

SLOUGH BOROUGH COUNCIL

REPORT TO: CABINET **DATE:** 16TH July 2012

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WARD(S): All

PORTFOLIO: Councillor Walsh – Health & Wellbeing.

PART I KEY DECISION

PROJECT TO ESTABLISH THE ACTUAL COST OF CARE RELATING TO REGISTERED CARE SERVICES FOR SERVICE USERS OF ADULT SOCIAL CARE PLACED IN SLOUGH AND OUTSIDE THE BOROUGH

1 Purpose of Report

To present the fee proposals for 2012/2013 based upon the actual cost of care relating to Registered Care Services for service users of Adult Social Care placed within Slough and outside the borough.

2 Recommendations

The Cabinet is requested to resolve:

- (a) that the “floor” and “ceiling” usual costs of residential care, residential dementia care, nursing care and nursing dementia care be approved as outlined in the report. These are:

	Floor	Ceiling
Residential Care	£466.40	£541.40
Residential Dementia	£583.14	£658.14
Nursing Care	£599.72	£674.72
Nursing Dementia	£609.72	£684.72

- (b) that the total cost of the fee increases of £468,900 be approved as outlined in the report and as follows:
1. Increases agreed for physically frail / dementia clients with residential and nursing homes in Slough - £71,100
 2. Increases agreed / likely to be agreed for physically frail / dementia clients with residential and nursing homes out of borough - £47,800
 3. Increases agreed / likely to be agreed for clients with a learning disability, physical disability or mental illness - £350,000

(c) that work proceeds with the providers to develop the quality standards to be achieved.

3 **Community Strategy Priorities**

3.1 Implementation of the recommendations of the project to establish the actual cost of care in Slough will contribute to the delivery of Community Strategy priorities as follows:

Health and Wellbeing

- Ensuring providers of care homes in Slough are able to deliver care services to our residents to the high standards and quality levels required

Economy and Skills

- Ensuring providers are paid at a level which sustains their business and rewards their workforce at levels which enable staff retention.

4 **Joint Strategic Needs Assessment (JSNA)**

The JSNA does not make specific reference to provider fee levels within Slough.

5 **Other Implications**

(a) Financial

Following the determination of the usual cost of care rates by the process outlined in this report, negotiations were held with each home to determine their individual increases for the current year. The negotiations were based on the following principles:

- where the current price being paid is below the floor, the price is increased to floor level;
- where the current price being paid is above the floor level, the price is increased by an inflation uplift or up to the ceiling level whichever is the lower;
- where the current price being paid is above the ceiling level, no increase is paid.

The additional costs arising out of this process are as follows:

1. Increases agreed for physically frail / dementia clients with residential and nursing homes in Slough - £71,100
2. Increases agreed / likely to be agreed for physically frail / dementia clients with residential and nursing homes out of borough - £47,800
3. Increases agreed / likely to be agreed for clients with a learning disability, physical disability or mental illness - £350,000

The total agreed or likely to be agreed increases is therefore £468,900 and this can be contained within the amount set aside for care fees inflation within the budget estimates for 2012-13.

(b) Risk Management

Risk	Mitigating action	Opportunities
Legal A number of local authorities have had their fee decisions subject to judicial review and this was considered to be a high risk.	The process followed was a detailed consultative one with all providers being invited to presentation meetings in February, March and April. Comments and suggestions from providers were actively sought and acted upon as part of the process. Legal advice has also actively been sought and received from their involvement as part of the project team.	During the process we have built up a good relationship with our providers which will assist in the coming months when we look to introduce new contracts and a quality model which will refine the relationship between price and quality.
Property	N/A	N/A
Human Rights	N/A	N/A
Health and Safety	N/A	N/A
Employment Issues	N/A	N/A
Equalities Issues	N/A	N/A
Financial	The potential additional cost of this project was unknown at its commencement; provision for increases has been made in the budget for the current year on the basis of estimates for inflation and benchmarking from other exercises that were available.	All fee increases approved are to be back dated to 1 st April 2012. The additional cost is within the sums provided for in the original budget.
Timetable for delivery and Project Capacity	External help was brought in (a) to manage and lead the project and (b) specialist advice sought from Ernst and Young regarding some technical elements of the process. Ernst and Young brought their experience from assisting other Council's through the same process and were able to advise on the calculation of the capital cost of care as well as the determination of the usual cost.	There is a need to complete the process as soon as possible in order to pay the providers the agreed rates from the start of the financial year. The process is required to be completed therefore by mid July 2012.

(c) Human Rights Act and Other Legal Implications

Under section 21 of the National Assistance Act 1948 ("the Act") and the Directions made under it and LAC 93 (10), the Council has a duty to arrange accommodation for adults who by reason of age, illness or disability or any other circumstance are in need of care and attention.

The National Assistance Act (Choice of Accommodation) Directions 1992 allows the Council to fix a maximum amount or "usual cost" that it is prepared to pay for particular types of residential care. Paragraph 3(b) states that that the individual should be accommodated at a place of his choice (known as preferred accommodation) provided making arrangements at the individual's preferred accommodation would not require the Council to pay more than they would usually expect to pay having regard to the individual's assessed needs.

The Council is not obliged to set a maximum cost for care, but if no maximum cost for care is set by the Council, the Council can not restrict a person's choice of accommodation based on cost, and to do so would be unlawful.

The Council is required to pay the amount it usually costs to meet the individual's objectives set out in the needs assessment and care/support plan [less any means tested contribution]. The Council is not required to pay more than they would usually expect to pay, having due regard to assessed needs. More than one usual cost should be set where the cost of meeting specific needs is different.

The Government issued statutory guidance Local Authority Circular - LAC 2004 (20) on setting the usual cost of care under section 7A of the Local Authorities Social Services Act 1970. By section 7 of the Act 1970, the Council, in carrying its functions, must follow general guidance issued by the Government unless it has cogent reasons for departing from the guidance and if it does so, the Council must not take a "substantially different course" of action.

On the setting of care home fees, paragraph 2.5.4 of LAC 2004 (20) states:

"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'). 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. A council should set more than one usual cost where the cost of providing residential accommodation to specific groups is different. In setting and reviewing their usual costs, councils should have due regard to the actual costs of providing care and other local factors. Councils should also have due regard to Best Value requirements under the Local Government Act 1999."

In setting the usual cost of care, the Council is also required to pay due regard to Building Capacity and Partnership in Care issued by the Department of Health issued in October 2001. The guidance is referred to as "the Agreement between healthcare, housing and social care" It provides a framework for joint working between councils and providers when setting usual costs and principles so that there is a balance between the usual cost and the actual cost of providing care. The Agreement requires Council's commissioners when setting usual costs to take account of providers' current and future costs, as well as the factors that affect those costs such

as planned outcomes for residents and efficiencies. The Agreement requires commissioners of care to having clear strategies and consultation procedures and for providers to proactively engage with commissioners'. For example, providing a break down of the actual costs of care.

In summary therefore, in setting the usual cost of care,

- (i) the Council should pay due regard to the actual cost of providing accommodation in Slough as if resident and third party contributions did not exist.
- (ii) the Council's usual cost of care should be informed by the actual cost of care.
- (iii) More than one usual cost should be set where the cost of meeting specific needs is different; and
- (iv) There shouldn't be a significant disparity between the usual cost and the actual cost of care.

(d) Equalities Impact Assessment

An Equalities Impact Assessment has been undertaken. The EIA has not identified any potential for discrimination or adverse impact and all opportunities to promote equality have been taken.

(e) Workforce

There are no workforce implications for Council employees.

6 Supporting Information

6.1 Background

- 6.1.1 The costs of most residential and nursing care placements in Slough have been set through prices agreed as a result of commissioning of services through block contractual arrangements implemented following tender exercises a number of years ago. In other cases 'spot purchases' of individual placements have been made and prices agreed on an individual case by case basis with reference to the Council's 'usual cost of care' rates. A decision is then taken annually on inflationary uplifts of care costs unless an agreed annual formula is set out in a contract.
- 6.1.2 During the last year there have been a number of instances of Judicial Review cases where Local Authorities have been successfully challenged on the rates they set for the 'usual cost of care' for residential and nursing care services. The 'usual cost of care' is the price stated by a Local Authority which will usually be paid for residential and nursing care placements for different categories of care.
- 6.1.3 In taking forward the Judicial Review cases, registered care home providers were seeking to challenge the fee rates set by some Local Authorities on the basis that Council fees did not reflect the actual costs of providing services. In particular there were cases taken against Local Authorities by home care providers where Pembrokeshire, Leicestershire and Sefton Councils were found to have set fee levels without **due regard** to the 'actual costs of care'.
- 6.1.4 The findings of these Judicial Reviews have made it clear that when setting care fees, Councils should consult widely with provider agencies to ascertain the "actual costs of care" and have due regard to them when setting their fee rates. These

cases and a subsequent one successfully defended by Neath/Port Talbot Council, made it clear that a meaningful consultation process with providers to identify actual costs of care should be undertaken and that Council's should pay due regard to these when setting the 'usual cost of care' fees.

- 6.1.5 However, the Neath and Port Talbot case also confirmed that a Council does not need to ultimately set fees at a level which corresponds with the 'actual costs' as it can take into account the Council's available resources, quality issues and future commissioning intentions when setting fees. The slide at Appendix A demonstrates the issues that can be taken into account in the fee setting process.
- 6.1.6 As regards the future commissioning intentions these have been outlined in the report "Residential and Nursing Care – future commissioning intentions and service provision", also on this agenda.
- 6.1.7 This report notes that during the last four years the general trends in residential and nursing care placements have been:
- A decline in residential care placements
 - Increased placements in residential elderly mental health (EMH) and nursing EMH
 - Nursing placements remaining relatively stable
- 6.1.8 These trends are expected to continue in the coming years. Future commissioning strategies will seek to ensure alignment between contractual commitments and these projected needs.
- 6.1.9 In summary therefore in order to set care fees for the present and future years and avoid running the risk of being challenged under a Judicial Review, the Council needed to:
- a) engage with providers and have a fully open and transparent consultation process;
 - b) make arrangements to collect the current **actual costs** of care from providers
 - c) from this process, determine the Council's "usual cost" for each category of care

6.2 The process undertaken in Slough.

- 6.2.1 In order to agree care fees with provider agencies locally and to set the 'usual cost of care' rates for 2012/13, the Council has undertaken a detailed consultation and information gathering exercise with all residential and nursing care providers in Slough.
- 6.2.2 All care home providers in the Borough were invited to meetings in February, March and April to inform them of this exercise and to consult with them on the proposed approach to establishing the 'actual costs of care' for each provider. This information has then informed the setting of the 'usual cost of care' rates.
- 6.2.3 A draft questionnaire and financial template were developed jointly with providers to gather information for this exercise and provider agencies were invited to comment on the methodology, questionnaire and template content and timescales for activity. Revisions were made to the questionnaire and template following comments

received from providers with the final version agreed at the providers meeting in April.

- 6.2.4 The questionnaire was circulated to all care providers in Slough on 10th April for completion and return by 11th May. In the event the following returns were received:

Residential Care – none out of five possible (0% return)

Residential Dementia – one out of four possible (25% return)

Nursing Care – four out of six possible (67% return)

Nursing Dementia - three out of five possible (60% return)

- 6.2.5 The approach taken to determine the actual cost of care in Slough following the consultation exercise is set out in the sections below.

Residential Care

- 6.2.6 As the Council did not receive any response or actual cost information from providers in this category, the approach taken to arrive at the usual cost was based on examination of what the Council currently pays. The weighted average cost (i.e. the total paid per week divided by the total number of residential beds) was found to be £525.63. To arrive at the usual cost of residential care in Slough for 2012/2013 the weighted average cost of £525.63 was increased by the published April 2012 CPI inflation rate of 3.0% to arrive at a usual cost of £541.40.

Residential Dementia (EMI) Care

- 6.2.7 Under this category the Council received only one return; this was insufficient to make reasonable calculations of the usual cost of care and so the same approach as for residential care placements was taken. The weighted average cost of the current placements is £638.97 and to arrive at the usual cost of residential dementia care in Slough for 2012/2013 the weighted average cost was increased by the published CPI inflation rate of 3.0% to arrive at a usual cost of £658.14.

Nursing Care

- 6.2.8 In this category the Council received returns from 4 homes. The costs were analysed, queries taken up with individual homes and adjustments made as and where appropriate. Costs were returned for last year (2011/2012) and the current year (2012/2013). The cost per bed breakdown by provider (anonymised) is shown at Appendix B. The weighted average cost per bed for the 4 homes is £674.72 for the current year. The summarised breakdown is shown in the table below.

NURSING CARE 2012/2013		Weighted Average	
DESCRIPTION	Cost per bed	£	%
STAFFING			
Nursing Care			
Total direct staff costs - nursing care	391.50		
Total indirect staff costs - nursing care	18.30		
Total Staffing Costs	409.80		61%
Premises	53.06		8%
Running Costs	93.40		14%
Total ongoing costs (before capital costs)	556.26		
Capital Costs	118.46		18%
Total ongoing costs (after capital costs)	674.72		100%

Nursing Dementia (EMI) Care

6.2.9 The Council received returns from 3 homes and again the costs were analysed, queries taken up with individual homes and adjustments made as and where appropriate. Costs were returned for last year (2011/2012) and the current year (2012/2013). The detailed cost per bed breakdown by provider (anonymised) is shown at Appendix B. The weighted average cost for the 3 homes is £684.72 for the current year. The breakdown is shown in the table below.

NURSING EMI CARE 2012/2013		WEIGHTED AVERAGE	
DESCRIPTION	Cost per bed		%
	£		
STAFFING			
Nursing EMI Care			
Total direct staff costs - nursing care	411.31		
Total indirect staff costs - nursing care	21.78		
Total Staffing Costs	433.09		63%
Premises	52.03		8%
Running Costs	90.28		13%
Total ongoing costs (before capital costs)	575.40		
Capital Costs	109.32		16%
Total ongoing costs (after capital costs)	684.72		100%

6.3 Quality Standards

- 6.3.1 The Council need to set both “floor” and “ceiling” rates in each category, the floor being the lowest level and the ceiling being the highest which would be paid to a home which not only meets all the 2002 Physical Environment (PE) National Minimum Standards but also achieves certain yet to be agreed quality standards. It is intended that a quality model is developed jointly with our providers over the coming months by which we can assure high quality services are delivered within the agreed budgeted rates. These issues will be part of the future commissioning strategy as proposed in the report “Residential and Nursing Care – future commissioning intentions and service provision” referred to above.
- 6.3.2 The templates returned and analysed in the nursing category represent 93% of beds that comply with the National Minimum 2002 PE standards and those in the nursing dementia category represent 92% of the beds. Whilst further work needs to be completed on the additional quality standards by which the homes will be assessed, the rates calculated above are the ceiling rates as they predominately come from homes compliant with the current standards. However a deduction does need to be made for homes which do not meet these minimum standards. A deduction that is consistent with that used in other care cost calculation models has been agreed at £75 per week.

6.4 Floor and Ceiling Rates 2012/2013

- 6.4.1 Consequently the recommended floor and ceiling rates are as shown in the table below:

Recommended Rates 2012/2013	Floor	Ceiling
	£	£
Residential Care	466.40	541.40
Residential Dementia EMI	583.14	658.14
Nursing Care	599.72	674.72
Nursing Dementia	609.72	684.72

6.4.2 The ceiling rate is therefore the (maximum) rate which the Council will pay for care to a home which is fully compliant with the 2002 PE National Minimum Standards and in addition meets the agreed quality standards.

6.5 Out of Borough Placements

6.5.1 As far as older people placements with out of borough providers are concerned, we have written to all the other authorities where we have placements to enquire as to their approach to awarding increases for the current year 2012/2013.

6.5.2 Out of 32 authorities contacted, we have had replies from 14 (44%) and in general increases have been awarded at fairly low rates (2.5% or less) with the exception of Devon County Council who have awarded an average increase of 7% following a consultation exercise. The current average cost of these 33 placements is £557 per week and an uplift in line with the CPI inflation index for April of 3% would cost £28,675 per annum. Consultation exercises are still ongoing in quite a number of authorities so it is difficult to be precise about the final cost outcome but based on the responses received so far it is estimated that an overall average cost increase of 5% would be the maximum i.e. a total cost of £47,800.

6.5.3 In terms of the remaining care categories of learning disabilities, physical disabilities and mental illness there have been relatively few requests for increases from providers to date and those that have been received have ranged from 0% to 4.5%. An inflation award of 3% to all placements (158 in total) would cost an additional £350,000 and this is assumed to be the likely additional cost for these placements.

7 Comments of Other Committees

This report was presented to Overview and Scrutiny Committee on 10th July 2012. Because of the short timescales involved between meetings, any comments from Overview and Scrutiny Committee will be reported verbally.

8 Conclusion

As a result of this project, the Committee are asked to agree the usual floor and ceiling cost of care rates for Slough for 2012/2013 in each of the four care categories of residential care, residential dementia care, nursing care and nursing dementia care.

The floor and ceiling rates have been used to determine the actual increases paid to providers in the current year based on their individual rates in relation to the floor and ceiling.

It is further proposed that over the coming months work is undertaken jointly with the providers to develop a quality model which when the defined standards are met, will enable them to progress to the ceiling rates. It is intended that the quality model

will also be used in the forthcoming commissioning process referred to in the report (paragraph 6.1.7).

The Cabinet is requested to resolve:

(a) that the “floor” and “ceiling” usual costs of residential care, residential dementia care, nursing care and nursing dementia care be approved as outlined in the report. These are:

	Floor	Ceiling
Residential Care	£466.40	£541.40
Residential Dementia	£583.14	£658.14
Nursing Care	£599.72	£674.72
Nursing Dementia	£609.72	£684.72

(b) that the total cost of the fee increases of £468,900 be approved as outlined in the report:

(c) that work proceeds with the providers to develop the quality standards to be achieved.

9 **Appendices Attached**

‘A’ - **DETERMINATION OF THE USUAL COST OF CARE**

‘B’ - **SUMMARISED COST PER BED FROM PROVIDERS**

10 **Background Papers**

‘1’ - letter from Berkshire Care Association dated 2 February 2012

‘2’ - Provider Consultation meeting on 1st February 2012 – presentation and minutes

‘3’ - Provider Consultation meeting on 27th March 2012 – presentation and minutes

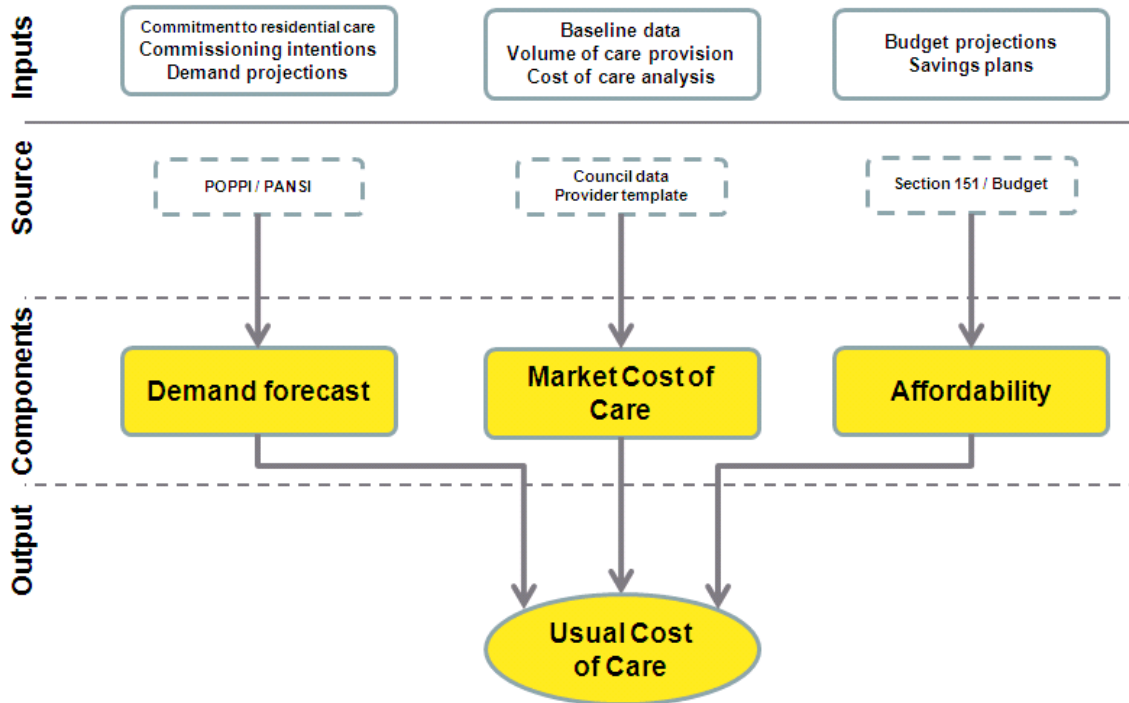
‘4’ - Provider Consultation meeting on 26th April 2012 – presentation and minutes

‘5’ - Questionnaire, Financial templates and guidance notes

‘6’ - Questions and responses to consultation

APPENDIX A

DETERMINATION OF THE USUAL COST OF CARE



APPENDIX B

SUMMARISED COST PER BED FROM PROVIDERS

1. Nursing Care

NURSING CARE 2012/2013	PROVIDER A	PROVIDER B	PROVIDER C	PROVIDER D	WEIGHTED AVERAGE
DESCRIPTION	Cost per bed £	Cost per bed £	Cost per bed £	Cost per bed £	Cost per bed £
Staffing					
Total direct staff costs - nursing care	398.46	361.90	413.05	374.32	391.50
Total indirect staff costs - nursing care	7.27	1.73	24.50	26.11	18.30
Total Staffing Costs	405.73	363.63	437.55	400.43	409.80
Premises	63.70	52.49	51.00	51.97	53.06
Running Costs	101.95	112.76	90.00	86.16	93.40
Total ongoing costs (before capital costs)	571.38	528.88	578.55	538.56	556.26
Capital Costs	154.42	141.66	98.08	112.32	118.46
Total ongoing costs (after capital costs)	725.80	670.54	676.63	650.88	674.72

2. Nursing Dementia

NURSING EMI CARE 2012/2013	PROVIDER A	PROVIDER B	PROVIDER C	WEIGHTED AVERAGE
DESCRIPTION	Cost per bed £	Cost per bed £	Cost per bed £	Cost per bed £
STAFFING				
Nursing EMI Care				
Total direct staff costs - nursing care	379.34	453.55	439.93	411.31
Total indirect staff costs - nursing care	26.25	1.73	25.33	21.78
Total Staffing Costs	405.59	455.28	465.26	433.09
Premises	51.97	52.49	51.33	52.03
Running Costs	86.16	112.76	90.00	90.28
Total ongoing costs (before capital costs)	543.72	620.53	606.59	575.40
Capital Costs	112.32	141.66	98.08	109.32
Total ongoing costs (after capital costs)	656.04	762.19	704.67	684.72