



4th February 2013

Agenda Item: 4(b)

**REPORT OF THE SERVICE DIRECTOR FOR JOINT
COMMISSIONING, QUALITY AND BUSINESS CHANGE**

**LOCAL FAIR PRICE FOR CARE – OLDER PERSONS' CARE HOME
FEES**

Purpose of the Report

1. To inform ASCH Committee of the work undertaken to review the current local 'Fair Price for Care' framework and the associated fee levels for older persons' care homes in Nottinghamshire.
2. To inform ASCH Committee of proposals on future fee levels based on the work undertaken to ascertain the actual costs of providing older persons' residential and nursing care across Nottinghamshire.
3. To ask ASCH Committee to recommend the proposed changes to Policy Committee for approval.

Information and Advice

4. There are currently 169 older persons' independent sector care homes in Nottinghamshire. The Council funds approximately 34% of the total long term placements within these homes. In addition, the Council utilises some beds for short term placements or respite care. As well as placements funded by Nottinghamshire County Council, a number of placements are arranged and funded by the NHS in nursing care where the service users meet the NHS Continuing Health Care criteria, or by people who fund their own care, or which are arranged and funded by other Councils. It is important to note that not all the places are occupied all of the time and most, if not all care homes, will have vacancies at varying levels.
5. The Council, through the ASCH&PP department, has a statutory duty to undertake an assessment of need to determine the level of care and support required by service users and where relevant their carers. The assessment also includes completing a financial assessment to determine the service user's contribution to their care, based on their financial circumstances.
6. The Council also has a duty to undertake an annual review of each service user to ensure that the services continue to meet their needs. The reviews are

undertaken by social work staff based in the locality teams. These reviews provide staff with the opportunity to ensure that service users are receiving a good quality service.

7. Additionally, the Department of Health has issued guidance saying that fees setting must take into account the legitimate current and future costs faced by providers as well as the factors that affect those costs, and the potential for improved performance and more cost effective ways of working. Contract prices should not be set mechanically but should have regard to providers' costs and efficiencies, and planned outcomes for people using services.

Historical context of the local 'Fair Price for Care' framework and fee structure

8. Since 2008/09, the Council has been implementing a phased fee structure based on a 'Local Fair Price for Care' model which was developed with input from the Nottinghamshire Care Association (NCA) and an external consultancy, Pinders. The framework, through its bandings, sought to pay higher fees for high quality care provision as evidenced through an annual audit of each older person's care home. The aim of the fee framework was to improve the quality of care across the sector and to increase the amount of good quality dementia provision. Locally, there was recognition by the NCA that overall the quality of residential and nursing care needed to be improved.
9. The banding system has been recognised as a model of good practice by the CQC and by other local authorities. The advantages of the framework and the banding system are as follows:
 - it rewards good quality as well as environmental conditions - since its implementation, there have been some overall improvements in the movement to a higher quality of care
 - it provides an agreed system for quality audits across health and social care – both NHS Nottinghamshire County and NHS Bassetlaw have adopted the same framework and undertake joint audits, with the Council's quality development officers, of nursing homes across the county
 - it provides a consistent means for assessing the quality of care in the sector on an annual basis
 - it enables service users and carers to make informed choices based on the assessment of quality.
10. The banding system leads to an increase in costs as the number of homes in higher quality bands, and hence the number of placements made in higher quality bands, increases.
11. The annual quality audit that determines the banding of each home is undertaken by a team of Quality Development Officers. The audit comprises of two elements:

- an assessment of quality of care provision based on the outcomes of the Care Quality Commission's Essential Standards of Quality and Safety
 - the home's accommodation and environmental standards.
12. The scores from these two assessments are combined in a ratio of 70% quality and 30% accommodation which gives an overall rating of each care home. A Quality Audit Framework tool is used to support the Quality Audit process. This tool is reviewed annually to ensure providers are demonstrating continuous improvement in the quality of the care they provide.
 13. The audits are undertaken by Quality Development Officers (QDOs) and each audit takes approximately 2 days to complete with one day spent on the site visit and the equivalent of one day to gather supporting information and to write the report. A particularly strong feature of the approach in Nottinghamshire is that the quality audits are carried out by social care and health care staff working jointly.
 14. Through the audit process, the QDOs seek to ensure that the providers are meeting the following objectives:
 - the health, well-being and safety of people using care services is maintained and promoted
 - service users are treated with dignity and respect
 - that service users and their carers' have choice and control over the services they receive
 - to ensure that care staff are appropriately trained to deliver the services.
 15. Where the audit process identifies concerns about the quality of the care being provided then the QDO will make recommendations to the provider who will be required to develop and implement an action plan, within specified timeframes, to address the areas of concern. The concerns may range from poor recording such as that of service users' care plans, or care plans not being updated through to insufficient evidence of training of care staff, or high levels of staff turnover resulting in inconsistent and poor care management and practice. Where concerns have been raised through the audit process, the QDO will provide advice and support on how the service could be improved. The QDO will also undertake a follow up visit to ensure that the actions have been implemented.
 16. As indicated in paragraph 11 above, the implementation of the Fair Price for Care framework has been phased over the past five years. The final year of implementation was initially intended to be 2011/12, however the final year's fee increase was not applied in full but spread across two financial years with 50% allocated in 2011/12 and the remaining 50% being allocated in 2012/13.
 17. The application of annual inflationary increases to fees has been considered separately through the Council's normal annual budget setting processes. For

the last two financial years, 2011/12 and 2012/13, inflation for externally provided services has been 0%.

18. Fees for 2012/13, under the current Fair Price for Care framework are outlined in Table 1, below:

Table 1: Current Fee Levels

2012/13 Fee Levels					
	Band 1	Band 2	Band 3	Band 4	Band 5
Older People	£303/£348	£391	£417	£443	£469
OP Dementia	£359	£438	£464	£489	£515
Nursing	£376	£439	£465	£491	£516
Nursing Dementia	£386	£480	£506	£532	£558

19. At the start of the 2012/13 financial year, the total number of long term placements funded by the Council in older persons' care homes in Nottinghamshire was 2,284. In addition, the Council funds approximately 180 short term and respite care placements at any one time. Within the local fair price for care framework, and based on the total number of placements in independent sector older persons care homes in mid-April 2012, the total estimated cost for 2012/13 for this provision is £57.8 million of which £53.2m is for long term placements and a further £4.6m for short term placements.

Provision within the local market

20. The numbers of older persons' care homes and total numbers of care home places within Nottinghamshire have increased in recent years. There have been a number of care homes that have closed whilst at the same time new homes have opened.

Table 2: Total number of older persons' care homes, home closures and new homes opened

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Number of homes	166	166	165	163	170	169
Homes closed	0	3	2	2	3	2*
New homes Opened	0	2	1	0	4	2*
Council homes transferred to the Independent Sector	0	0	0	0	6	0

* As at 01/01/13

21. As outlined in paragraph 4 there are currently 169 older persons' independent sector care homes a further 6 Council owned care homes in Nottinghamshire. Overall, whilst the number of homes in Nottinghamshire in recent years has generally been level, the number of available beds in older persons' care homes has increased from 6,723 in 2007/08 to 7,033 in 2012/13 as outlined in Table 3 below.

Table 3: Total bed numbers and changes in bed numbers

	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13
Independent Sector Beds	6076	6076	6167	6182	6162	6645
Changes in Year						
Beds Lost (Upgrades)	0	0	0	0	2	0*
Beds Lost (homes closed)	0	89	43	45	91	96*
Beds Gained (Upgrades)	0	19	18	25	43	126*
Beds Gained (New Homes)	0	161	40	0	202	118*
Beds Transferred (from the Council)	0	0	0	0	331	0
Independent Sector Beds	6076	6167	6182	6162	6645	6793
Council Beds	647	647	593	571	240	240
Total Beds	6723	6814	6775	6733	6885	7033*

* As at 01/01/13

22. The decrease in the number of council owned beds in 2011/12 reflects the changes in ownership following the transfer of 6 homes from the Council to an independent sector provider who entered the Nottinghamshire market for the first time.
23. Table 3 also shows that as well as new providers entering the local market, existing providers are investing in upgrading or extending their care home provision. Over the past four years, a total of 52 homes have upgraded their premises and a further 14 homes have built extensions to their properties leading to improved environmental standards. Providers have commented that the improvements have been made to the fabric of their buildings as a direct result of the local Fair Price for Care initiative. The increase in the number of beds as a result of investments in new homes and of existing homes upgrading their provision is evidence that the sector is financially viable.

24. Table 4 below shows distribution of the older persons' care homes across the 5 quality bandings over the period of the fair price for care initiative. Band 5 is the highest quality band.

Table 4: Distribution of homes per band

	2008/09	2009/10	2010/11	2011/12	2012/13
Band 1	39	31	25	27	33*
Band 2	47	39	38	38	27*
Band 3	57	43	43	42	47*
Band 4	21	38	29	29	28*
Band 5	2	14	27	33	34*
Total Homes	166	165	162	169	169

* correct as of 01/01/13

Legal context

25. Over the past two and a half years, there have been a number of cases brought before the Courts by care home providers who have sought to challenge local authorities through Judicial Review both on the level of fees allocated and the way in which they have determined their fee levels.
26. In its decisions the Courts stressed the need for local authorities when setting fee levels to consider the actual cost to its private sector providers of providing care. Councils also need to ensure that its fee levels will allow for sufficient and sustainable capacity and choice of provision within the local market.

The Council's strategic commissioning intentions for health and social care services

27. The Council has set out its key strategic objectives in its 'One Council Strategic Plan, 2010 - 2014', and in accordance with Central Government policy on personalisation, one of the Council's key objectives is to promote independence by enabling service users and carers to have more choice and control over the services they access including the ways in which the services are delivered.
28. One of the key priorities for the department is to help and support people to live independently in their own homes for as long as possible. In discussions with care home providers at Provider Forums, the Council has informed them of its intentions to support people to remain living independently in their own homes for as long as possible. To this end, the Council continues to develop and invest in care and support services which enable people to live safely within

their own home, and to prevent or to delay the need for residential or nursing care. As such, the Council has sought to increase people's independence, which may have the result of reducing the numbers of long term placements in care homes.

The review of the local Fair Price for Care framework and the fee levels

29. Given that the fee increases associated with the current local Fair Price for Care framework come to an end in 2012/13, and in light of the various Court rulings, the Council has completed a review of its fee levels and fee structure with a view to informing future fee proposals and the financial implications arising from these. In order to ensure that due processes were followed in determining fee levels beyond 2012/13, Browne Jacobson Solicitors have been engaged to advise the Council.
30. The Council also engaged KPMG to help complete the project to ascertain actual costs of older persons care home provision in Nottinghamshire.
31. In seeking to determine future fee levels and the fee model, the Council has taken in to account its strategic objectives and the legal and policy context, as follows:
 - a meeting the legal requirement to take in to account the actual costs of care
 - b setting a fee which allows a sustainable market
 - c rewarding good quality, striking an appropriate balance which prioritises care quality issues over the environment but which recognises the importance of both
 - d challenging inefficiencies at the same time as providing incentives for improvement in quality
 - e enabling a more personalised approach to the delivery of care and ensuring that outcomes are achieved for residents through appropriately trained care staff
 - f promoting good standards in the delivery of care and giving particular focus to dementia care and end of life care
 - g creating a framework which can be applied over a period of years to ensure continuity in the market and clearer financial planning for the Council
 - h ensuring the new/revised framework is simple to apply and to adjust over a given period of time and prior to any further review of the model in future years
 - i ensuring that the Council considers and takes into account its financial resources when setting care home fees
 - j ensuring the Council adheres to its duties under the Equalities Act.
32. The review of the framework and fee levels has included a comprehensive two stage consultation process with the care home providers, undertaken over a six month period from May to October 2012. Throughout this process, the Council has sought to work with the NCA and its executive members have broadly

supported the project scope and have provided feedback on the process which has helped to ensure that it is robust and comprehensive.

Consideration of Inflation

33. In determining future fee levels, consideration has also been given to future inflation related fee increases. Currently, in its contracts with external providers for social care services, the Council does not include a clause which ties it to a specific inflation formula. Instead, the Council has maintained that inflation related increases will be considered by Members as part of their annual budget setting processes.
34. In their discussions with the Council over the past 4-5 years, the NCA executive have requested that an inflation formula which takes in to account key elements of their costs, be agreed and included in their contracts. This has not been agreed by the Council to date.
35. The advantages of establishing and applying an inflation formula are:
 - it provides a transparent way for updating the fee model annually
 - it prevents the need for the Council to review the fees on an annual basis
 - it minimises the risk of challenges, or threats of challenge, being brought on an annual basis
 - it reduces the need for periodic and costly reviews to determine actual costs in order to inform future fee levels.
36. The disadvantages of applying an annual inflation formula are:
 - it commits the Council to an increase which may prove to exceed the true inflation in actual cost experienced by providers.

Stage 1 – Provider Survey

37. Stage 1 of the consultation process entailed sending out a questionnaire to all of the older persons' care homes seeking information to establish their actual costs. Providers were given a four week period, between 8th May and 6th June 2012, to complete and return the questionnaire and support was made available during that time from KPMG and from officers within the Council to providers who had any queries or were experiencing difficulties in completing the form. This report refers to this as the 'provider survey'.
38. As well as considering the options for future fee levels, the survey has also sought feedback from providers about the current framework and the 5 bandings. This has entailed consideration of the following:
 - whether fees should continue to be allocated on the basis of rewarding good quality

- whether the annual audit process needs to be changed to focus more time and resource on the lower band homes (Bands 1 and 2) in order to help improve quality of care
 - whether environmental factors should continue to be taken in to account in the allocation of fees
 - whether the Council, over an identified period of time, ceases to fund placements in Band 1 homes and if so, what the implications would be both in terms of future capacity and on finances
 - whilst the current model includes an enhanced payment level for dementia provision, overall the quality of dementia provision has not improved as had been hoped. Consideration is being given to whether the Council should only allocate the enhanced dementia payment to those homes where the quality exceeds an agreed threshold.
39. The proposals align with the strategic objectives of continuing to develop and promote good quality care services and to focus particularly on improving the quality of dementia care. In particular, proposals have been made to award a higher level of payment for dementia services to those homes which are able to demonstrate high quality dementia care. The criteria for dementia placements is also being revised to focus on those people who have higher care and support needs as a result of their dementia. This initiative has yet to be devised and the Council is seeking to work with care home providers in its development. Implementation of the initiative would need to be phased over a period of time in order to prevent the destabilisation of current provision. It is anticipated that the transition period would take place over the next three years.
40. The Council also proposes that a limited number of care homes are awarded 'beacon status'. These homes would have a specific remit to promote best practice within their locality, including sharing their expertise and knowledge through a process of mentoring and providing support to those providers who historically who have not provided good quality care. It is proposed that a number of specific projects are considered and implemented to support lower banded homes to improve the quality of care. The Council will work with providers to develop this initiative.
41. A total of 70 completed questionnaires were returned, representing just over 41% of all of the older persons care homes in Nottinghamshire. There was a cross section of responses covering the different registration categories (residential and nursing) as well as a good geographical spread. The number of completed returns from Band 2 homes was lower than that of the other bands.
42. Once the questionnaires were returned, any queries were raised by officers with the relevant providers for clarification to ensure the data was robust, the information was aggregated and analysed and this has enabled the Council to determine the current costs to the market of providing residential care and nursing care.

43. Information from the survey on all of their costs including staff costs and non-staff costs across the different care types and quality bandings, and also their expectations on return on operations and return on capital, has been used to create an average cost of operating a care home in Nottinghamshire, as well as exploring costs associated with the provision of high quality dementia care. These costs have been segmented according to type of care home provision and the Council has relied on them when devising its fee proposals.

Comparison with other recent local cost models

44. It is important to note that in their rulings, the courts considered that while national factors may give an indication of costs, local factors should prevail when councils are setting their fee levels.
45. Accordingly the Council has ascertained the actual costs of local providers through the provider survey. The costs from the provider survey have been compared to the costs identified in other similar surveys. These comparator surveys are:
- a survey commissioned by a number of care associations in the East Midlands and the NHS East Midlands Resource Hub and undertaken by Laing and Buisson in 2010/11
 - a survey commissioned by the Nottinghamshire Care Association and undertaken by Laing and Buisson in 2010/11
 - a survey undertaken nationally by Laing and Buisson in 2008.
46. Given that the surveys were undertaken at different times, there are some likely to be some differences in the cost bases and there is some variation between the various cost elements. However, the overall costs and identified fee levels are broadly similar to each other (see **Appendix A**).
47. In addition to the above, consideration has also been given to the most recent survey undertaken by Laing and Buisson in 2012 and also to known fee levels across other neighbouring councils. Currently, Nottinghamshire's minimum fee levels are amongst the lowest within the comparable councils, whereas its higher band fee levels are the highest of the other councils.

Consideration of models for calculating inflation

48. Given the legal context and in order to reduce the need for periodic and costly reviews to determine actual costs to inform future fee levels, consideration has been given to incorporating an inflation formula which takes in to account key elements of costs, in to the future fee model. An inflation formula will provide a transparent way for updating the fee model annually.
49. Possible models for inflation range from applying a nominal flat rate percentage each year to complex models which recalculate individual elements of the costs

of homes each year to reflect specific impacts of inflation. In determining a model relevant considerations include the following factors:

- ease of understanding
- ease of calculation
- ease of application
- independence
- relevance to cost increases.

50. A number of proposals for increasing fees to reflect inflation have been developed and these are explained below. It should be noted that past changes in figures are not necessarily a guide as to how figures may change in the future.

- a Flat rate increase of 2.5% per annum
- b Retail Price Index (RPI) excluding mortgage payments in October of each year
- c Consumer Price Index (CPI) in October of each year
- d Index based on Average Weekly Earnings (AWE) in the Health and Social Care Sector for staffing costs (EARN03) and CPI for non-staffing running costs in October of each year. Finance costs are not inflated. In this model it is assumed that costs are made up as follows:-

Staffing	69%
Non-staffing running costs	26%
Finance costs	5%

(Figures based on data from the provider survey)

- e Index based on Average Weekly Earnings in the Health and Social Care Sector for staffing costs and a range of indices for elements of non-staffing running costs. Finance costs are not inflated. In this model it is assumed that non-staffing running costs are made up as below. Index used for inflation is also shown. All indices are produced by the Office for National Statistics (ONS). Figures used are for the second quarter of each financial year.

		ONS Index
Repairs and maintenance	23%	04.3
Food	20%	01.1
Utilities	17%	04.5
Other running costs	40%	CPI

(Figures for split of non-staffing running costs based on data from the provider survey).

51. The model of a flat rate of 2.5%, (a) above, does not take in to account any established inflation indices and does not necessarily bear any relation to the general inflation levels in the economy or the specific factors relevant to the social care sector. The RPI and CPI (b) and (c) above, relate to general inflation but do not take in to account the specific cost pressures that make up the key elements of costs within the social care sector. Index based on Average Weekly Earnings (AWE) in the Health and Social Care Sector for staffing costs (EARN03) and CPI for non-staffing running costs, (d) above, takes into account staffing costs related to the sector but then non staffing costs are based on CPI. The AWE/Detailed indices, (e) above, takes in to account those factors that have a significant impact on all of the costs facing the social care market and as such, it is the most relevant to this provision and therefore is the preferred model for determining the level of inflation to be applied on an annual basis.

Outline of the fee proposals

52. The proposals for future Fair Price for Care framework and the future fee levels have been informed by the Council's commissioning intentions, as outlined in sections 27 and 28 above, and by the information gathered from the provider survey. Subsequently, consideration has also been given to more recent national survey undertaken by Laing and Buisson during 2012 (see paragraphs 94 – 96 below).
53. The future fee proposals are based on the current framework being maintained, with the differentials between the bands remaining the same. This would mean that the same cash uplift in fees is applied to each band.
54. The average quality banding of the 70 respondents to the survey was 3.2. The data from the survey shows that the actual costs identified by the homes do not correlate with the banding of the home. Various other factors, such as the size of the home, do however impact on actual costs. The consultation showed that providers are supportive of the banding structure as a means of improving quality through the allocation of higher fees as care homes move in to the higher bands. The fee proposals therefore are based on the continuation of the five bandings. The average cost of operating a care home in Nottinghamshire has therefore been re-calculated from the survey data, and then inserted at the mid-point of the banding. This reflects the fact that the cost data is an average and representative of all bands, and it represents an easily understood translation of the survey data into the fee level structure.

Assumptions on return on operation and capital

55. In their survey responses and in their feedback to the consultation process, providers expressed differing expectations on the level of return on their investment. Account has been taken of the national survey data and on the current economic climate, and on this basis, the proposal for future fee levels is based on an assumed return on operation of 18%. Whilst a number of providers responding to the consultation expected higher levels of return, other

providers acknowledged that an assumed return on operations of 18% was reasonable given the current economic climate.

56. The fee proposals are also based on a return on capital of 7%. The return on capital is a measure of the expected annual return (profit) generated by a provider when making a significant capital investment into the purchase, construction or refurbishment of a care home. The information from the provider survey was that a 7% return, on average, was expected. This matches other data sources such as the Laing and Buisson research which also applies a 7% return on capital.

Assumptions on occupancy levels

57. The data from the provider survey identified average occupancy levels of 83% in Nottinghamshire. When developing the initial Fair Price for Care framework, an average occupancy level of 90% was built in to the model as this was identified as the 'industry norm' from market analysis such as that undertaken by Laing and Buisson in 2008 and subsequently in their 2012 survey. Current fees assume 90% occupancy.
58. In the Stage 2 consultation process, the Council has proposed basing its fees for 2013/14 and beyond on average assumption levels of 92%. It is not considered reasonable to expect the Council to fund providers' overhead costs for empty beds at occupancy levels of 83% as identified by providers in their survey responses. This would mean that the Council would be funding costs which arise from inefficiencies in the market. Nonetheless, the Council recognises that providers will not be able to operate at average occupancy levels of 100% because of the following:
- turnover of residents – it is reasonable to expect that providers will not be able to fill vacancies as soon as they become available
 - the Council's policy is to ensure that people do not have to share a room unless it is their expressed wish

Adjustments to staffing levels

59. The main element of cost for all care home provision is staffing costs. As a proportion of total operating costs, responses to the provider survey indicated that staffing accounts for 69% of costs across all care homes.
60. The provider survey reported a significantly higher average number of hours of staff time per resident in Nottinghamshire compared to the figures for 'industry norms' as reported by Laing and Buisson based on their 2008 analysis of care home providers nationally. For care homes (residential) the staffing levels reported in the provider survey were on average 15% above the Laing and Buisson industry norm, and the staffing levels for care homes with nursing were reported in the provider survey to be an average 14% higher than the industry norm.

61. The fee levels proposed in the Stage 2 consultation document were based on staffing levels which are above the Laing and Buisson industry norms data but below the staffing levels identified by providers in the survey. As such the fee proposals consulted on were based on staffing levels at a point between the two sets of data, enabling providers to have staffing costs in care homes which are 7.5% higher than the national average, rather than 15% higher as reported by providers in the survey, and for care homes with nursing, 4% higher than the national average, rather than 14% higher as reported in the survey response.
62. The staffing levels for care homes with nursing, in the fee proposals consulted on, were adjusted to a lower level than that identified from the survey because they took into account the staffing costs arising from health funded Continuing Health Care placements which at times will include the need for one to one staffing. Fees for Continuing Health Care placements are negotiated by health commissioners directly with the providers as part of their Any Qualified Provider accreditation process and this is agreed outside of the Council's fee structure.

Stage 2 – Consultation Report and Feedback from Providers

63. Stage 2 of the consultation process entailed sending out a report to all of the older persons' care home providers across Nottinghamshire as with the Stage 1 provider survey, to inform them of the findings of the Stage 1 process, and outlining the set of proposals on the future fee levels and fee structure based on the assumptions and adjustments identified in paragraphs 59 – 62 above. (See **Appendix B**).
64. Providers were asked to respond to 12 questions relating to the findings from the survey, the proposals on future fee levels and about the impact the proposed fees would have on their business. As well as inviting their comments in writing, two provider meetings were also held in early September, one in the north and one in the south of the county, giving providers the opportunity to raise questions about the fee proposals and to provide feedback on these.
65. The consultation was open for a six week period from 6th August to 17th September 2012. During this period, two consultation events were held, in order to give maximum opportunity for providers to respond to the proposals.
66. A total of 23 care home providers submitted a written response to the consultation document, representing 49 of care homes and a total of 33 providers attended the consultation events, representing 45 of older persons care homes. A written response was also received from the NCA who were also represented at both the consultation events. **Appendix C** outlines the full details of all the responses received and of the Council's comments relating to each of these.
67. Overall, the feedback from the consultation was that providers support the current Fair Price for Care model and framework and the proposal to continue with this in order to continue to reward good quality services. Providers also

welcomed the proposal to identify and apply an inflation formula for implementation on an annual basis.

68. In terms of the proposed fee levels, two main issues were identified from both the written responses and the verbal feedback received at the events. These related to:

- the assumptions about occupancy levels
- the adjustments relating to staffing levels.

Occupancy Levels

69. The majority of providers who responded to the Stage 2 consultation exercise stated that they are not able to achieve average levels of occupancy at 92%. The reasons they give are as follows:

- the Council's commissioning strategy of helping people to live independently in their own homes for as long as possible means that fewer people are being placed in care homes
- there has been an increase in the level of need of residents, with service users being admitted later than previously. This also shortens the average length of stay, increasing the turnover of residents which reduces providers' ability to sustain high occupancy levels
- the Council does not support placements in shared rooms unless explicitly requested by the residents. Therefore those homes that have shared rooms are usually not able to fill the second bed in a shared room.

70. Currently there is over-provision of older persons care home placements in Nottinghamshire and, in accordance with its commissioning intentions the Council is seeking to place fewer people in care homes. Accordingly, if there were to be a contraction in the market in line with the reduction in council funded placements, through the closure of less efficient homes with lower occupancy levels, that would not be a contravention of the council's duty to support a sustainable private sector market.

Staffing Levels

71. The majority of providers who responded to the Stage 2 consultation stated that their staffing levels are higher than those reported in the Laing and Buisson 2008 survey. The reasons they give are:

- service users have higher levels of dependency because of the Council's policy to support people in their own homes for as long as possible which means that when they are placed in care homes they have more complex social and health care needs, including managing challenging behaviour arising from dementia, or to provide end of life care, all of which require higher staffing levels

- the Laing & Buisson industry norms are not representative of the care home market as they reflect the costs of running a corporate, efficiently run 50 bed care home and this does not reflect the configuration of the average home in Nottinghamshire
- they would not be able to provide a good quality care which promotes and maintains service users' dignity if their staffing levels were at those identified in the Laing and Buisson industry norms data.

72. Following analysis of the feedback from the Stage 2 consultation process providers, further information and evidence was sought from providers. This was to enable account to be taken of the potential impact on providers of the Council's fee proposals specifically in relation to the assumed average occupancy and on staffing levels.

73. A total of 13 providers, representing 38 homes, responded to this further clarification process (see **Appendix D**). The providers re-iterated the same concerns that they had indicated in their initial written response or at the two consultation events and referred to their own staffing levels, as identified in the provider survey. The main points raised are:

Average occupancy levels:

- some providers commented that it is 'unfair' for the Council to set its fee levels on an assumed occupancy of 92% when the provider survey showed that in reality the average levels of occupancy are 83%
- some providers acknowledged that it would not be reasonable for the Council to fund inefficiencies that arise from high levels of voids but then stated that their occupancy levels were lower than they had been historically because the Council was not placing people in care homes
- these providers also commented that in placing people in care homes at a later stage, the average duration of a placement is shorter thereby resulting in a higher turnover of residents resulting in more frequent voids
- two providers commented that a significant number of the beds in their homes are used for 'respite' or 'interim' care resulting in a high level of turnover of residents and thereby an increased likelihood of vacancies

Adjustments to staffing levels:

- The majority of the respondents stated that their staffing levels are higher than the industry norm and that this reflects the increased dependency and higher levels of need of people who are now placed in care homes, and in particular they referred to the needs of people with dementia. Some of the providers referred to the report recently

published by Bupa, Bridging the Gap, 2012 which reports that nationally there has been a need to increase staffing levels in care homes due to greater dependency and higher level of need of residents

- providers stated that there would be a negative impact on the quality of care if they were required to reduce their staffing levels to the levels on which the fee proposals are based
- a number of the providers commented that they want to reward and invest in their staff so that they can maintain a stable and reliable workforce.

74. Providers reiterated that both the average occupancy levels and the assumed staffing levels should reflect the levels that were identified from the provider survey as they reflect the actual costs. It could also be reasonably assumed that the providers' costs will take account of an average occupancy level.

Consideration of Providers' Feedback on average Occupancy Levels of 92%

75. The Provider Survey revealed an average occupancy rate of 83%. The responses received throughout the consultation gave 3 systemic factors which reduce occupancy levels:

- Double rooms – out of the 169 number of independent sector older persons care homes, 109 homes have one or more double rooms. Of these, 53 homes have only one double room. Out of a total of 6,793 of rooms, there are 261 double rooms across the 169 care homes. If only one placement is made in each of these double rooms, the maximum level of occupancy achievable by the providers overall would be 96.3%.
- Time gap between successive occupancies - The Council has for many years implemented a policy of continuing to pay providers for two days following the death of the service user. This is in order to give family members sufficient time to collect the service user's belongings and ensures that respect and dignity is maintained both for the deceased service user and for their family. In making this payment, the Council is contributing to the costs of turnover of residents.
- High turnover rates due to placements being made at much later stages and subsequently for a shorter duration, and higher levels of short term or high levels of respite or interim care. The Council's data does not support this observation as it is evident from recent benchmarking data that the Council is continuing to place a higher number of people in care homes than that of comparator Councils and that the average length of stay in a care home is longer than that of comparator Councils.

76. The only other factor referred to by providers was a lack of demand, and particularly a lack of demand for local authority funded placements. That is not a systemic issue. It is also not something for which the council has any responsibility. The Council is not under any obligation to maintain its

placements at any particular level. Its obligation is to pay a fee for those placements which takes the provider's actual costs into account, and which supports a viable and sustainable market to meet the demand which exists at that time.

77. Over a number of years, the Council has given providers a clear indication of its commissioning intentions to reduce the number of people placed in care homes, with a view to supporting people to remain in their own homes for as long as possible. The Council continues to implement this strategy and therefore anticipates that there will be a reduction in the use of care home placements in the future. Currently there is an over provision of care home beds in Nottinghamshire. Also, the response from providers that occupancy levels are depressed by a decrease in demand for council funded placements shows there is overcapacity in the market.
78. Taking the three systemic factors into account, if there were sufficient demand, then care homes in Nottinghamshire should be able to operate at 92% occupancy or above. This is the figure the Council has used to calculate the future fee proposals.
79. The Council has taken into account the impact on residents where a home may need to close due to low occupancy. The Council has plans and processes in place to ensure that any home closure is managed sensitively, with support provided by social care staff, and with health care staff, to ensure suitable alternative placements are found within the local area and that residents are assisted to move with due consideration given to their specific health and social care needs.

Consideration of Providers' Feedback on Staffing Levels

80. The fee levels proposed in the Stage 2 consultation document were based on staffing levels which are above the 'industry norms' data from the Laing and Buisson 2008 survey but below the staffing levels identified in the provider survey. The proposed fees as set out in the consultation document would enable providers to have staffing costs in care homes which are 7.5% higher than the Laing and Buisson data, rather than 15% higher as reported by providers in the survey, and for care homes with nursing, 4% higher than the Laing and Buisson data, rather than 14% higher as reported in the provider survey.
81. The staffing adjustments for care homes with nursing, in the proposed fees, are greater to reflect staffing costs arising from health funded Continuing Health Care placements which at times will include the need for one to one staffing. Fees for Continuing Health Care placements are negotiated by health commissioners directly with the providers as part of their Any Qualified Provider accreditation process and this is agreed outside of the Council's fee structure.
82. As indicated above, the Council's policy is to support service users to maintain their independence and to remain in their own homes for as long as possible. This will mean that the Council delays the point at which a service user is

placed in a care home and the service user may well have higher levels of need as a result. However it is important to note that this policy is no different to that implemented by other local authorities as all will be striving to reduce the numbers of people placed in care homes.

83. There is no evidence to suggest that in Nottinghamshire, service users are placed in care homes at a much later stage than elsewhere. In fact, benchmarking data shows that the Council continues to place a higher number of people in care homes than other comparator local authorities and the length of stay is also longer in Nottinghamshire than in other comparator local authorities.
84. Some providers also commented that the Laing and Buisson industry norms are not representative of the care home market as they reflect the costs of running a corporate, efficiently run 50 bed care home and this does not reflect the configuration of the average home in Nottinghamshire.
85. It would be reasonable to expect care home providers in Nottinghamshire to run care homes as efficiently as possible and for their staffing levels to reflect this. However, consideration also needs to be given to the provision within the local market. Whilst the Laing and Buisson industry norm data is based on an efficiently run 50 bedded care home, the average sized home identified in the provider survey is a 39.7 bedded unit.
86. The Care Quality Commission (CQC) confirms that it does not use a methodology or tool to determine staffing levels and there are no specific staffing levels or ratios of staff to residents identified in the CQC's 'essential standards'. As part of the registration and inspection processes, the CQC places the emphasis on the provider to ensure they have a process for determining appropriate staffing levels based on the needs of the service users. Also, staffing levels in any one home will vary from time to time, depending on the numbers of residents and their levels of need. In recognition of the fluctuations in need of residents, the Regulator and the 'essential standards' that they use have moved away from a prescriptive and set formula of staff to resident ratios.
87. Feedback from providers to the consultation process shows that staffing levels in care homes in Nottinghamshire vary from provider to provider. However, on the whole, the majority of the providers indicated that they operate at higher staffing levels. During the consultation period many providers suggested that the Laing and Buisson industry norms data was outdated as staffing levels in the industry had increased considerably to reflect higher levels dependency of service users, including increasing numbers of people with dementia, in care homes.

Laing and Buisson 2012

88. Since undertaking the provider survey in May 2012 and consulting with providers on proposed fee levels for 2013/14 and beyond, Laing and Buisson

have issued an updated report and a revised toolkit for determining the cost of care home provision. The toolkit and report were published in October 2012.

89. The toolkit is based on cost benchmarks drawn from a survey of major care home groups, carried out during 2012. Findings from the survey show a significant increase in staffing levels in care homes which “reflect the rising dependency profile of care home residents, as evidenced by successive patient censuses carried out in Bupa care homes, covering about 16,000 residents on each occasion”. Source: ‘Laing and Buisson, Fair price for Care – A toolkit for care homes for older people and people with dementia’, 2012.
90. Table 5 below shows the data on average staffing levels derived from the Laing and Buisson reports of 2008 and 2012 and from the provider survey undertaken in Nottinghamshire in May 2012. The table also shows the assumed staffing levels that were applied to the fee proposals on which the Stage 2 consultation was based.

Table 5: Comparative data on staffing levels

	Staffing hours per resident per week care homes (residential)	Staffing hours per resident per week care homes with nursing
Laing and Buisson 2008	24.5	34.0
Provider Survey 2012	28.7	39.6
Consultation Proposal	26.5	35.6
Laing and Buisson 2012	28.1	37.4

91. The Laing and Buisson 2012 report is based on the findings of the most recent and extensive survey of actual costs for older persons care home provision across the country and provides a reliable indicator of staffing levels. Both this national survey and the local provider survey show that staffing levels have increased in order to meet higher dependency and increasing levels of need of service users within care homes. In setting its fee levels, the Council has given due consideration to the increased costs to providers arising from higher dependency levels.

Fee Proposals for 2013/14 and beyond

92. Consideration has been given to the feedback from providers through the consultation process and to the latest national benchmarking data from Laing and Buisson in relation to the actual cost of care. Accordingly, the fee proposals are based on staffing levels identified in the Laing and Buisson 2012 national survey data. It is proposed that this new fee level is implemented for a five year period with inflation applied on an annual basis as of April 2014 in accordance with the formula identified in section 50 (e) above.

93. Table 6 shows fee levels based on the revised Laing and Buisson 2012 survey, and with an assumed occupancy level of 92%, compared to current fee levels.

Table 6: Proposed fee levels for 2013/14 compared to current fee levels

Proposed fees compared to current fees					
	Band 1	Band 2	Band 3	Band 4	Band 5
Older People					
Current	£348	£391	£417	£443	£469
Proposed	£399	£442	£468	£494	£520
OP Dementia					
Current:	£359	£438	£464	£489	£515
Proposed	£410	£489	£515	£540	£566
Nursing					
Current	£376	£439	£465	£491	£516
Proposed	£433	£496	£522	£548	£573
Nursing Dementia					
Current	£386	£480	£506	£532	£558
Proposed	£443	£537	£563	£589	£615

94. The total estimated additional cost of this proposal is £6.8 million with an increase in the overall cost and average fee paid of 11.8%. The above fee levels would be implemented as the baseline fees for 2013/14. An increase based on the proposed inflationary index would be added to the above base line fees on an annual basis commencing in April 2014.
95. The proposed fees outlined in Table 6 above are based on the comprehensive consultation exercise undertaken with providers during 2012/13. Feedback received from providers during the consultation process has been taken in to account and assumptions about staffing levels have been adjusted in light of the feedback and in consideration of the most recent survey of the sector undertaken by Laing and Buisson. The proposals are also based on average occupancy of 92% to reflect the need for providers to deliver efficient services.
96. As indicated in the table above, the Council is proposing to retain its bandings in order to continue to reward good quality care provision. It is proposed that the fee differentials between the bands should remain the same so that all the homes will get the same amount of increase in monetary terms. The Council is keen to reward good quality care provision but at the same time is seeking to provide an incentive for homes in the lower bands to improve and to move up to higher bands. The Council will seek to work with providers with the aspiration of phasing out Band 1 homes over a period of time. In accordance with the terms of its contract with care homes, the Council is able to terminate a contract on the grounds of poor quality provision where this places service users at significant risk of harm to their health and well-being. Where care homes have their contracts suspended on two or more occasions over a two year period, the Council will seriously consider terminating the contract with the provider.
97. In comparison to fee levels in other councils in the region, Nottinghamshire will continue to pay the highest fees in the region for those homes that are in bands

4 and 5. However, the fees will remain lower in Nottinghamshire for homes in Bands 1 and 2 compared to other councils in the region (see **Appendix E**). This reflects the wide range of fees paid by the Council through its five bandings. It is important to note that the fees set by other councils are likely to change as they will also be reviewing their fee levels in light of recent court rulings.

98. The revised proposed fee structure continues to support higher fees for the provision of high quality dementia care. However, currently, there are a number of care homes that, whilst providing services for people with dementia, are not able to demonstrate high quality dementia care. It is therefore proposed that a higher level of payment is made where providers are able to demonstrate and evidence high quality dementia care, including high level staff training. It is proposed that this will be implemented over a number of months with all new dementia care placements attracting the higher level payment where the providers have shown evidence of high quality dementia care. Those providers who are not able to demonstrate high quality dementia care will not be allocated the higher level of payment for new residents.
99. It is also proposed that the Council will continue to promote high quality care services by introducing a 'Beacon Status' award to a small number of providers who are delivering excellent care services. Providers awarded Beacon Status would be required to work with providers who in Bands 1 and 2 by providing mentoring, shared knowledge, information and access to training were relevant. The Council would want to work with providers in developing the 'Beacon Status' framework. Consideration will also need to be given to how the providers that are awarded the status may be rewarded for the work they undertake.
100. As part of the consultation process, providers were asked if there should be any grounds for changing the annual audit process in relation to the 70:30 weighting between quality indicators and environmental factors. Some providers suggested that the weighting should be changed with less emphasis being placed on environmental factors and more of a weighting on quality indicators. Other providers however, expressed a view that the current weightings are not changed. The Council has given due consideration to the feedback and it is proposed that the weightings are not changed.

Other Options Considered

101. With regards to the funding of care home provision, the Council has given due consideration to the actual costs of care and also of its responsibilities in ensuring there is a sustainable market of care provision to meet current and future demand. The fees proposed for implementation from April 2013 take in these into account whilst also reflecting wider and competing Council priorities.
102. As well as setting and implementing revised fees, the Council will continue to work with care home providers to focus on improving the quality of care services. This will include reviewing its internal processes, including its auditing

and monitoring activities to ensure that the quality of care services continues to improve.

Statutory and Policy Implications

103. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they have been described in the text of the report.

Implications for Service Users

104. The Council is proposing an increase in fees of £51 per person per week for people in care homes and £57 for people in care homes with nursing. In doing so, it is anticipated that care providers will be able to best meet the needs of people that live in care homes. The Council is also proposing to maintain its fee framework, thereby providing financial incentives to providers to continuously improve the services that they provide for service users.
105. The Council has completed an Equality Impact Assessment in order to consider whether the implementation of future fee levels and fee structure is likely to have any adverse impact on specific groups of people within Nottinghamshire and in doing so has considered the actions it will put in place to mitigate against these. As detailed in paragraph 104 above, the proposals are for an increase in payments to care home providers which should make care homes more viable and to enable the quality of care to be improved. Additionally, the proposals include applying annual index linked inflation to the fees reflect increasing costs and therefore financial viability of care homes.

Financial Implications

106. The Council currently spends an estimated £57.8 million per annum on both long-term and short-term care within its local fair price for care framework. The additional annual cost of the revised fee proposals set out in paragraph 89 is estimated at £6.8 million. The total annual cost from 2013/14 is therefore estimated at £64.6 million.
107. The County Council, like all local authorities, continues to face an extremely challenging financial future. The Council has to give due consideration to its key priorities in accordance with its Strategic Plan. The Council has a duty to effectively manage its finite resources whilst at the same time balancing its key strategic objectives which include the following:
- safeguarding children and vulnerable adults
 - meeting increasing demand for children's social care
 - meeting increased demand for essential adult social care services arising from demographic pressures, and within this helping people to live independently in their own homes for as long as possible

- promoting and enhancing economic growth and development including investing in roads, transport and infrastructure
 - supporting the health and wellbeing of its citizens including through the provision of leisure and cultural services.
108. The Council's forecast financial position and initial budget proposals for the period 2013/14 to 2016/17 were set out in a report to Finance and Property Committee on 12th November 2012. The report detailed the financial pressures faced by the Council and identified a need to find further savings estimated at £106 million over the period 2013/14 to 2016/17. Since this report was considered the Government has announced the provisional financial settlement figures for local authorities for 2013/14 and also, in the Chancellors Autumn Statement, that local authorities will face additional budget reductions in 2014/15. A report updating the Council's financial position and setting out final budgets proposals and Medium Term Financial Strategy (MTFS) for the period 2013/14 to 2016/17 is to be presented to Policy Committee on 13th February 2013.
109. Additionally, the Government has stated its intention to undertake a spending review next year to determine spending allocations for 2015/16 and future years. The County Council will need to revisit its budget plans and MTFS following the publication of the results of this spending review. Given previous announcements from the Government regarding the difficulties being experienced in reducing the national budget deficit it is assumed that the County Council will be faced with an increasingly challenging financial position over the next few years.
110. The nature and scale of the financial challenges facing the Council are therefore clear. The proposals set out in this report to increase fees for residential and nursing care under the Council's fair price for care framework, and the consequent additional estimated cost of £6.8 million, need to be considered and balanced against the wider financial pressures faced by the Council.

RECOMMENDATION/S

It is recommended that the Adult Social Care and Health Committee:

- 1) note the findings of the local Fair Price for Care consultation process and the fee proposals arising from this
- 2) note the proposals to further support improvements in the quality of care provision through the development of initiatives for allocation of a higher level of payment for high quality dementia services and through the introduction and implementation of a 'Beacon Status' award
- 3) recommend the proposed changes to Policy Committee for approval.

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Constitutional Comments (KK 25/01/2013)

111. The proposals in this report are within the remit of the Adult Social Care and Health Committee.

Financial Comments (RWK 24/01/2013)

112. The additional cost of the fee proposals set out in the report is estimated to be £6.8 million. This additional financial pressure will need to be considered by Policy Committee and the County Council in determining the County Council's 2013/14 Budget and the County Council's Medium Term Financial Strategy (MTFS) for the period 2013/14 to 2016/17.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- a. East Midlands and the NHS East Midlands Resource Hub survey of care home costs, commissioned from Laing and Buisson, 2011
- b. Nottinghamshire Care Association, survey of care home costs, commissioned from Laing and Buisson, 2011
- c. 'Calculating a fair market price for care – A toolkit for residential and nursing homes' – William Laing for Joseph Rowntree Foundation, September 2008
- d. 'Bridging the Gap – Ensuring local authority fee levels reflect the real costs of caring for older people' Bupa, 2012
- e. 'Fair Price for Care – a toolkit for care homes for older people and older people with dementia' Laing and Buisson, October 2012.

Electoral Division(s) and Member(s) Affected

All.

ASCH100