



Meeting: Council

Date: 6 February 2013

Wards Affected: All

Report Title: Care Home Fee Setting 2012-2014

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1. Purpose

The Council, through Torbay and Southern Devon Health and Care Trust, is required each year to set its 'usual cost' (ie the cost it will pay) for residential and nursing care provision. In March 2012 a letter setting out fee levels for 2012/13 in Torbay was sent to all care home providers. These fees are currently being paid to providers and represent on average a 3.12% uplift on the fees paid in 2011/12. Following this the TQCF (Torbay Quality Care Forum), an organisation representing the owners of 29 homes in Torbay, wrote to the Director for Adult Social Services on 14th May 2012 asking her to review the decision on fees which she agreed to do, as it was accepted that there were some flaws in the process undertaken previously.

- 1.1 That review has now been undertaken, a proposal formulated and consultation has been undertaken on the proposed fee rates. The consultation has been carefully considered, which has resulted in some changes being made. This report explains the approach used to setting the 'usual cost of care' and the funding necessary to support payment of care home fee rates for 2012/13 and 2013/14.

Banded weekly fee rates for 2012 - 2014

| | | | |
|-------------------------|----------|---------------|-------|
| Nursing Care | Standard | Standard Plus | Needs |
| | £529* | £555* | |
| Residential Care | Standard | Standard Plus | |
| | £344 | £409 | |

Exceptional

* Figures include RNCC (Registered Nursing Care Component) of £108.70 rounded to £109. This is funding paid by the NHS to cover the nursing costs in registered nursing homes

2. Proposed Decision

- 2.1 The Council approves the basis of the calculation for the 'usual cost' of residential and care home fees, as set out in this report.

- 2.2 The Council authorise funding to Torbay and Southern Devon Health and Care Trust in the sum of £494,000 in 2012/13 and recognises the additional costs £412,000 in 2013/14 in order to meet Care Home fees for that year.

3. Reasons for Decision

- 3.1 To allocate the amounts set out above to Torbay & Southern Devon Health & Care Trust who have delegated authority to discharge the adult social care function on behalf of Torbay Council.

4. Summary

- 4.1 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. (See Appendix 1 for further information).

- 4.2 There are 108 care homes in Torbay. The majority provide care for the elderly (people aged over 65). There is a notable difference between the numbers of residential and nursing homes nationally and those in Torbay. The national average split between residential and nursing care provision is 52:48 whilst in Torbay the split is 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.
- 4.3 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 3.12% uplift on the previous year's fees. Following this the TQCF wrote to the Director of Adult Social Services on 14th May 2012 asking her to review the decision on fees which she agreed to do, as it was accepted that there were flaws in the processes undertaken previously.
- 4.4 A review was undertaken and revised fee proposals were developed. The fee proposal relates only to those residential and nursing care homes providing care to the elderly. It was intended to fully review fee levels for people with mental health needs and learning disabilities who are under the age of 65. However this was 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. As a result a project team is being established specifically to consider the issues in these sectors of the market. As an interim measure, and without prejudice to the final outcome, it was proposed to make a non-recurrent payment of £500 per annum in 2012/13 and 2013/14 for each person whose care package is individually

negotiated and falls outside the proposed banding structure. The cost of making these payments is included at 2.2 above.

4.5 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. 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. There were a number of elements to the review and the detail of these is included in Appendices 1 and 2 of this report as well as in the summary below:

- **Revising the banding structure** - When someone is assessed as having a need for residential or nursing care the level, or 'band', of support required to meet their needs will be identified. Each band has a fee level attached to it. Prior to the review there were many different bands in use. The system was overly complex and not suitable for the shape of future care delivery. A simplified structure comprising 4 bands was developed with some care home providers and TSDHCT clinical and professional staff.

Revised Banding Structure

| | | | |
|-------------------------|----------|---------------|-------|
| Residential Care | Standard | Standard Plus | Needs |
| Nursing Care | Standard | Standard Plus | |
| Exceptional | | | |

There is recognition that some service users will have needs that do not fit within these four bands. There is therefore an additional band of 'exceptional need.' For this band, an individual's needs will be assessed and a care plan to meet need will be devised, with an individually negotiated contract with the care provider.

- **Calculating the cost of care in Torbay** - There is now an increasing variety of research and development of models aimed at assessing the 'actual cost' of providing care including, Laing and Buisson's annual 'Care of Elderly People UK Market Survey' (see Appendix 3 for a summary of this model), the Bishop Flemming report following a survey of care homes in Torbay (See Appendix 4) and work done by ADASS (Association of Directors of Adult Social Services). 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. While existing cost tools/reports were considered in the review (see Section 6 below) the decision was made to develop a Torbay model for the cost of care. To do this 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. Further information is provided in Appendix 5.

- **Defining the usual cost of care** - The 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 is purchased by TSDHCT or is purchased at rates linked to Torbay's;
 - 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 questionnaire included as Appendix 6.

- **Economic impact assessment** - 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 indicate that the number of beds purchased by TSDHCT and 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 also includes some transitional protection for existing clients to enable providers to consider and implement changes to their businesses if they feel this is appropriate.

- 4.6 **Equality Impact Assessment** - The proposal by its very nature affects only older people and the thresholds for access to services have not been changed. The proposal represents an overall increase in the budget that the Council and TSDHCT makes available to care homes. As part of a commitment to providing services in a more personalised way to all client groups over the next 15 months TSDHCT will be working with service users, carers, providers and front line staff to develop more individual purchasing arrangements for care. A full Equality Impact Assessment is included as Appendix 8. At a meeting in May 2012 and in response to a questionnaire in July 2012, providers advised that they would prefer a fees settlement for more than one year. As a result it has been agreed that this settlement will be for two years. This has been taken

into account in assessing the usual cost of care with an assumption of a requirement to achieve efficiency and cost improvements within contracted services. To avoid any disadvantage to current residents and to enable providers to adapt to the changed bandings, the following process and transitional protection 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, provided 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.

4.7 As well as impacting upon the Council, the decision as to the fee rates also impacts upon service users on whose behalf the Trust contracts with care providers when they are responsible for meeting the entire cost of their care. So as not to disadvantage these self funding clients, it is proposed that the service users will become responsible for any increase in fee rate from the 1st April 2013.

4.8 The original fees proposals for 2012/13 were set out in a letter which was sent to homeowners on the 27th March 2012. Those proposals represented an average increase of 3.12% over the fees paid in 2011/12 (the actual increases ranging from 0% to 9% depending on the type of home and service user group).

4.9 Having received the request to review that offer a full review of the offer made on the 27th March 2012 has been conducted. The outcome of the review is a recommendation, as set out in this report, for a range of fees which overall would represent a further increase over the 2011/12 baseline budget as illustrated below.

| | Additional net cost in | |
|---|-------------------------------|----------------|
| | 2012/13 | 2013/14 |
| Cost of the fees proposed 27th March 2012 | £374,000 | £374,000 |
| Additional cost of revised proposals | £494,000* | £412,000 |
| Total additional cost | £868,000 | £786,000 |

*This figure includes transitional protection until 1st April 2013 for private fee payers contracted for by the Council

Supporting Information

5. Position

5.1 A fees proposal was developed through the process described above. This was subject to consultation between October and December 2012. The proposal has been revised as

a consequence of the feedback received and the final fee rates are those listed in paragraph 1 (above). The methodology and process followed to arrive at a usual cost of care has been supported and endorsed by Torbay Council Chief Operating Officer/Director Adult Social Services and the Executive Head of Finance/s.151 Officer, as well as the Chief Executive of Torbay & Southern Devon Health & Care Trust.

6. Possibilities and Options

- 6.1 It was accepted that there were deficits in the processes undertaken in 2011 to set care home fees. There is also a growing amount of information including, a number of challenges through judicial review to the rationale and reasonableness of methods used by local authorities to set fees. As a result, to meet the requirement to set a usual cost of care, it was necessary to undertake the process described in the body of this report and set out in Appendix 5.
- 6.2 Alternative options were considered including, applying an existing cost model such as, Laing and Buisson or Bishop Fleming, or adopting another local authority's approach. It was however concluded that this would be neither appropriate nor reasonable because it would not fully take account of current circumstances in Torbay. Particular consideration was given to the Bishop Fleming report. It was however, concluded that, while the report contains a number of useful cost analyses for the costs within various cost heads, only limited confidence can be placed in these as it was based on analysis of the financial reports of only 21 businesses, is now some months old, with the sample sizes small and the standard deviations high. Additionally, in the Bishop Fleming Report the figures are set out in four cost categories, similar to the Laing and Buisson model, and Torbay does not accept that model on the basis of its treatment of the cost of capital.

7. Preferred Solution/Option

- 7.1 For the reasons set out in section 6 (above) it is recommended that the Council approves the basis of calculating the 'usual cost' and agrees the fee levels recommended at paragraph 1 of this report, as a final settlement for 2012-2014. To make this possible it is necessary for the Council to make available additional funding of £494,000 in 2012/13 and to recognise the additional costs of £412,000 next year to TSDHCT to administer payment of the revised fees and transitional protection.
- 7.2 There is widespread acknowledgement of the need to address future models of care, new ways of working and the future commissioning and funding of care and support. At a local level Torbay will be developing a market position statement for adult social care in 2013 and working with providers, service users and carers on future service models (see Appendix 6). Nationally, following the Dilnot Commission recommendations the Government is considering how the cost of care will be met in the future.

8. Consultation

- 8.1 Following the agreement to review fees and following the formulation of the original proposed fee rates there were a number of meetings to which all care home providers were invited, two questionnaires were sent to all care home providers and every provider was telephoned to offer an appointment for a one-to-one meeting with a member of staff. See summary of consultation at Appendix 7.

8.2 The consultation period on the fees proposal ran from 11th October 2012 to 7th December 2012. During this time a questionnaire, including the key assumptions on which the assessments underpinning Torbay’s definition of usual cost were based, was sent out to all providers so that they had the opportunity to comment specifically on any or all of the assumptions. The questionnaire is included in Appendix 8. The table in (8.3 below) shows how the consultation feedback influenced the fee levels in this report and further analysis of feedback from consultation and how this was taken into account is included as Appendix 10.

8.3 Impact of consultation on fee rates

| | Original proposed fee levels | Revised fee levels post consultation |
|----------------------------------|-------------------------------------|---|
| Residential Standard | £341 | £344 |
| Residential Standard Plus | £392 | £409 |
| Nursing Standard | £529* | £529* |
| Nursing Standard Plus | £555* | £555* |

*Figures include RNCC of £108.70 rounded to £109

9. Risks

9.1 The risks associated by a failure to set fees at an appropriate level are detailed in the Equality Impact Assessment, which is detailed at Appendix 9. In summary these risks include;

- Individuals’ needs arising from age might not be properly addressed,
- May cause care homes not to be viable, this could lead to home closures and consequently to disruption and distress,
- If the fee levels did not properly differentiate between different levels of need, those with more intensive needs in particular might not have them properly assessed,
- If fee levels unduly restricted residents’ choice of home, this would reduce equality of opportunity and tend to increase isolation and segregation.

Accordingly TSDHCT and the Council has set fee levels which cover the actual cost of care (using bandings to ensure sufficient provision for more difficult cases such as severe dementia) and provide a return on capital, so as to ensure that these risks are avoided.

9.2 Failure to set a fee that covers Torbay’s usual cost (explained in 4.1 above) may result in legal challenge. Across the country there have been a number of judicial reviews into the way local authorities set care home fees, including in Devon. These reviews have considered the reasonableness and rationality of the methodology used to set fees. This underlines the importance of the Council and Trust taking a robust and balanced approach to fee setting.

9.3 The potential economic impact is addressed in section 4.5 (above). Transitional protection forms part of the recommendation on care home fee setting for 2012 – 2014. This will enable care home owners to plan future business models. The exceptional needs band allows for a continuation of individually negotiated packages in the small number of cases where this is deemed appropriate following full assessment.

10. Appendices

1. Review of Care Home Fees in Torbay 2012-2014 (October 2012)
2. Fees Review Points for Clarification (November 2012)
3. Summary of Laing & Buisson Care of Elderly People UK Market Survey 2011/12 and 2012/13
4. Torbay Care Homes Market, the Provision, Pressures and Cost Base, Bishop Fleming (September 2011)
5. Assessing the Usual Cost of Care in Torbay (October 2012)
6. Future commissioning priorities
7. Summary of consultation
8. Questionnaire (October 2012)
9. Equality Impact Assessment
10. Analysis of Consultation Responses (January 2013)