



Friday, 16 November 2012

HEALTH SCRUTINY BOARD

A meeting of **Health Scrutiny Board** will be held on

Thursday, 29 November 2012

commencing at **4.00 pm**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Councillor Barnby (Chairman)

Councillor Mills

Councillor Bent

Councillor Davies (Vice-Chair)

Councillor Doggett

Councillor Parrott

Councillor Thomas (J)

Councillor Hytche

Working for a healthy, prosperous and happy Bay

For information relating to this meeting or to request a copy in another format or language please contact:

Kate Spencer, Town Hall, Castle Circus, Torquay, TQ1 3DR

01803 207014

Email: scrutiny@torbay.gov.uk

HEALTH SCRUTINY BOARD AGENDA

1. **Apologies**
To receive apologies for absence, including notifications of any changes to the committee membership.
2. **Minutes** (Pages 1 - 2)
To confirm as correct records the Minutes of the meetings of this Committee held on 4 October 2012.
3. **Declarations of interests**
 - a) To receive declarations of non pecuniary interests in respect of items on this agenda

For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Democratic Services or Legal Services prior to the meeting.)
4. **Urgent items**
To consider any other items that the Chairman decides are urgent.
5. **Adult Social Care - Local Account** (To Follow)
To consider the Local Account and to make any comments to the Council.
6. **Brixham Hospital Site Development Scheme** (To Follow)
To receive an update on the latest developments concerning the proposed developments at the Brixham Hospital site.
7. **Care Homes: Accountabilities, Assurance Processes and the Fees Review** (Pages 3 - 24)
To consider the attached report which seeks to clarify the respective accountabilities of the Trust, the Council and the Care Quality Commission in relation to care homes in Torbay.

8. **Proposed Relocation of Grosvenor Road Surgery, Paignton**
To receive a briefing from Dr Kulkarni on the above.

(Verbal Report)



Minutes of the Health Scrutiny Board

4 October 2012

-: Present :-

Councillors Addis, Barnby, Bent, Brooksbank, Davies, Doggett, Hytche and Parrott

10. Election of Chairman

Councillor Barnby was elected Chairman of the Board for the Municipal Year.

Councillor Barnby in the Chair

11. Committee Membership

In accordance with the wishes of the Conservative Group, the membership of the Board was amended by including Councillors Addis, Brooksbank and Hytche in place of Councillors Thomas (J), Mills and McPhail.

12. Appointment of Vice-chairman

Resolved: that Councillor Davies be appointed Vice-Chairman of the Board for the Municipal Year.

13. Minutes

The minutes of the meeting of the Board held on 19 July 2012 were confirmed as a correct record and signed by the Chairman.

14. Dementia Services

David Somerfield (Medical Director of Devon Partnership NHS Trust) and Ann Redmayne (Mental Health Commissioner for South Devon and Torbay Shadow Clinical Commissioning Group) attended the Board and gave a presentation setting out the national, regional and local perspective in relation to dementia.

The Board heard about the different types of dementia, its causes and its impact together with its prevalence nationally and locally. Details were provided about the Outcomes Framework as it related to dementia, the successes which had been achieved in Torbay and the issues which still needed to be addressed.

The Board also noted the Prime Minister's Dementia Challenge which was issued in March 2012 and related to driving improvements in health and care, creating dementia friendly communities which understand how to help and accelerating research into dementia. The Board heard how the Challenge was being met within Torbay.

15. Acquisition of Torbay and Southern Devon Health and Care NHS Trust

The Board received an update from the Company Secretary of the Torbay and Southern Devon Health and Care NHS Trust on the process which was currently underway for the acquisition of the Trust by a suitable NHS Foundation Trust. The Board heard that the Pre-Qualification Questionnaire would be issued on 22 October 2012 with completed Questionnaires returned by 12 November 2012. (The Pre-Qualification Questionnaire included position statements from each of the Trust's commissioners and it was agreed that these would be circulated to members of the Board for their information.)

There would then follow an evaluation process with a shortlist of potential acquirers expected to be announced on 23 November 2012. With further detailed evaluation and assessment, it was expected that the final acquisition would be complete in October 2013.

16. Adult Social Care - Local Account

Consideration of this item was deferred to a future meeting.

17. Work Programme 2012/2013

The Board received a report giving details of its Work Programme for the remainder of the Municipal Year which would focus on two main themes: Services for the elderly and Reducing demand on acute services.

Resolved: that the Health Scrutiny Work Programme for 2012/2013 be approved.

Chairman

Agenda Item 7



Title: **Care Homes: An Update on Accountabilities, Assurance Processes and the Fees Review**

Public Document: **Yes**

Wards Affected: **All Wards in Torbay**

To: **Health Scrutiny Board**

On: **29th November 2012**

Contact Officer: **Phil Heywood, Assistant Director Business Strategy**

☎ Telephone: **01803 210494**

✉ E.mail: **phil.heywood@nhs.net**

1. Key Points and Summary

- 1.1 This report seeks to clarify the respective accountabilities of the Trust, the Council and the Care Quality Commission and then includes two sets of annexes providing detailed information in regard to assurance processes and an update on the review of care home fees which is the subject of a period of consultation, with a decision expected to be made at the Council meeting in February 2013. .

2. Clarification of Accountabilities

- 2.1 Under the Annual Strategic Agreement, held between the Council and Torbay Care Trust, the Care Trust held and discharged a range of accountabilities and duties on behalf of the Council. This included discharging the statutory accountabilities of the role Director of Adult Social Services (DASS) which had been vested in the Chief Executive of the Trust.
- 2.2 However on the 1st of April this year the Care Trust was dissolved and the responsibilities the Care Trust had held for the provision of services transferred to the newly established Torbay and Southern Devon Health and Care Trust.
- 2.3 At the same time the DASS role returned to the Council and is now held by the Interim Chief Operating Officer and Director of Adult Services and Resources. The Council is therefore now directly accountable for some decisions (for example setting the level of care home fees) which were previously delegated to Torbay Care Trust.
- 2.4 Under the current agreement between the Council and the Trust the Trust is, in line with the nationally acclaimed Torbay model for integrated Zone based services, accountable for the assessment of the needs of individual people and arranging services (including residential and nursing home care) to meet those assessed needs.
- 2.5 The position in regard to care homes is further complicated because

responsibilities for the registration and inspection of care homes, and other providers of care services, which were previously held by local authorities are now discharged by the Care Quality Commission (CQC).

- 2.6 Registration with the CQC endows the home with a licence to trade and provides assurance to the Council, the Trust and members of the public that the home has in place systems, processes and procedures which meet a minimum set of quality standards.
- 2.7 Under the Choice of Accommodation Directions the Trust, on behalf of the Council, is obliged to place anyone assessed as needing residential or nursing home care in a home of their choice so long as that home is a registered provider, where the cost of the same is not more than the Council would usually expect to pay.

3. Market Summary

- 3.1 Working on behalf of the Council the Trust commissions a range of social care placements from independent sector residential and nursing homes to the value of around £22.5million each year. The income received from client contributions (circa £8million) is offset against this amount leaving a net annual cost to the Council of approximately £14.5million.
- 3.2 The actual number of people supported in care homes fluctuates constantly as existing residents are discharged, or die, and new residents are admitted. However at any one time around 890 people are being supported in residential or nursing home care. The approximate make up of this figure is:
 - Residential care (long stay): 760
 - Nursing care (long stay): 94
 - Short stay: 36
- 3.3 In line with national trends to promote care at home, where ever this is possible and appropriate, the volume of care purchased in care homes has been falling at an average of around 4% per annum. This is illustrated in the chart below:

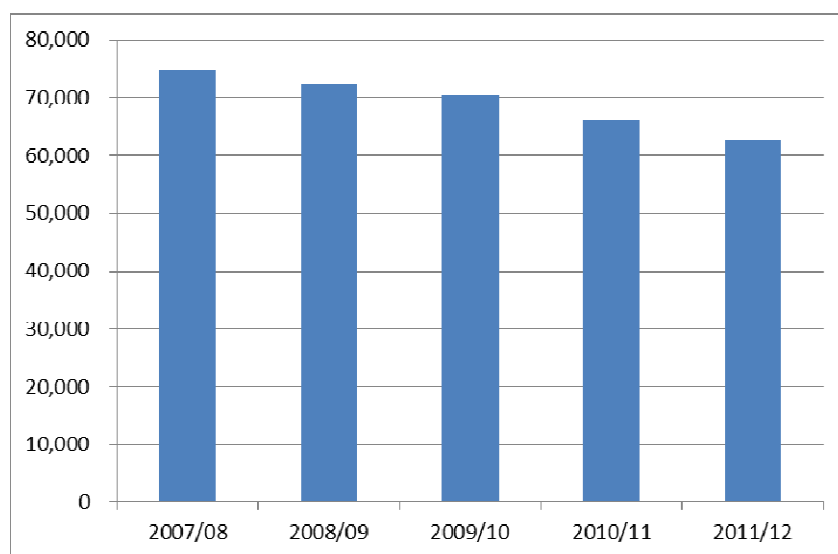


Figure 1: Bed Weeks of Care Purchased 2007 ~ 2012

- 3.4 There are 108 care homes, with 2,525 bed spaces, in Torbay which are registered to provide care services by the CQC. This total of 108 homes includes;
- 16 Nursing Homes.
 - 59 Residential Homes, for people over the age of 65.
 - 33 Residential homes for people aged 18 to 65 with learning disabilities or mental health needs.
- 3.5 This ratio of nursing to residential homes in Torbay is notably different to figures which are quoted for national averages:
- | | | |
|---------------|----------------------|-----------------------|
| ▪ Nationally: | 52% Residential Care | 48% Nursing Home Care |
| ▪ Torbay: | 85% Residential Care | 15% Nursing Home Care |
- 3.6 The experience of staff in the Zone teams and commissioning staff is that the variance in these ratios is indicative of an oversupply of residential care.
- 3.7 There is also a difference in the average size of homes with the national average being around 60 beds where as in Torbay the average size is 28 beds. The actual number of beds per home is illustrated in the charts set out in Appendix 1 for residential homes, nursing homes and homes for people aged 18 to 64.
- 3.8 In summary out of the 2,525 registered beds in Torbay at any one time around 890 beds (approximately 35%) are likely to be commissioned by the Council. But, in line with national trends, the number of beds has been falling by 4% per annum, and will probably continue to fall.

4 Fees Review

- 4.1 Proposals for the fees to be paid for residential and nursing home care in Torbay in 2012/13 were developed between the Care Trust and the Council and notified to home owners on the 27th March 2012. The Council subsequently received a request to review the proposed level of fees in a letter which indicated that a group of home owners would seek a judicial review of the position if the Council did not accede to the request.
- 4.2 Since the original proposals had been developed legal proceedings had been initiated by home owners in a number of other areas in the country. Having due regard to this increasingly litigious environment, and the judgements emerging from those proceedings, it was accepted that there were deficits in the previous process and therefore it was decided that it was appropriate to review the approach which had been taken to setting fees levels for 2012/13.
- 4.3 The outcome of this process was set out in a report on a revised set of proposals '**Review of Care Home Fees in Torbay 2012 – 2014**' which was circulated to all home owners in Torbay on the 11th October 2012 for consultation (Appendix 2a & 2b).
- 4.4 The consultation period included the opportunity of responding to the revised proposals by letter, e-mail or telephone, the offer of 1:1 meetings with home owners, an open meeting for all home owners and discussions with the Torbay Quality Care Forum (an organisation which represents a number of home

owners, currently believed to be 18 owners of 25 homes).

- 4.5 The consultation period was originally set to close on the 9th November 2012. However a request to extend the consultation period was received at the open meeting for home owners held on the 25th October 2012 and the review team had received a lower response rate to the consultation than had been anticipated. It was therefore decided to extend the consultation period to 7th December 2012.
- 4.6 The fees proposals not only contain revised proposals (from those proposed on 27 March 2012) for the level of fees but also considers other provisions including:
- Reducing the number of bands of care from 24 to 4, with an additional category for people with exceptional needs.
 - A revised assessment tool for residential care, which had been developed with input from care home managers and matrons.
 - Extending the revised fees proposals, for care homes and nursing homes for older people, to cover a two year period from 1/4/12 to 31/3/14.
 - An interim, without prejudice, payment for to home for people aged 18 to 65 to allow time for further work to understand and develop proposals for the more complex circumstances of this service user group.
 - Transitional protection, through to 31/3/14, to protect the fees, for all those residents who are currently in placement, at the level offered for 2012.

Details of these provisions set out in the paper '**Review of Care Home Fees in Torbay 2012 – 2014**' which is attached as part of Appendix 2.

- 4.7 The reality is that care homes now operate in an open market and the objective of the Council is to reach the position where the price for an individual package of care can be agreed on the basis of the particular needs of an individual.
- 4.8 Officers believe that this is the correct approach because reliance on defined bands of care establishes artificial thresholds and demarcations in the market which will tend to become a standardised set of prices which it is expected will be paid. This expectation distorts the market and will produce anomalies for providers, the Council, the Trust, care management staff and residents.
- 4.9 The objective of the proposals is therefore to establish a market price for care which takes account of:
- The actual costs of providing care.
 - The need to reward the investment made by the care home owner and shareholders.
 - The ratio of publicly funded to private residents accommodated by homes.
- 4.10 Consultation process are still under way; the early indications are of significant concerns being expressed in regard to a number of assumptions which had to be made by the team which developed the costing model, including:
- The level of fees charged to private residents.
 - The return on investment and abatement of capital values.

We have made it clear to home owners that they need to provide us with appropriate evidence within the consultation period as to their concerns.

- 4.11 Comments have also been made in regard to the specific needs of people with dementia. The suggestion has been made that the particular needs of this group of service users have been overlooked because the proposed fee structure does not include separate fee rates for people with dementia.
- 4.12 However the Council and the Trust believe that the assessment tool, which has been developed as part of the review process, takes account of the specific needs of people with dementia. Additionally the proposed fee bands of Standard and Standard Plus, with the provision for exceptional needs, will enable fees to be agreed according to needs of individual service users rather than the term used to describe their illness or disability.
- 4.13 Once the consultation period has closed the review team will consider all the feedback received and prepare a final report and recommendations which will be presented to full Council in February for a final decision.
- 4.14 As detailed above evidence suggests that there is an oversupply of residential homes in Torbay, potentially leading to low occupancy rates and/or an over reliance on social care placements. This could create risks for the future viability for some homes and is one of the factors that will be considered in the economic impact assessment which is being completed as part of the consultation process.
- 4.15 However it has to be remembered that the homes operate in an open market and the owners will need to make appropriate business decisions. The Council and the Trust would wish to work collaboratively with home owners in such situations, to provide appropriate support to them and their residents.

5. Assurance Processes.

- 5.1 As indicated in the introduction the Trust and Council are bound by the outcome of CQC registration processes and the wishes to the individual service users as expressed through the Choice of Accommodation Directions.
- 5.2 However in the course of working with the 890 people who are, at any one time, in residential or nursing home placements staff of the Trust become privy to a wide range of information about how individual residents and their family's view the care they are receiving.
- 5.3 In some situations there will be obvious concerns about one or more residents in a home. Whilst these situations can be distressing and time consuming the structures and process for managing these situations are set out in the local safeguarding process and procedures which accord with national guidelines.
- 5.4 The more difficult situations to manage are those where there are a number of lower level concerns none of which would individually constitute a safeguarding concern or reach the threshold for 'statutory' action.
- 5.5 In these situations the main difficulty is that the information, or knowledge, is frequently diffused amongst a number of members of staff and so needs to be collated and brought together into a single place.
- 5.6 A part of the remit for CQC is to make visits (announced and unannounced) to

care homes to assess and review care standards. These visits will often highlight issues which need to be addressed. Staff in the Trust's Contract Management Team will be aware of these issues and will work actively with home owners and the CQC to ensure that action plans are in place to ensure the issues are addressed.

- 5.7 Where any persistent or chronic concerns remain Trust staff will liaise with the Safeguarding Team, and Strategic Commissioners, to decide on what action can and should be taken. Where necessary this will include the suspension of placements, and ultimately the transfer of residents to other accommodation.
- 5.8 In managing these situations Officers of the Trust and the Council have to be mindful that whilst there is a clear duty of care to residents acting inappropriately, or without good cause, could unnecessarily compromise the viability of the home and the livelihood of the owner and staff.
- 5.9 The approach that the Trust is taking to managing these situations is described in Appendix 3.

Phil Heywood

Assistant Director Business Strategy & Transformation

Torbay and Southern Devon Health and Care Trust.

Appendices

Appendix 1: Charts Indicating Bed Numbers by Care Home Type

Appendix 2: Information Provided to Care Home owners about the Outcome of the Fees Review

- Covering Letter to All Home Owners
- Report: 'Review of Care Home Fees in Torbay 2012 – 2014 (amended 17th October 2012)

Appendix 3: Contract Quality Assurance and Monitoring of Care Homes in Torbay

Documents available in members' rooms

Fees Review Consultation Pack: This pack contains copies of all letters, reports, and presentations sent to home owners.

Document / Format	Title / Content	Date	Author
E-mail	<i>'Important Request for Information'</i> <ul style="list-style-type: none"> ▪ e-mail containing information request. 	04/09/12	Lin Gibbs <i>(on behalf of Fran Mason)</i>
E-mail	<i>'Letter from Fran Mason and presentation given by Anthony Farnsworth'</i> <ul style="list-style-type: none"> ▪ PDF copies of letter and ▪ PDF copy of Power Point Slides following presentation made on the 6th September at open meeting. 	12/09/12	Lin Gibbs <i>(on behalf of Fran Mason)</i>
E-mail and hard copy via post	<i>'Care Home Fees – IMPORTANT LETTER AND DOCUMENTS'</i> <ul style="list-style-type: none"> ▪ Letter from Caroline Taylor ▪ Consultation Questionnaire ▪ Report: Review of care Home Fees in Torbay 2012 - 2014 	11/10/12	Lin Gibbs
E-mail	<i>'IMPORTANT DOCUMENT: care homes Workshop Event 25 Oct Follow Up'</i> <ul style="list-style-type: none"> ▪ Covering letter from Caroline Taylor ▪ Copy of presentation ▪ Final amended report ▪ Usual cost of care Torbay Methodology 		Lin Gibbs <i>(on behalf of Caroline Taylor)</i>
E-mail	<i>'Important Letter from Fran mason re extension of consultation period'</i> <ul style="list-style-type: none"> ▪ Letter from Caroline Taylor 		Lin Gibbs <i>(on behalf of Fran Mason)</i>

Background Papers:

None other than those attached as appendices or included in the consultation packs.

Charts Indicating Bed Numbers by Care Home Type

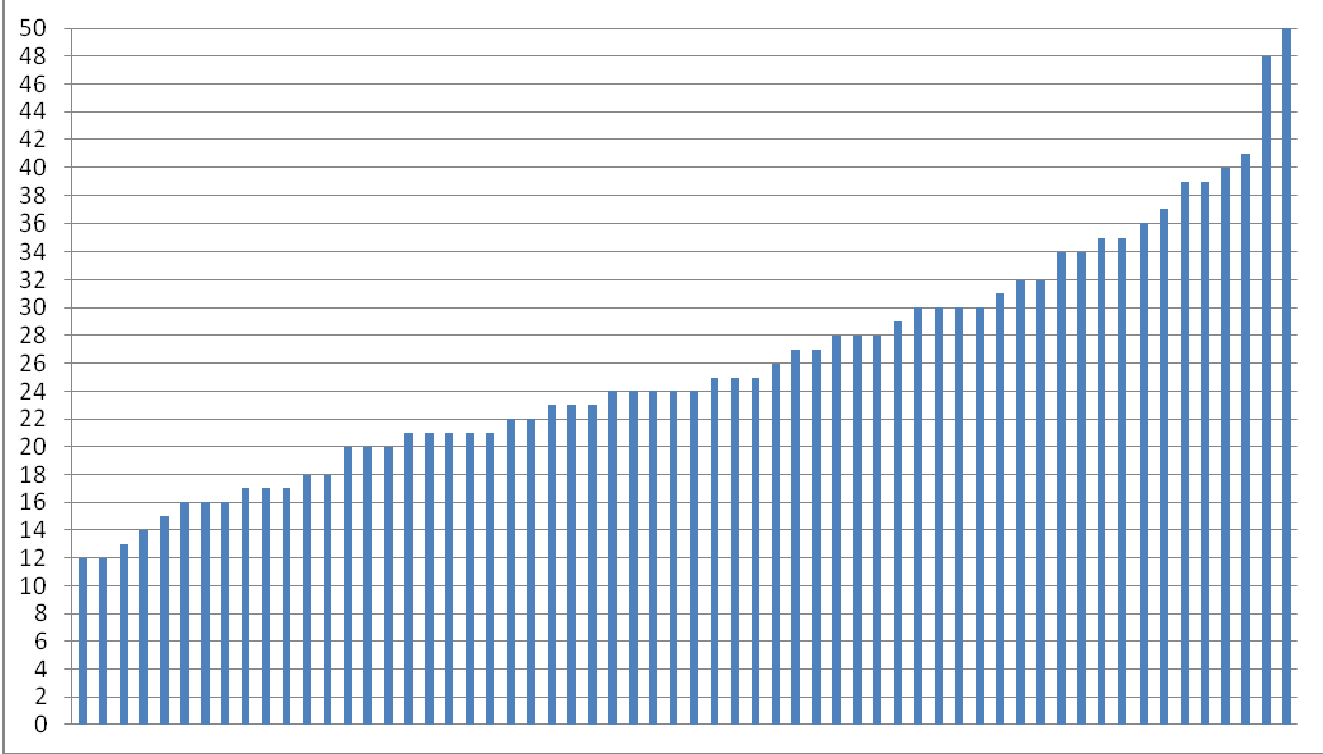


Figure 2: Number of Beds per Residential Home
(Older People = 59 Homes)

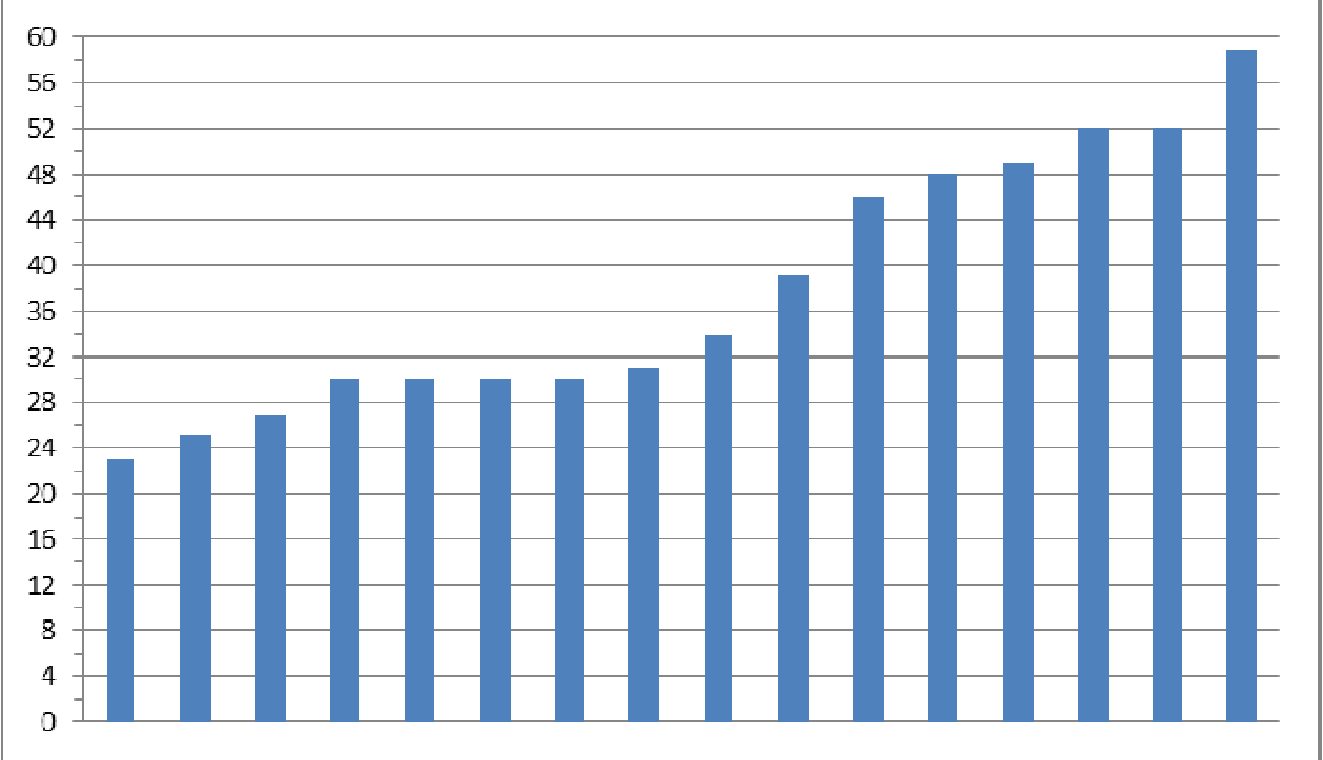
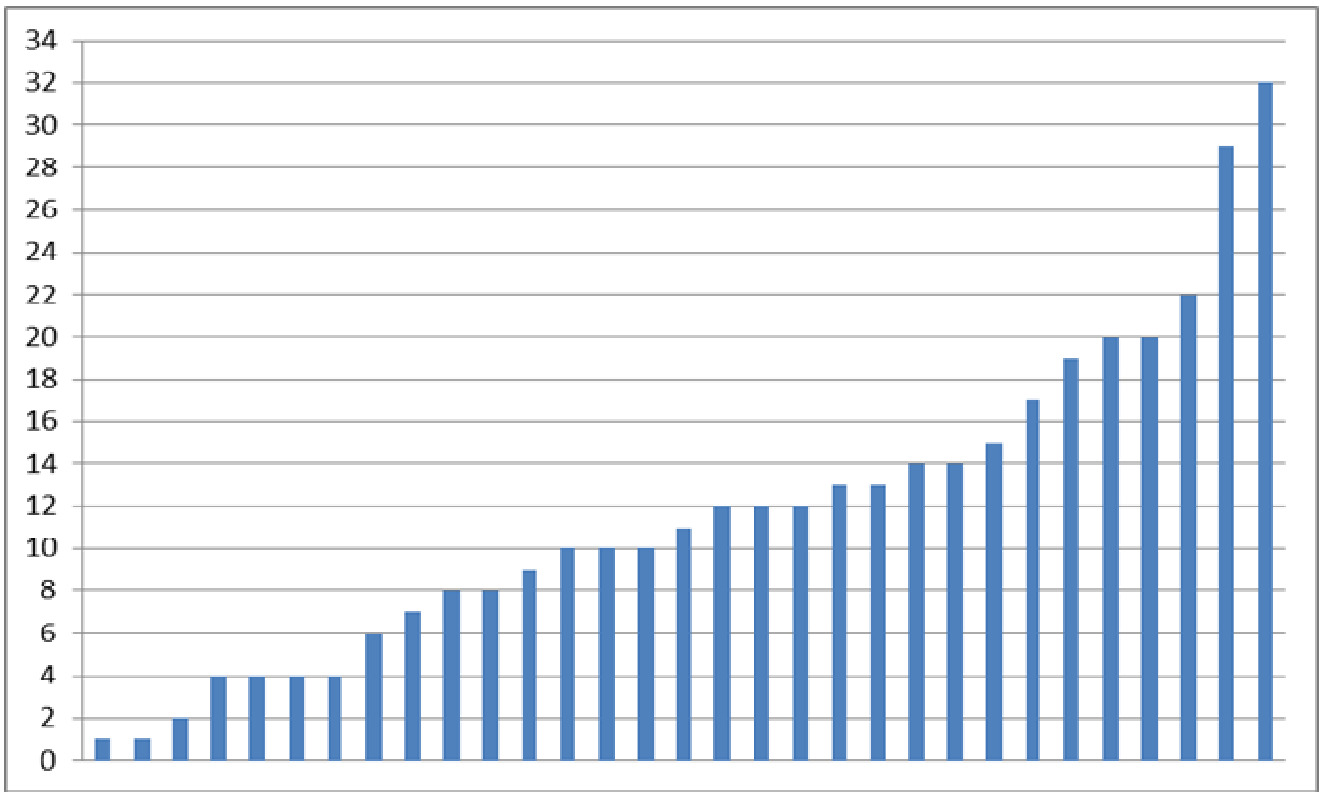


Figure 3: Number of Beds per Nursing Home
(Older People = 16 Homes)



**Figure 4: Number of Beds per Residential Home
(People Aged 18 to 65 = 33 Homes)**

Agenda Item 7

Appendix 2

Please reply to: Caroline Taylor
Director of Adult Services and Resource
Town Hall, Castle Circus
Torquay
TQ1 3DR
My ref: CT/LR
Your ref:
Telephone: 01803 207116
E-mail: caroline.taylor@torbay.gov.uk

Website: www.torbay.gov.uk
Date: 11th October 2012

Dear Care Home Providers

The review into the care home fees for the period 1st April 2012 to 31st March 2014 is now complete. I would like to thank all of you who have been involved in the review to date and I now wish to consult with all home owners on the review process, the conclusions we have reached and the revised fees proposals.

The formal consultation period will close on the 9th November 2012. At the end of the consultation period the feedback which has been received will be reviewed before final recommendations are taken to the Council for a decision. It is expected that the Council will consider the final recommendations at the Council Meeting which is scheduled for the 6th December 2012.

In undertaking the review the team working on this project has taken note of:

- Feedback received at the open meetings held 31st May, 9th July and 6th of September 2012.
- Responses to the questionnaire which was discussed on at the 9th July 2012 meeting and circulated on the 24th July 2012.
- The aggregated and anonymised information returned to Francis Clark Accountants.
- Information received through telephone surveys of occupancy in a sample of homes.
- Any individual or group responses we have received.

A detailed report is attached which summarises the background to the review, the work completed in undertaking the review and the conclusions which have been

Schools and services for children and young people • social care and housing • recycling, waste disposal and clean streets • community safety • roads and transportation • town planning • tourism, harbours and economic regeneration • consumer protection and licensing • leisure, museums, libraries and arts

If you require this in a different format or language, please contact me.

reached. I am sure you will want to read this in full but thought it might be helpful to summarise the main outcomes:

- In line with the feedback we received the fees structure we are proposing is simpler and decoupled from CQUIN.
- The previous fees structure included differential rates according to the CQC quality ratings of Good and Excellent. Now that the CQC no longer maintain this rating system this element of the banding structure will no longer be used.
- Even after consolidating the CQUIN and CQC elements of the fees structure twelve categories of care would have remained. This was still felt to be too many. We are therefore proposing a fees structure with four bands of care, but with an acknowledgement that there will be residents who need to have their care needs individually negotiated because of their particular circumstances.

These main outcomes apply to the provision of care for older people aged over 65 in residential and nursing homes. The previous fees offer included no uplift for individually negotiated placements for people with mental health needs and learning disabilities, particularly those under the age of 65. Owners of homes providing care for this group of service users asked if this position could be reviewed.

The position regarding service users with mental health needs and learning disabilities is a complex one, where cost models are harder to find and apply, as needs can vary significantly from service user to service user. We have therefore decided that we will need to establish a project team specifically to consider the issues in this area of the market. As an interim measure, and without prejudice to the final outcome, the proposals set out here include a provision to make a non-recurrent payment of £500 per annum in 2012/13 and 2013/14 for each person whose care package has been individually negotiated and would fall outside the proposed banding structure.

With regard to older people (over 65) there are inevitably some circumstances where the revised and banded fee may be lower than that previously proposed in our 27 March 2012 letter. Where this is the case the proposal includes provision to protect the payments being made to homes at the current level until the 31st March 2014. This protection will be at the levels set out in our letter of 27th March 2012 and apply as long as individuals remain in placement or until their care needs alter. I believe this provides some protection and will allow home owners to make any necessary amendments.

This letter is the start of the formal consultation on the revised fees proposals which are summarised above and set out in detail in the attached report. We want all home owners to be involved in this process and we are seeking your involvement in the following ways:

1. Attached to the consultation pack is a set of consultation questions which I would be grateful if you could complete and return to us, preferably by e-mail to Carehomesconsultation@torbay.gov.uk
2. During the week beginning the 15th October 2012 members of the review team will be available for one to one meetings with home owners. The

objective of these sessions is for you to be able to give us individual feedback on the proposals. Additionally as part of these sessions we also intend to provide you with detailed information of how the fees proposal will affect the payments made in respect of individual service users in your home, who are currently funded by Torbay Council.

3. An open meeting will be held on 25th October 2012, 6pm to 8pm at the Riviera International Conference Centre which all home owners are invited.
4. You can also write to Lin Gibbs, St Edmunds, Victoria Park Rd, Torquay, TQ1 3QH, telephone us on 01803 208018 or send an email to Carehomesconsultation@torbay.gov.uk with your comments.

The full consultation pack has been sent to the email address you have provided us with, as well as via Royal Mail. All future correspondence will be sent by email, unless you specifically request that we send it by Royal Mail. If you have not received the consultation pack by email please contact linda.gibbs2@nhs.net with your correct email address.

Any questions concerning the consultation and all response to the consultation should be sent to Carehomesconsultation@torbay.gov.uk by 9th November 2012.

If you would like to book a one to one meeting in the week commencing 15th October 2012 please contact Lin Gibbs by telephone or email as above. It would also be helpful if you could email Lin to let her know whether you will be attending the consultation event on 25th October 2012.

I look forward to receiving your feedback on the proposals and seeing you at the Consultation event.

Yours sincerely



Caroline Taylor
Director of Adult Services and Resource

Review of Care Home Fees in Torbay 2012-2014 (amended 17th October 2012)

Introduction

Local authorities are required to provide residential care for people over the age of 18 who are in need of care and attention, which is not otherwise available to them. In providing this care the Local Authority has to comply with the National Assistance Act 1948 (Choice of Accommodation) Directions, which requires Local Authorities to provide such accommodation at the place of the clients' choosing provided that;

“the cost of making arrangements for him at his preferred accommodation would not require the authority to pay more than they would usually expect to pay having regard to his assessed needs.”

This is generally known as the 'usual cost' and is the basis on which Local Authorities set the fees they will normally pay to care homes.

Local Authority Circular (2004) 20 states at paragraph 2.5.4

“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 recent years there have been a number of judicial reviews into the way local authorities set usual costs for residential placements. This relates largely to care for the elderly because the fees paid for younger adults, such as those with poor mental health or learning disabilities, are more likely to be based on specific care packages. For these reasons Torbay's review of fees and this report relate only to residential and nursing care for the elderly.

There is now an increasing variety of research and the development of models aimed at assessing the actual cost of providing care including, Laing and Buisson's annual care for the elderly survey with care home owners, information on local authority fee rates compiled by ADASS (Association of Directors of Adult Social Services) and the emergence of local surveys such as the Bishop Flemming report in Torbay. In all cases these models make assumptions about the average costs across a whole market. These, in turn, are built on assumptions about how a care home is operated and managed.

The important elements of this definition and our interpretation of them include the following:

- The usual cost is the cost to the local authority – in other words the price that is paid to the provider;
- It represents what the authority “expects to pay” and therefore it should be a market based price;
- It should be “sufficient to meet the assessed care needs of supported residents in residential accommodation” and that implies:
 - The resources required to meet these needs are delivered by an efficient and well run home,
 - The price should reflect the direct care costs and associated accommodation costs,
 - The price does not, therefore, necessarily need to include the profit element or return on capital employed, however this may form part of a commercial pricing strategy.

This document summarises the approach Torbay has taken to reviewing the cost of care and establishing our fee rates for residential and nursing care for the elderly in the light of the above.

Background

There are 108 care homes in Torbay with 2,525 bed spaces registered with CQC (Care Quality Commission). Within this total 16 are nursing homes for people over 65 with 605 bed spaces, and 59 residential homes with 1,529 beds, resulting in 75 care homes for people over 65 with 2,134 bed spaces. Homes in Torbay are run by the private sector and the average size of a home in Torbay is 28 beds against a national average of 60. There is a notable difference between the numbers of residential and nursing homes, the national average split between residential and nursing care provision is 52:48 whilst in Torbay the split is Torbay 85:15. Placement trends and demand projections indicate this represents an over-supply of residential care rather than an undersupply of nursing care. In line with national trends towards personalisation and supporting people in the community, placements into residential care have been declining at a rate of about 4% annually since 2010 and this rate of reduction in demand is expected to continue over at least the next two or three years.

In March 2012 a letter setting out fee levels for 2012 to 2013 in Torbay was sent to all care home providers. These fees are currently in payment and represent on average a 3% uplift on the previous year's fees. Following this the TQCF (Torbay Quality Care Forum, an organisation representing the owners of about 25 homes in Torbay) wrote on 14th May 2012 to the Director of Adult Social Services asking her to review the

decision on fees which she agreed to do, as it was accepted that there were deficits in the processes undertaken previously.

The review of Torbay's decision on care home fees in March 2012 is now complete. To arrive at the usual cost of care it was necessary to establish the cost of delivering care in Torbay, as well as accommodation related costs and an appropriate contribution to the cost of capital. In doing this a number of factors were taken into account and these are set out in the section entitled Defining the Usual Cost of Care. The proportion of beds in the market currently purchased by local authorities, the level of vacancies, capital abatement, land values and profit multiples were taken into account. Economic and equality impact assessments have been undertaken as part of this process.

Since the decision to review the fees providers have been involved in the review in number of ways: through three provider events, in a working group to review the revised banding structure, by answering specific questions posed to them and by providing information on their services via a local accountancy firm. Now that the review has been completed there will be a period of formal consultation, during which care home owners can respond to the methodology used, the approach that has been taken to defining the usual cost of care and the proposals themselves. The outcome of the consultation, alongside any other comments and ideas, will be considered and if appropriate the proposals set out in this paper will be revised before final recommendations are put to the full Council. It is the Council which will then take the final decision on the level of fees, which is due to take place at a meeting of the Full Council on 6 December 2012 at Oldway Mansion.

The Scope of the Review

The revised fee proposal only relates to those residential and nursing care homes providing care to the elderly (people aged over 65 years).

We had intended to fully review fee levels for people with mental health needs and learning disabilities who are under the age of 65. However this is a more difficult area than we had anticipated. This is partly because cost models are harder to find, and harder to apply in this area of care where needs can vary significantly from service user to service user. We have therefore decided that we will need to establish a project team specifically to consider the issues in this sector of the market.

Consequently as an interim measure, and without prejudice to the final outcome, we propose to make a non-recurrent payment of £500 per annum in 2012/13 and 2013/14 for each person whose care package has been individually negotiated and would fall outside the proposed banding structure.

The Approach

Meetings with providers

At an initial meeting to which all care homes were invited on the 31st May 2012, it was agreed with those present that bi-monthly evening meetings (6pm – 8pm) would be an effective way to ensure regular, consistent communication between Torbay Council, TSDHCT and all care home providers. Meetings were subsequently held on 6th

July and 9th September. A further meeting to consult on the proposal is due to be held on 25th October 2012.

Revising the banding structure

At the meeting in May the existing banding structure was discussed. Providers perceived the existing banding structure as overly complex and not suitable for the shape of future care delivery.

In order to consider how the banding structure could be revised and simplified a working group comprising care home providers and TSDHCT clinical and professional staff was convened to develop a new banding structure. The group were able to create a simplified structure and this was circulated to all providers for consultation following the open meeting held on the 6th September 2012.

The simplified structure, comprising of 4 bands, recognises that a number of placements currently sit outside the present fees structure because their packages are negotiated on an individual basis. (See revised banding structure below)

Revised Banding Structure

Residential Care	Standard	Standard Plus	Needs
	Standard	Standard Plus	
Nursing Care	Standard	Standard Plus	
Exceptional			

To facilitate the change from one banding structure to another we have mapped the old bandings to the new bandings so it is clear which fee band any person has moved from and to. This has been a paper exercise taking into account recorded assessment information.

Calculating the cost of care in Torbay

While existing cost tools were taken into account including Laing and Buisson 2012 and Bishop Flemming’s Torbay survey in 2011, the Council has a duty to take account of local circumstances in Torbay, as well as ensuring that the information used is up to date and accurate. Therefore as well as considering these tools/reports as sources of information, we have also undertaken our own work in this regard.

Care costs were divided between care, accommodation and return on capital. Costs were assessed on a set of reasonable assumptions including the staff hours per bed. Professional and clinical staff were involved in making these assumptions and the consequent decisions. Providers were also asked to provide a snapshot of information

relating to their number of staff by qualification, number of local authority placements and number of vacancies.

The approach taken in separating costs was mindful of the proposals of the Dilnot Commission recommendations that costs of care and accommodation be treated differently and if these proposals are adopted the costs of care and accommodation will need to be clearly separated. Proposals in the Care and Support White Paper to offer direct payments for residential care are also likely to require a clearer breakdown of costs.

Defining the usual cost of care

Our approach to defining the usual costs, for each of the 4 care bands defined earlier, was to consider an appropriate fee so that:

- It reflected the proportion of the market that we purchase or is purchased at rates linked to Torbay's (about 45%);
- It covers the cost of care and accommodation (including a provision for capital maintenance which reflects an allowance on capital costs over a long period)
- Is no lower than the average fee rate set currently;
- It provides for a reasonable and sustainable return for a home given average fee rates secured in the market.

The key assumptions upon which these assessments are based are set out in the consultation questions so that home owners can comment specifically any or all of them.

Economic impact assessment

This assessment was undertaken in order to gauge the impact of the fees proposal on the economy and also to assess any potential risk to supply in Torbay.

A number of factors were taken into account including, placement trends and projections, demographic projections and changing economic circumstances, supply of care homes across the three towns in Torbay and the demographics in these areas. Personal choice and new ways of working have both had an impact on demand. Projections also indicate the number of beds purchased by Torbay Council over the next three years is likely to continue to fall by 4% per annum on average. This is in line with national trends and new ways of working enabling people to remain independent in their homes for longer. A greater emphasis on rehabilitation will also mean people often return to independent living after a period in hospital followed by reablement when previously they may have been admitted to care.

The proposed fees reflect an appropriate price in a balanced and efficient market, which does not compensate for the current oversupply in the market for residential care. Consequently there is the risk that the market may need to re-balance, as efficient markets should do, and as a result some home owners may need to exit from the market.

The proposal includes some transitional protection for existing clients, which will be detailed later in this document.

The closure of a home may result in reduced employment and some local purchasing which will impact upon the local economy. However, should a business close the Council will ensure that residents receive support to find suitable alternative accommodation. These alternative arrangements are likely to impact positively on employment and purchasing opportunities in Torbay. While this will not mitigate the entire loss (because some increased purchasing will be absorbed within improved efficiencies and economies of scale) it will strengthen the financial position of the homes that remain in operation.

Equality impact assessment

The proposal for fees does not affect any one group differentially. The proposal by its very nature affects only older people and the thresholds for access to services have not been changed.

As part of our commitment to providing services in a more personalised way to all client groups over the next 15 months we will be working with service users, carers , providers and front line staff to develop more individual purchasing arrangements for residential care.

The Proposal

After a review using a structured methodology, the weekly care home fees proposed for (2012-2014) are as follows;

Residential Care	Standard £341	Standard Plus £392	Needs
	Standard £529	Standard Plus £555	
Nursing Care	Exceptional		

These figures are weekly rates and include Registered Nurse Care Contribution (RNCC) payment (currently £108.70 per week, rounded to £109). They exclude Continuing Healthcare (CHC) and any third party top-up.

To avoid any disadvantage to current residents and to enable providers to adapt to the changed bandings, the following process is proposed:

- Where a new banding represents an increase in the current banding, and therefore a higher fee, the revised fee will be paid with effect from the 1st April 2012 until the 31st March 2014.
- Where the new banding represents a decrease in the current banding, and therefore a lower fee, the current fee will be paid until 31 March 2014, for as long as the client remains a resident of the home and their care needs are unchanged.
- Anyone assessed following a final decision on the fees for the period 2012 - 2014 will be assessed under the new bandings.

Consultation

All care home providers now have an opportunity to respond to this proposal by providing their views on how the proposal was developed by responding to the attached set of consultation questions.

The consultation period will run from 11th October 2012 to 5pm on 9th November 2012. During this time there will be a meeting on 25th October 2012 for all care home owners to come and share their views with Torbay Council and TSDHCT. In addition there is an opportunity for all home providers to meet on a one to one basis with commissioning and contract management staff to share their views on the proposal. Comments and views can also be supplied by telephone, email or letter.

At the end of the consultation period all consultation responses will be considered. A report will be written summarising responses, how the responses were considered and whether this changed the proposal, including the reasons behind this.

At this point a final report will be submitted to the Council meeting scheduled to be held on 6th December 2012 for a final decision.

Contract Quality Assurance and Monitoring of Care Homes in Torbay

The small team responsible for this function have a good understanding of the level of Regulatory Compliance within Torbay and in almost all cases will be actively involved in working with the non-compliant homes and the Care Quality Commission (CQC).

How the CQC Review and Compliance Process works:

- CQC compliance is judged upon 16 Outcomes across 5 Standards. These are:
 1. Treating people with respect
 2. providing safe care and preventing harm
 3. providing care, treatment and support to meet people's needs
 4. staffing
 5. management

- In 2010 when Care Homes re-registered (under The Health and Social Care Act 2008 (Regulated Activities) Regulations 2010) they completed a self-declaration to cover all areas of these Regulations.

- When the CQC complete a Review of Compliance they usually inspect at least 5 of the 16 outcomes, one under each standard. In some cases where it is felt necessary the CQC look at a number of additional outcomes.

- If a home fails 1 or more of the outcomes inspected, then the standard which it relates to is not met. CQC will issue Compliance Actions and these will be included in the care homes publically published report and highlighted on the homes CQC webpage by an 'X'.

- The home will then be required to draw up an Action Plan in response to the Compliance Actions and submit this to the CQC. Ordinarily, the CQC do not go back to the home to check that the intended actions have been completed, nor overwrite the website markings ("X") until such time that the CQC revisit and review the specific outcome again.

- Therefore it is important to consider the date of the review and the fact that the "X's" may remain with the home for some time even though the necessary improvements have been made.

Torbay's Contract Monitoring Team Process:

As and when we are notified or find out about a Review of Compliance we will engage with the home to request:

1. a copy of the draft report (if this has not already been published) and
2. where appropriate, a copy of the Compliance Action Plan they are duty bound to submit to the CQC, detailing the remedial actions the home will take in order to achieve compliance in any area that has been identified as non-compliant.

In addition to CQC actions, and dependent upon other local knowledge and confidence levels, we may need to draft a Contracts Action Plan (enforceable by the agreement we have with the home) to ensure we are satisfied that the necessary actions have been taken.

We track compliance for the 108 Torbay care home providers on our commissioning database and since the reregistration and introduction of Compliance in October 2010 can report the following information:

	Homes reviewed by CQC	% Total of homes	How this % relates to the 70 homes CQC reviewed	Homes reviewed by Torbay Contracts Team
Total homes reviewed since 2010	70	65%	Of all 108 Torbay Homes since re-registration in Oct 2010	94 Homes independently assessed by Torbay (includes 21 Learning Disability Homes)
Homes Fully Compliant	40	57%	Of the 70 Reviewed Homes, but many outcomes adjudged purely upon the Oct 2010 self-assessment.	21 homes assessed in 2012 2 in assessed in 2011 7 assessed since 2008 Plus 10 LD homes visited in the past three years
Homes Failing in at least 1 of the 16 Outcomes	30	43%	Of the 70 Reviewed Homes	See breakdown below
80% Compliant – 4 ticks out of 5	8	27%	Of the 30 Non-Compliant Homes	7 assessed in 2012 1 assessed in 2009
60% Compliant – 3 ticks out of 5	8	27%	Of the 30 Non-Compliant Homes	6 assessed in 2012 1 assessed in 2011 1 LD home visited
40% Compliant – 2 ticks out of 5	8	27%	Of the 30 Non-Compliant Homes	3 assessed in 2012 3 are currently under review (following assessment in 2011 and 2009) 2 LD homes visited
20% Compliant – 1 tick out of 5	4	13%	Of the 30 Non-Compliant Homes	3 assessed in 2012 1 is under DPT
0% Compliant – 0 ticks out of 5	2	7%	Of the 30 Non-Compliant Homes	Both homes are currently being supported by the team

From our own assessment and subsequent work with the homes in Torbay, many homes who had areas of non-compliance identified by the CQC, have completed the associated Compliance Actions to a satisfactory level sufficient to meet the requirements of the previous CQC inspection.

For example, a safeguarding concern at one home prompted a CQC inspection which identified areas of non-compliance. The Trust team engaged with the home and set up a Contracts Action Plan (CAP) to cover both the safeguarding actions and the Compliance Actions. The home is no longer under safeguarding and they have satisfied all but 1 area from the CAP yet the “X’s” will stay on their CQC website until CQC re-inspect and determine that all those areas previously checked are now compliant.

We are developing our own Quality Assurance Framework as a provider of care in order to understand “what good care looks and feels like for Mrs Smith”.

Outline of proposed Quality Assurance Framework 2012/2013

By 31st March 2013, The Trust will have a framework and tools in place to assure the quality, safety and client experience of care provision by residential, nursing and domiciliary organisations within a defined set of agreed outcomes. This will be achieved within current resources by:

- Enhancing the current contract monitoring data base and assessment tool to include clinical quality indicators and client/carer feedback alongside the current business and financial data.
- Developing, testing and implementing the revised quality assurance tool, dashboard and report to aid senior management’s knowledge, understanding and decision-making with regard to commissioned care.
- Collating information from Safeguarding, Incident and Hazard reports to monitor the key learning and ensure triggers have been disseminated back to the front line to prevent, reduced or eliminate similar incidents.
- Capturing “soft intelligence” from front line health and social care staff to pro-actively monitor activity and trends outside of the formal incident/safeguarding process and prevent escalation or crisis intervention. Triggers for escalation are in development.
- Providing data for CQUIN on care home performance against quality and business assessment framework
- Providing quarterly audit reports on quality and application of the personalisation process – resource allocation, outcome-based support plan and risk assessment – to identify good or poor practice and subsequent training needs.
- Providing qualitative data and feedback to evidence legislative and regulatory requirements for customer experience including Quality Account
- Providing the mechanism and data for Cluster Commissioning assurance
- Providing mechanism to support CQUIN for care homes 2013/2014 (standards & fees)
- Providing intelligence for market management and development
- Identifying educational and training needs across the care sector
- Enabling partnership /relationship building with providers to support quality improvements
- Planning roll out across Torbay and Southern Devon of quality assurance framework

Nicola Barker

Head of Transformational Support