverging with homes that focus on privately funding residents prospering whilst homes that admit a higher proportion of Council funded residents do not prosper financially.
- 39. In summary, we carried out a consultation inclusive of all care home providers and conducted by letter, web based consultation and face to face meetings. In all, 11% of care home providers participated in the consultation and only 2 care home providers were willing to share their costs with us. Costs at those 2 homes appeared to be higher than either the banding rates of the County Council or the actual fees agreed by the Council.
- 40. Whilst we do not know why the majority of providers did not come forward with their costs, despite ample opportunity to do so in confidence, it is reported by those providers that did come forward that providers feel the Council has not fully considered information supplied by providers in previous years.

The Oxfordshire Care Home Market

- 41. As stated above, previous legal challenges elsewhere have also emphasised the need to take into account local market factors when considering price changes.
- 42. We already monitor closely developments within the Oxfordshire care homes market through regular reviews, performance information and on-going day-to-day contact with individual homes and organisations as part of our quality monitoring work. The following is a summary of our views:
 - (a) Firstly we expect to continue to purchase nursing care home services in the future. Alongside this we anticipate purchasing fewer residential care home services and instead we will look to alternatives such as extra-care housing and care at home. This is something that we have shared with the care homes sector on a number of occasions and has been set out in our Business Strategy for some time.
 - (b) In terms of **market share** we estimate that we purchase about one-third of all care home places in Oxfordshire. We estimate a further 9% of places are purchased by health partners or by other local authorities meaning that just under 60% of all places are purchased privately.

Whilst this means that we are in volume a minority purchaser of places it also suggests that the Council is the largest single purchaser.

- (c) **Changes within the care homes market** - Over the last few years there has been good interest in developing new care home services and extra-care housing in Oxfordshire. In respect of the latter the council already has 512 extra care housing flats available, plus schemes under construction which will increase overall supply to approximately 900 by December 2015.
43. The Council is aware that several planning applications for new care home developments are at various stages currently and it appears that there remains interest from private providers in developing new sites in Oxfordshire.
44. The County also experienced 3 care homes closures in 2013. This included the planned closure of Mayott House as part of The Orders of St John Care Trust redevelopment and the closure of 1 residential and 1 nursing home that were failing to meet Care Quality Commission standards.
45. The risk here is that if the supply of care home places outstrips demand then vacancies may increase creating an imbalance between expenditure and income for some care homes.
46. A further concern is that if the current trend of new developments concentrating on the private market continues, the proportion of the market that the Council can access to support its vulnerable adults may reduce.
47. The Council aims to share information with current and potential care home providers via Market Position Statements. We have already published Market position Statements for Home Support Services and one for Extra Care Housing. A Market Position Statement for Care Home services will be published in the coming month.
48. How we are purchasing - The following table shows the placements made from 1st April 2013 to 31st March 2014 and the average price paid. The table shows that we are paying above the target rate for all levels of need.

Category	Target Price	Band	Placements*	Average Purchase Price per week
Res Extensive/Specialist	£452	-	232	£580
Nursing - Extensive	£560		173	£644
Nursing - Specialist	£630		165	£705

* Includes placements for people who originally funded their own care but excludes placements where the Target Banding Rate is unknown.

49. The **financial health of the sector** is regularly checked by the Council as part of our response to managing risk and business continuity in the current

financial climate. In terms of sustainability our assessments suggest that the current financial health of the sector is similar to that of 12 months ago.

50. Our general view is that **the quality of care** in Oxfordshire is good and that there is a good foundation of quality care home providers in the county. We have reviewed the Care Quality Commission's latest checks on the Essential Standards of Care that are published on its website. These cover the areas of
 - (a) Treating people with respect and involving them in their care.
 - (b) Providing care, treatment and support which meets people's needs
 - (c) Caring for people safely and protecting them from harm
 - (d) Standards of staffing
 - (e) Standards of management.
51. In nearly all homes in Oxfordshire, the Care Quality Commission is reporting that when last checked all standards were being met.
52. The Council is concerned that **some people may be entering a care home setting too early in their life**. In 2013-14, the Council funded about 606 new permanent placements, 89 (15%) of these were people who had originally funded their own care but who now required support from the Council. Further analysis suggests that a number of these people may not have needed care home services when they first went into a care home as determined by our eligibility criteria for social care. With this in mind we are working with My Care My Home to provide independent advice for people who fund their own care about the best support options available to them. This service provides information and support for people regarding the alternatives to care homes and supports people to make the right decision for their own personal circumstances.
53. For Council funded residents the length of stay in a care home is approximately 2.60 years.
54. We are committed to help people stay in their own home.
55. Peoples' **experience in a care home** generally appears to be positive. Across Oxfordshire, people are generally happy with services they receive. Of a survey of 525 social care clients in February 2013 the questionnaires returned in respect of care home services indicated that overall 95% were satisfied with services (65% of them being extremely or very satisfied), and only 1% were dissatisfied.
56. In summary there is a thriving care home market in Oxfordshire with new entrants coming in all the time. Closures have been limited in number. The Council aims to place approximately 546 people in to care homes every year, although its strategy is to support more people at home or, for those that require it, nursing care. Currently supply and demand are reasonably well balanced. The quality of care is good and people are satisfied with the care that they receive.

Considerations

57. We find it disappointing that our consultation process has generated such a limited response. Indeed the low number submitting cost structure returns would in the Council's view not provide a robust argument for substantially increasing funding to the sector above that already given.
58. However the cost structures we did receive indicated cost of provision above that which the council currently pays.
59. The County Council's service and resource planning process has identified that there are significant pressures on the older people's budget. As a result we need to focus resources for the benefit of an increasing number of vulnerable people. Increasing our spending on care home services goes against our stated business strategy for the future.
60. However these are clearly challenging times for both providers and purchasers and it is important to the council to make sure that there is a sufficient provision to meet existing and increased future service demands. Sustainability appears to be the key but the care homes market is itself responding to demographic changes with new services being planned and developed.
61. One area of vulnerability may be some of our smaller homes as Laing & Buisson identify the operation of an efficient home starting at 48-50 beds capacity. But smaller more homely establishments clearly have a place in our commissioning strategy and they may be more viable if they have lower overheads and less debt due to how long they have operated.
62. The care home providers who met with Council officers represent a sector of the market that accept a high proportion of Council funded residents. These providers stated that they are disproportionately affected by the Council's funding decisions and that negotiating individual rates (where this is necessary) is extremely time consuming.
63. What this suggests is that we need to recognise that whatever cost model is used the resulting figure generated is only an aid to discussion about what is an appropriate banding level or price to pay and that the fee must reflect the needs of the person. In any model there are local variations that will inevitably be challenged by both sides as each drives to obtain the best outcome. In this respect the existence and use of a costing model does not in itself generate a solution to the question about what is the true cost of care.
64. Local market conditions in terms of supply and demand will have a legitimate impact on price. Local factors may also generate a situation that genuinely allows the local authority to purchase a service at a lower than cost price. If expansion outstrips placements then there may be an increase in the number of vacant beds available (unless these are taken up through demand resulting from demographic changes). Inevitably this will add to operating pressures for some providers as they experience vacancies and changing income levels.

65. The result may be that in the future the council may be able to more easily access beds at a lower than cost price as providers seek to generate income. The counter argument is that some homes will go out of business and the market may end up being dominated by providers aiming only at the private market.
66. The Service & Community Impact Assessment indicates that should a significant increase in the care homes budget be made then there will be less money available to spend within Adult Social Care. The impact on vulnerable people of having less money to spend on other types of support (including support to support people in their own homes) will have a greater negative impact on vulnerable and disabled people than a care home fee level increase.

Financial and Staff Implications

67. If the Council sets the residential banding rate at £458, then the cost to increase all Care Home placements below that rate to the new level is £1,229 per week or £64,000 per annum.
68. If the Council sets the lowest nursing banding rate at £568, then the cost of increasing all current placements below £560 to that level is £2,940 per week or £153,000 per annum.
69. If the Council were to accept the above recommendations the total cost therefore is £217,000 per annum.
70. In setting the 2014/15 budget and Medium Term Financial Plan no inflation allocation was made in respect of Care Homes as the outcome of the review was not known. Instead the corporate contingency set aside to meet pressures across the council in 2014/15 also included an element for inflation on Care Homes. If the recommendations on the Target Banding Rates are accepted, a virement of £217,000 will be required from the corporate contingency to meet the increased cost.
71. The Council will apply these revised banding rates to any provider currently being paid below the new Target Banding Rate.
72. Cabinet may wish to note that
 - (a) The revised basic wage rate we have used in the calculation is £6.83 per hour and this has been compared to local advertisements for Care Staff. The adverts range from £6.57 to £7.40 which would indicate that the model hourly rate applied is reflective of the labour market.
 - (b) We have reaffirmed our intention to maintain a significant level of investment in care homes for Older Persons as part of our Commissioning intentions. We aim to make 546 new placements a year most of which are likely to be for nursing care.

- (c) We are making available financial advice to self-funders so that their personal funds can be invested in such a way that it will sustain them for the rest of their time in care.
 - (d) Where a care home is experiencing particular hardship or financial problems we will review their financial standing as part of our Safeguarding and Business Continuity strategies to determine appropriate action.
73. We have been mindful of the above points when coming to a conclusion about Banding Rates for 2014/15.
74. We reaffirm our view that care homes in Oxfordshire have an important role to meet the needs of vulnerable adults. We also recognise that the Council has an important role to ensure that there is sufficient capacity within the social care market to meet its future commissioning requirements.

RECOMMENDATION

75. **The Cabinet is RECOMMENDED that in view of the above:**

- (a) for 2014/15 to:**

- **Revise our Target banding Rates from April 2014 and**
 - (i). Increase the Target Banding rate for the Residential-Extensive Specialist Category to £458 per week for new placements.**
 - (ii). Increase all existing weekly Residential payment rates that are currently paid below £452 per week to £458 per week**
 - (iii). Increase the Nursing-Extensive Target Banding Rate to £568 per week**
 - (iv). Increase all existing weekly Nursing Extensive and Substantial rates that are currently below £560 per week to £568 per week.**
 - (v). Increase the Nursing-Specialist Target Banding Rate to £639 per week**
 - (vi). Increase the above rates to reflect the increase in Funded Nursing Care once this is announced later in April 2014.**
 - (vii). Continue to use these rates as a guide to secure a care home placement at a funding level as close to the Target Banding Rate as possible.**
 - (viii). The above to apply from April 2014 and for care home placements in Oxfordshire.**
- (b) Cabinet are requested to approve a permanent virement of £217,000 from corporate contingency to fund the increase in the Target Banding Rate.**

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Background papers: None

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