



1. Formal details of the paper

1.1.1. Title of the paper

The title of this paper is Fees to Providers (Care Homes) from September 2016

1.2 Who can see this paper?

This paper can be seen by the general public

1.3 Date of Health & Wellbeing Board meeting

The date of Health & Wellbeing Board meeting is 12th July 2016

1.4 Author of the paper and contact details

The author of this paper is Jane MacDonald Commissioning Manager

Jane.macdonald@brighton-hove.gov.uk

Tel: Btn (01273 29 5038)

2. Summary

2.1 The Council is required to fix the fees it pays to care home and care home with nursing providers in respect of placements made by the Council. Council Commissioners and Clinical Commissioning Group (CCG) Commissioners working together with stakeholders have reviewed those fees in accordance with the provisions of the Care Act 2014 and the statutory guidance issued by the Department of Health.

2.2 This report makes recommendations for the increase of fees to be paid by the Council and the CCG to providers of care home and care home with nursing from 5 September 2016. The report also seeks authority to tender for a new framework for approved providers of care homes and care homes with nursing.

2.1. Decisions, recommendations and any options

3.1 The recommendations are set out below. The underpinning evidence is contained in the main body of the report:

3.1.1 That the fees payable to care homes and care homes with nursing providers be increased as set out below with effect from 5 September 2016

£543 per week care homes

£656 per week care homes with nursing (including Funded Nursing Care)

3.1.2 That the payment of premium rates for dementia in care homes and care homes with nursing is discontinued.

3.1.3 That the Council when making a placement outside the city match the applicable host authority's set fee rates for new and existing registered care home and care home with nursing placements.

3.1.4 That the Executive Director of Health and Adult Social Care be authorised to initiate a procurement exercise in order to identify suitable providers of care homes and care homes with nursing to be appointed to a framework or contract and to enter into all agreements and undertake any ancillary matters necessary to achieve the award of contracts for care for eligible persons on appropriate terms.

3.1.5 That the Executive Director of Health and Adult Social Care be authorised to award block contract(s) to care homes and care homes with nursing.

3.1.6 That the Council continues to provide additional benefits currently available to providers free of charge which include the provision of a range of training and targeted advice sessions eg fire evaluations and health and safety support and advice.

3.1.7 The Board is asked to note that it is the intention of officers to recommend a further increase in the rates set for care homes and care homes with nursing to be applied from April 2017 when it is anticipated a further increase in the National Living Wage to £7.70 will take effect. This is dependent on funding being agreed by the Council from the Adult Social Care Precept. If the Board agrees to the funding a further paper on fees will be brought to the Health & Wellbeing Board with appropriate recommendations.

4. Relevant Information

4.1 The Care Act

4.1.1 A local authority's duty to provide care and assistance to its residents has since 1st April 2014 been set out primarily in the Care Act 2014 (the Act) supported by statutory guidance issued by the Department of Health (Care and Support 2014 and updated in 2016).

4.1.2 Section 1 of the Act places a general duty on a local authority in the exercise of its functions under the Act to promote an individual's wellbeing including the promotion of suitable accommodation. Section 5 places an obligation on local authorities to:

“(1) promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishing to access services in the market

- a) has a variety of providers to choose from who (when taken together) provide a variety of services;
- b) has a variety of high quality services to choose from;
- c) has sufficient information to make an informed decision about how to meet the needs in question”

4.1.3 The local authority has to consider a number of issues in the proper performance of its duty including:

- The need to ensure it is aware of current and likely future demand and how providers may meet that demand
- The importance of ensuring the sustainability of the market

- The need to ensure that sufficient services are available to meet the needs of those adults in its area who are eligible for care and support

4.1.4 The Guidance provides that in the exercise of a local authority's duties under section 5 that they should be guided by the following principles in their commissioning activity

- Focusing on outcomes and wellbeing
- Promoting quality services, including through workforce development and remuneration and ensuring appropriately resourced care and support
- Supporting sustainability
- Promoting choice
- Working with partners.

4.2 Current issues

4.2.1 For a number of years there has been an issue about the costs of delivering quality care versus the prices which such care attracts. Some providers have expressed concern that fees paid by Councils and CCGs do not reflect the real cost of care. See Appendix One for Current Set Rate Fees.

4.2.1 There is widespread agreement from stakeholders that those paying their own fees in both care home and care home with nursing are being charged a large premium to subsidise residents funded by Councils. Typically self-funders are charged 45-49% more than a local Council would pay for the same bed.

4.2.3 The conclusion drawn by some providers is that currently, financially, it is not in their interest to accept publicly funded placements. In August 2015 the body representing county councils in England and Wales warned that the system of paying for care home beds is on its "knees" with private providers already "teetering" on the brink of collapse. The Telegraph August 2015. <http://www.telegraph.co.uk/news/health/elder/11815119/Middle-class-care-home-residents-charged-unfair-50pc-subsidy-to-prop-up-teetering-system.html>

4.3.2 *The National picture*

4.3.2.1 The Guardian (31st October 2015) stated that, "The problems for care homes are rooted in the gap between the costs of care and the amounts local authorities are paying for residents". The chairman of HC-One, which rescued almost 250 care homes from Southern Cross, warns that the industry faces a "perfect storm" and needs "significant help". He said that industry research shows that half of the country's care homes are facing collapse.

4.3.2.2 Age UK claims there are examples of care homes being refurbished specifically so they can target private rather than local authority residents, while some are charging private residents more to make up for the shortfall from publicly funded residents.

4.3.2.3 Martin Green, Chief Executive of Care England, the body that represents independent care providers, warned that the crisis in the sector would dwarf the problems in the steel industry. The Guardian 31 10 2015
<https://www.theguardian.com/business/2015/oct/31/care-homes-crisis-dwarf-steel-industry-problems-four-seasons-terra-firma>

4.3.3 *The Local picture*

4.3.3.1 There is a significant undersupply of care homes with nursing home placements in the city which accept publicly funded residents. Placements that the Council and CCG can access for people with the most complex needs are becoming scarcer. New build care home

projects target private funders. There is evidence that care homes and care homes with nursing, that previously accepted publicly funded residents are reducing the number of this type of placement.

4.3.3.2 Currently the Council and CCG place people out of the city, particularly in wider Sussex. In April 2015 there were approximately 130 older people living outside the city who would prefer to live in the city if there were available beds. There are currently 1,400 beds for older people in the city and the Council purchases 332 of these on set rates.

4.3.3.3 Some care homes that accept publicly funded placements in the city are closing, see Table one below.

Table one

	2013	2014	2015
Care Home	2	1	4
Care home with nursing	1	3	5

In the same period two very large care homes with nursing opened, but their target market is older people who privately fund their own care.

4.3.3.4 The picture is similar for wider Sussex. A few years ago there was an over-supply of care homes willing to accept publicly funded residents. This is changing with a significant number of homes refining their business model to target self-funding residents or choosing to exit the market.

4.3.3.5 Providers report that recruitment to care work is their biggest challenge. Living in the city is costly, specifically as accommodation is comparatively expensive. Low wage care workers need to be supported to provide care locally.

4.4 Evidence to inform the new fee system

4.4.1 Council and Health Commissioners have worked with stakeholders including Providers, Provider Representatives such as the Brighton and Hove Registered Care Association, Assessment, Procurement, Finance and Clinical Commissioning Group partners to construct a methodology for fee calculation.

4.4.2 The Laing Buisson Fair Price for Care Toolkit provides a transparent and evidence-based mechanism for the determination of 'fair market fees'. The data is collected from providers of care homes for older people, interviews with senior managers and further benchmark costs for individual elements. The recommended fees for the South East were significantly more than the Council can afford. For care homes with nursing it would be a minimum of 26 % uplift on current set fee and for care homes it would be a minimum of 20 % uplift. See Appendix Two

4.4.3 There have been a number of attempts to understand the local city care home market. On three separate occasions different questionnaires were sent out to local homes. The highest return at any time was from 17 individual homes out of a potential 79. The indication seems to be that if a local premium was used this would increase the current set rates by 40% for care homes with nursing and 37% for care homes.

4.4.4 The trend seems to be for other local authorities to provide significant uplifts. Adjacent authorities have increased their fees:

a) In April 2016 East Sussex County Council uplifted fees by 4%. This brings their long stay preferred provider EMI (Elderly Mentally Infirm) care home placements to £501.76 a week and their long stay preferred provider EMI care home with nursing placements to £618.52. Short stay placements generate additional premiums.

b) West Sussex County Council has a comparatively complex set of rates with enhanced fees paid in the northern area and Chichester. Care home rates range from £530 to £587 and care home with nursing rates range from £504.81 to £720.14 including FNC.

4.5 Principles

4.5.1 The new fee process will be less complex, with fewer options. The revised contract and new fee structure will apply to both care that is purchased for the Council and CCG. There will be one rate for those with eligible adult social care needs. The funded nursing care rate will be added for nursing care. Individually negotiated rates will continue to be 'micro commissioned' with the intention to move to a web based Dynamic Purchasing System (DPS) for specialist/complex placements.

4.5.2 Premium rates for dementia care will be discontinued. 80% of both care homes and care homes with nursing residents have dementia or severe memory problems, much higher than previously thought (Alzheimers Society 2013). The Care Quality Commission no longer registers care homes as those for 'older people' or 'older people with mental health needs'. Both care homes and care homes with nursing can provide the care that individuals require provided they can evidence they can manage their needs. This makes sense as the cost of a person's care is not simply increased by memory loss, it rises when more staff are needed. It is specialist/complex care that requires higher levels of staffing and this is when services are to be micro-commissioned.

4.5.3 The new rate will be transparent. There will be a clear methodology which will be used to make future adjustments. The National Living Wage will have to apply, but unlike home care not the Foundation Living Wage as this would be too costly at present. The intention is to move towards this incrementally.

4.5.4 The recommendation demonstrates the financial impact on existing clients (as at 2015/16 month 11 TBM report) in care homes (219 clients) and care homes with nursing (113) on the 2015/16 set rates plus a 2% increase from April 2016.

4.5.5 There are currently several set rates based on the need of the client and the room type. The weighted average set rates for 2015 is £480 per client per week for the 219 clients in care homes and £601 per client per week for the 113 clients in care homes with nursing.

4.6 Recommendations

4.6.1 The recommendations from September 2016 are set out below:

2015/16 Average set rates with an uplift to meet the National Living Wage plus 2% (See Table two)

4.6.2 The new rates would be £543 per resident per week in a care home and £656 per resident per week for a care home with nursing (including FNC). When compared to the current average set rates, this would be an increase of £65-£94 per client per week for older people and £8-£15 per client per week for older people with mental health needs.

4.6.3 The new rates would allow for a composite staff pay rate of at least £7.20 an hour which meets the National Living Wage rate from September 2016. This would increase the projected commitment for 2016/17 by £0.590m which will be funded by the ASC precept for 2016/17. The ASC precept gives flexibility for authorities with social care responsibilities to raise council tax by up to 2% above the referendum threshold. This applies to each year between 2016/17 and 2019/20 to fund Adult Social Services. This flexibility is to address, in part, the rising costs of this service. Councils raising additional revenue through this precept must demonstrate the additional resources are being applied to Adult Social Care

4.6.4 A further uplift would be applied from April 2017 on the assumption that the National Living Wage would increase to £7.70 (to be confirmed), in addition to the full year effect of 2016/17 fee increases. This would increase the fees to £558 for care homes and £672 for care homes with nursing (including FNC). This gives a projected commitment increase of £0.718m in 2017/18.

4.6.5 It is anticipated that the Council budget will increase by 2% from April 2017 which would fund a projected £0.167m of this increased commitment. The ASC Precept money received in 2016/17 is funding the rate uplift from September 2016. The option of applying the ASC precept in 2017/18 would be needed to manage the remaining balance of £0.551m.

Table two

	Sept 2016	April 2017	April 2018/19/20
Action	Average set rates with an uplift to meet the National Living Wage plus 2%	Alignment with the National Living Wage requirement	By 2020 Alignment with Foundation Living Wage
Fees paid	£543 pw care home £656 pw care home with nursing (including FNC)	£558 pw care home £672 pw care home with nursing (including FNC).	
Cost	Increase of £0.590m which will be funded by the ASC Precept for 2016/17	A projected commitment increase of £0.718m	

Note: The FNC has not yet been published for 2016/17 and therefore estimates are being used in this report.

4.6.6 Block contracts will be considered for both care homes and care homes with nursing, which accept people with the most complex needs. The cost of these is likely to be higher than the rate set out above. This is because it is care for those with the most complex needs. Homes taking a block contract will reduce their self-funder capacity. It is, however also likely to be less risky than micro-commissioning and will secure care in the city which is currently difficult for public purchasers to buy.

4.7 Out of city care homes Recommendations

4.7.1 It has long been recognised that each local area best understand their local market. It is recommended that Brighton and Hove City Council match the applicable host authority set fee rates for new and existing registered care home placements out of the city where these rates apply. This practise is common to most other councils. It is also recommended that any adjustment to these rates is reflected in any third party payments which apply. With regard to out of city placements where there are no set rates the

recommendation is to micro-commission future placements using current systems and then move to the DPS.

4.8 Top up Fees

4.8.1 On 15th April 2016 CareFirst showed that there were 26 people living in city care homes and care homes with nursing whose fee was 'topped up' by a third party. The increase in fees paid by the Council must be given regard by the care provider. Providers will be expected to reduce the level of top up fee required of the third party.

4.9 Proposed new contract for the provision of care home placements

4.9.1 The current joint Council and NHS Clinical Commissioning Group contract with care homes and care homes with nursing is a preplacement rolling framework contract which has been in place since 2013. It is good practice to review terms and conditions on a regular basis and framework arrangements are generally reviewed and re-commissioned every four years unless there are exceptional circumstances.

4.9.2 It is proposed to put in place a new framework to which all qualified care homes and care homes with nursing will be admitted on application. The contract will be for all eligible adults as defined by the Care Act (not just for older people) and the revised contract will apply to both care that is purchased for the Council and CCG.

4.9.4 Care homes and care homes with nursing providers admitted to the framework of approved suppliers must be accredited by the appropriate accreditation or regulatory provider in order to be admitted to the framework.

4.9.5 A process to ensure compliance with the Public Contract Regulations 2015 will be undertaken to create a new framework of approved suppliers which will be for a fixed term of four years. The framework will be advertised in the Official Journal of the European Union locally and on the Governments website Contract Finder

4.9.6 A process to ensure compliance with the Contract Regulations 2015 will be undertaken to create an approved supplier list which will ensure that all suppliers are signed up to the revised contract described above. The new contracts will also be on a 4 year fixed term instead of the current rolling arrangements.

4.9.7 It is recommended that the current systems of additional benefits paid to providers remain in place. This includes the Council continuing to fund and provide a range of training and targeted advice sessions eg fire safety evaluations which are free to access and which are much appreciated by providers. The Council provides advice and support relating to Health and Safety. Currently the Council spend £150K pa on training that is open to the independent sector, community and voluntary sector providers, learning disability services, care home, home care, mental health and day/support services.

4.10 Consultation

4.10.1 Contract revisions have been worked in partnership with CCG

4.10.2 The fee modelling has been shared with the Brighton & Hove Registered Care Association. They support the recommendations and are very pleased that substantial increases to the current fee levels are proposed. Providers have been reluctant to accept placements at the current low fees and the much improved rates proposed should help to support and stabilise the market.

5 Important considerations and implications

5.1 Legal

It is a function of the Health and WellBeing Board to oversee, monitor and make decision concerning Adult Social Care in the city. The Care Act 2014 imposes duties on the Local Authority to meet the needs of people with care and support needs in the city and to facilitate and shape the market to meet those needs. Further detail is given in the body of the report.

The procurement of care home services falls within Schedule 3 of the Public Contract Regulations 2015 and is therefore subject to the “light touch regime”. The threshold applicable to such services over which the PCR 2015 requires an advertisement to be placed in the Official Journal of the European Union is £589,148.00. All such procurements must comply with the requirement to be fair, open and transparent.

Legal officer consulted: Judith Fisher

Date: 26.5.2016

5.2 Finance

The Council provides in the region of 900 packages of care with external care home providers for care homes and care homes with nursing at a gross cost of £29.800m across all primary support groups i.e. Physical Support, Memory & Cognition Support. Of these, 332 are on set rates, placed within the city at a gross cost of c. £9.000m.

The actions taken and the financial impact to set a fair, clear and transparent rate for providers are included within the body of the report. The increase in costs highlighted under 4.6.3. is being funded by the ASC precept for 2016/17

Out of area placements, not on set rates, will continue to be micro-commissioned and the financial impact on care packages will be managed on a spot purchases basis.

It is planned to review the option of aligning the rates to the Foundation Living Wage from April 2018 at a later date and will be included in a future report.

Finance Officer Consulted: Neil Smith

Date: 24.05.16

5.3 Equalities

5.3.1 An Equalities Impact Assessment has been completed and shared with the project working group. The main area of concern was the removal of the current premium paid for dementia. The reasons for this are detailed in the main body of the report.

5.4 Sustainability

5.4.1 The recommendations are intended to be a fair price which will support the care market to be sustainable.

5.5 Health, social care, children’s services and public health

5.5.1 The Care Home Fees working party has included representatives from Health and Social Care. Public Health is aware of the recommendations. This paper has minimal impact on Children’s Services

6 Supporting documents and information

None included

Appendix One

Current Set Rate Fees

1. Care Homes for Physical Support

Low need - single room	£357.48
Low need - shared room	£321.42
Medium need - single room	£434.74
Medium need - shared room	£395.60
High need - single room	£484.19
High need - shared room	£444.02

2. Care Homes for Memory/Mental Health

Shared room	£539.97
Single room	£500.43

3. Care homes with Nursing for Physical Support Base BHCC rate (excludes FNC)

Shared room	441.96
Single room	481.10

4. Care homes with Nursing for Memory/Mental Health Base BHCC rate (excludes FNC)

Shared room	494.50
Single room	533.64

Appendix Two

Laing Buisson 2014-5

Fair Market Price	Region	Care home with nursing [Older People]	Care home with nursing [Dementia]	Care home [Older People]	Care home [Dementia]
Ceiling	England	£799	£799	£625	£662
	South East	£832	£832	£645	£684
	Brighton & Hove	£843	£843	£658	£658
Floor	England	£726	£726	£554	£591
	South East	£759	£759	£575	£613
	Brighton & Hove	£771	£771	£587	£587
Mid Point	Brighton & Hove	£807	£807	£623	£623

