
RESIDENTIAL CARE HOME AGREEMENT

**Responsible Cabinet Member - Councillor Veronica Copeland,
Adult Social Care and Housing Portfolio**

Responsible Director - Murray Rose, Director of People

SUMMARY REPORT

Purpose of the Report

1. To advise Members of the outcome of the review of the current Agreement for the Provision of Residential Care 2007 – 2013.
2. To advise and seek agreement of Members to introduce the proposed new agreement from April 2013-16.
3. To seek approval in relation to the circumstances when the Local Authority will provide residential care to 'Full Fee Payers' whose resources make them ineligible for local authority support.
4. To agree the Council's 'usual cost' of care under the Choice Accommodation Direction 1992.

Summary

5. The Council has a current agreement with 21 Care Homes in Darlington up until the end of March 2013 for the provision of Residential Care for Older People in Darlington. Under the current Agreement the Council undertakes a review of quality standards upon which fee levels are set for the full year, based on a formula aligned to a number of indices, as outlined in the Agreement. The 2012/13 Adult Social Care budget for this agreement is £12.7m, however actual spend is based on number of people being admitted to the care homes.
6. The current Residential Care Agreement has been considered to inform the development of a new agreement for the period 2013-16 with a Council option of two further twelve month extension periods. A number of changes have been made following the review.
7. Developing the new agreement has been an open and transparent process consulting with the current contractors at key stages in the process. This included requesting contractors to complete a questionnaire, on the existing quality standard

process (**Appendix 1**) and a financial template with guidance for completion (**Appendix 2**).

8. Outcomes for individuals will form part of the Service Specification and will be reflected in the Quality Standards process and each individual service user's annual review (**Appendix 3**). The development of the outcomes has been supported by baseline information gained through an audit of dignity and respect in care homes by members of Growing Older and Living in Darlington (GOLD) (**Appendix 4**). The outcomes will be collated into an annual report and monitoring of the care homes.
9. The Quality Standards Process in the new Agreement will continue to consist of two elements, Environmental Standards and Quality Standards. The Environmental Grading process will remain as it is in the current agreement, and homes will be graded 1-4 based on their current grades. The Quality Standard have been revised and consolidated to three levels A to C to reflect outcomes and best practice (**Appendix 5**).
10. The new agreement will continue to apply the successful method of monitoring and fee level setting based on the current formula (**Appendix 6**).
11. In developing the new agreement full regard has been given to recent case law relating to care home fees.
12. Drafts of all the contract documentation have been circulated to contractors and individual meetings offered, to discuss any issues the contractors may have.

'Full Fee Payers'

13. In the process of developing the new agreement it has transpired that historic custom and practice has enabled individuals (known as "full fee payers"), whose resources make them ineligible for Council support, to be provided with residential accommodation under its Contractual Agreement with a care home. It is proposed that the Council only provide "full fee payers" with residential accommodation, under its Contractual Agreement with the care home, where the Council has a duty to do so.

'Usual Cost of Care'

14. Where the Council have a contract with the care home the contract will set out what the Council would usually expect to pay for the accommodation. However, where the Council do not have a contract with the care home, the placement is governed by the National Assistance Act 1948 (Choice of Accommodation) Directions 1992 and connected guidance "the Choice Guidance".
15. The Council has a duty to provide residential care for older people and older people with mental health needs where a social care assessment has identified the need for 24 hour care. The direction for this provision is set out in LAC (2004)20: Guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1992 and National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001.

16. The Guidance on the National Assistance Act 1948 (Choice of Accommodation) Directions 1992 states that the Council should set a 'usual cost' which is sufficient to meet the assessed needs of an individual. The Council has a range of fee rates calculated in accordance with a 'true cost of care model' which are sufficient to meet those needs.
17. The "usual cost" has been reviewed and it is proposed that the usual cost in accordance with the Choice Directions be confirmed at the minimum acceptable grade level at which the Council would contract under its current and subsequent agreements. This is currently a grade 4D, but would be a grade 4C under the new agreement. The grade 4D fee in 2012-13 is £356.00, and the weekly fee level at this grading has already been calculated using a true cost of care model as the amount sufficient to meet the assessed care needs of an individual within the Councils Quality Standards Process

Recommendation

18. It is recommended that Members :-
 - (a) Note the outcome of the review of the current Agreement for the Provision of Residential Care 2007 – 2013
 - (b) Approve the new Residential Care Agreement for implementation from 1 April 2013- 31 March16 with the option of two further twelve months extension periods
 - (c) Approve the criteria under which the Council will provide for "full fee payers"
 - (d) Agree the Council's "usual cost of care" fee for people choosing to access care homes outside of the new Agreement

Reasons

19. The recommendations are supported by the following reasons :-
 - (a) The current agreement expires in March 2013
 - (b) That it is not a statutory duty for the Council to provide contracts for those people who are able to fund their own care under current legislation with the exceptions outlined.
20. The Council has a duty under the National Assistance Act 1948 to provide residential care for older people and older people with mental health needs where a community care assessment has identified the need for 24 hour care. Once a need is identified people are able to exercise choice to reside at a particular accommodation, the provisions for this are set out in LAC (2004)20: Guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1992 and National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001

Murray Rose
Director of People

Background Papers

No Background papers were used in the preparation of this report

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S17 Crime and Disorder	N/A
Health and Well Being	Will support residents of care homes.
Carbon Impact	There are no carbon impact implications in this report.
Diversity	Older people resident in care homes in the Borough
Wards Affected	All
Groups Affected	Older people and older people with mental health needs.
Budget and Policy Framework	There is no impact on the Budget or Policy framework
Key Decision	Yes- approval required to implement new agreement and approach contractors for their signature.
Urgent Decision	No
One Darlington: Perfectly Placed	People are Healthy and Supported.
Efficiency	Yes in regard to providing minimal service under government legislation, setting a "usual cost" and not providing managed services for "full fee payers" who do not meet the criteria.

MAIN REPORT

Information and Analysis

21. The Council has a duty under the National Assistance Act 1948 to provide residential care for older people and older people with mental health needs where a community care assessment has identified the need for 24 hour care. Once a need is identified people are able to exercise choice to reside at a particular accommodation, the provisions for this are set out in LAC (2004)20: Guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1992 and National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001.

22. The current agreement 2007- 2013 with 21 care homes in the Darlington will expire at the end on March 2013. The intention is for contractors to have a new signed agreement prior to the end of the current one. This will be for an initial three year

period with a Council option of two further twelve month extension periods.

23. The Agreement forms a Contract between the Council and an individual care home, with special Terms and Conditions and a Service Specification.
24. Under the current agreement the Council undertakes an annual review of Quality Standards upon which fee levels are set for the full year, based on a formula aligned to a number of indices as outlined within the Agreement. Table 1 shows the current and previous year's percentage fee changes to Residential Care contractors commissioned by Darlington Borough Council.

Table 1 Annual % Fee Changes

08/09	09/10	10/11	11/12	12/13
4.95%	3.9%	2.95%	-4.91%	4.1%

25. The purpose of the Quality Standards Process is to incentivise Care Home contractors to increase their income through good quality care provision. This process is over and above the Care Quality Commission Minimum Standards required for registration. The fees are aligned to the outcome of the grading, 1A being the highest and 4D the lowest. There are currently 14 Quality Standards which are graded as follows :-
 - (a) Environmental standards, agreed at outset are graded 1 to 4
 - (b) Quality Standards grade A to D which are agreed annually
26. There has been an overall rise in Care Homes achieving higher grades and, therefore, the cost to the Council has increased over the period of the Agreement.
27. Baseline information of activity and finance has also been collated to inform the new Agreement.
28. A review of recent case law in relation to fee level setting by other Local Authorities has also informed the process for developing the new agreement set out below.

Agreement for 2013-16 Process

29. The new agreement process involved consultation with current contractors. The purpose of which was to :-
 - (a) To understand provider views on the current Quality Standards Process and to enhance understanding of their financial conditions
 - (b) To enable the Council to give due regard to the "actual costs of care" when reviewing the existing model to set future fee rates

- (c) To ensure information is submitted from providers in a consistent format to enable comparability
30. Contractors were asked to complete :-
- (a) A questionnaire on the existing Quality Standard Process (**Appendix 1**)
 - (b) A financial template (**Appendix 2**) that included an accompanying guidance document
31. The questionnaire and financial template could be completed electronically or as a hard copy. A period of 25 days (9 April – 11 May 2012) was given to contractors to complete both documents.
32. In addition, contractors were invited to attend a number of consultation events throughout the process. The purpose of these events was to agree and advise contractors of the scope, stages and timescales of the review process and give an opportunity to raise any queries regarding the process and/or the consultation documents. Questions raised and answers given during these events were captured in minutes that were circulated to all involved.
33. The analysis of the Quality Standard Questionnaire was discussed with contractors on 22 May 2012. The general consensus was that contractors were happy with the current quality standards process.
34. The financial template responses (59%) were analysed and discussed with contractors at one of the consultation events. Some contractors also took up the offer of an individual meeting to discuss any questions they had regarding the process.
35. Analysis showed little variation from the currently applied formula and therefore Council Officers proposed continuing with this formula into the new Agreement.

Changes to the New Agreement

36. There are some significant changes to the current agreement which have been proposed to the contractors during the consultation process.
37. The new specification will be outcome based to ensure quality care is being provided to individuals within the care homes (**Appendix 3**). The outcomes are also reflected in the revised Quality Standard process. The outcomes have been identified as :-
- (a) Promoting and maintaining independence
 - (b) Maximising dignity and respect
 - (c) Supporting and improving emotional health and wellbeing
 - (d) Quality of life
 - (e) Exercising choice and control
 - (f) An environment free from abuse, discrimination and harassment

(g) The right to a 'good death'

38. A mechanism to ensure that all of this information can be collated into an annual report and inform the contract monitoring process is being developed. Any immediate concerns for individuals will be dealt with through Adult Social Care processes at the time of their review.
39. The Quality Standard Process has been revised and consolidated to three grades A to C outlined fully in **Appendix 5**.
40. A change has also been made to the Agreement which will apply a reduction in fee levels for care homes. Where a contractor is in breach of the Agreement and a suspension of new placements has been placed upon the care home during the year, the rate payable will be reduced to a Grade C from the date of the breach of Agreement letter, and will remain in place until the breach of Agreement is resolved and the contractor has no restrictions on taking new admissions into the care home.

Full Fee Payers

41. In the process of developing the new agreement it has transpired that historic custom and practice has enabled individuals (known as 'full fee payers' or "self funders"), whose resources make them ineligible for the Council's support, to be provided with residential accommodation under the contractual agreement with a care home. As a result of this arrangement, these individuals pay the standard rate as set out in the Council's Agreement with the care home rather than the care homes' private rate for the accommodation.
42. The Courts have accepted (R v Sefton MBC exp Help the Aged) that Local Authorities do not have a duty to provide residential accommodation for 'self funders' if their means are above the limits set out in the Charging for Residential Accommodation Guide, this limit is currently set at £23,250. As a result of having this level of means, individuals may be in a position and able to make their own care arrangements and therefore the Local Authority duty to provide residential accommodation does not arise.
43. There are however situations where the Local Authority will have a duty to provide residential accommodation to full fee payers. Even if an individual has means over the capital limit they may not be in a position and able to make their own arrangements, for whatever reason and may not have anyone who is willing and able to make the arrangements for them.
44. The Council will therefore have a duty to provide the accommodation, for full fee payers, whose funds are above the limit :-
 - (a) Where they lack mental capacity to make the relevant decisions or
 - (b) Where they are unable to make their own arrangements or
 - (c) Where they have no-one who is willing and able to make arrangements for them, for appropriate care

45. It is therefore proposed that the Council only provide 'full fee payers' with residential accommodation, under the Council's contractual agreement with the care home, if the Council has a duty to provide the individual with residential accommodation.

'Usual Cost'

46. Where the Local Authority has a duty to provide residential accommodation to an individual then that individual can express a preference/choice for particular accommodation anywhere within England and Wales. If an individual expresses that preference then the Local Authority must arrange for care in that accommodation provided :-
- (a) The accommodation is suitable to meet the individual's assessed needs
 - (b) It would not cost the local authority more than it would usually expect to pay for accommodation for someone with the individual's assessed needs. This is known as the "usual cost"
 - (c) The accommodation is available
 - (d) The provider of the accommodation is willing to provide accommodation subject to the Local Authority's usual terms and conditions for such accommodation
47. If an individual requests it, the Local Authority must also arrange for care in accommodation that is more expensive than the "usual cost" provided a, b, c and d have been complied with. If the local authority provide this accommodation then a third party must be willing and able to pay a third party top up (the top up is the difference between the cost the council would usually expect to pay and the actual cost of the accommodation). Without a 'usual cost' this 'top up' cannot be determined.
48. If the individual expresses a preference/choice to reside 'out of borough' based on need and (as costs vary from area to area) then the Council should pay the receiving authorities "usual cost". If the care home selected is more expensive than the receiving authorities "usual cost" then the issue of top ups may arise. Without a "usual cost" the additional costs and any top ups cannot be determined.
49. Where the Council have a contract (agreement) with the care home the contract will set out what the Council would usually expect to pay for the accommodation. However, where the Council do not have a contract with the care home, the Council will pay the 'usual cost' determined in accordance with the Choice Guidance.
50. If an individual's assessed social care needs show that their needs can only be met in that particular care home, even if that care home is more expensive than what the Council would usually expect to pay, then the Council will be responsible for the full cost of the accommodation. This is based on the individual's specific circumstances and will be looked at on a case by case basis.
51. The Council therefore needs to set a "usual cost" for residential accommodation, to apply when the Council do not have an agreement with a care home, for both in and out of borough placements, where an individual has expressed a

preference/choice to reside at that care home.

52. The "usual cost" has been reviewed and it is proposed to set it at the minimum acceptable grade level in the current and subsequent agreements. This is currently a grade 4D, this would be a 4C grade under the new agreement. The grade 4D in 2012-13 is £356.00, and has already been calculated using a true cost of care model as the minimum sufficient to meet the assessed care needs of an individual within the Councils Quality Standards.

Equalities & Human Rights Implications

53. An Equality Impact Assessment (EIA) was carried out on 14 March 2012 to highlight possible impacts resulting from the review. After the analysis and evaluation of the questionnaire and financial template responses, a review of the EIA was undertaken and an Equality Improvement Action Plan (EIAP) developed (**Appendix 7**). These documents were reviewed by a temporary 'Equality Group' set up for this project on 14 May 2012 and will be made available on the Council's website.
54. A further Equalities Impact Assessment has been commenced for the proposed change to full fee payers accessing the Council managed contracts (**Appendix 8**). Individual impacts will be considered at annual review and mitigated where appropriate.

Financial Implications

55. There are no new financial implications for the Council other than those set out in the Medium Term Financial Plan. The cost of Residential Care will continue to rise in line with inflationary indices which are set out within the Agreement.