

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

16 MARCH 2017

**REPORT OF SENIOR
MANAGEMENT TEAM**

CABINET DECISION / KEY DECISION

Cabinet Member for Adult Services and Health – Councillor Jim Beall

OLDER PEOPLE'S AND MENTAL HEALTH CARE HOME SERVICES FEES

1. SUMMARY

- 1.1. The Council is required on an ongoing basis to promote the efficient and effective operation of the local market in care homes. It is important that the fees paid for this publicly funded care are sufficient to ensure that the care provided is safe, available at the right time and of the right quality. Provision should be sustainable on reasonable commercial terms.
- 1.2. In order to review and decide on what the Council should set as its usual cost, an exercise to assess actual costs has been carried out. This has sought to enquire into and develop a deeper understanding of what the actual costs of providing care home services in Stockton are, including the local factors that relate to the market in Stockton.
- 1.3. The assessment of the actual costs of providing care within Stockton is aimed at establishing a fair fee for Council funded care home services. The Council may take into account local factors and any other relevant matters, as well as its own resources. Adopting the recommendations will meet providers' costs and see an overall increase in the rates paid.

2. RECOMMENDATIONS

- 2.1. To approve the fees for older persons care home services set out in paragraph 11.1.
- 2.2. To approve the fees for mental health care home services set out in paragraph 12.5.

3. REASONS FOR THE RECOMMENDATION(S)/DECISION(S)

- 3.1. The report presents the findings of the review of actual costs and fees for older people's and mental health care home services fees.

4. MEMBERS' INTERESTS

- 4.1. Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.
- 4.2. Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, in accordance with **paragraph 18** of the code, consider whether that interest is one which

a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
 - relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.
- 4.3. A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)
- 4.4. Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

- 4.5. It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.
- 4.6. Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code).

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3. DETAIL

The 2013 Decision

- 3.1. On 25 July 2013 (following a consultation process with providers) the Council’s then Corporate Director of Children, Education and Social Care (CESC), in conjunction with the Lead Cabinet Member, approved the setting of a number of usual costs for care home services for older people for the period of 1 October 2012 to 30 September 2013 and made an offer of a usual cost for the period of 1 October 2013 to 30 September 2014.
- 3.2. The usual cost is essentially the fee or rate the Council is prepared to pay to care home providers for care home services (“the fees”).
- 3.3. The decision of 25 July 2013 became the subject of a judicial review pre-action protocol letter sent on behalf of the Stockton and Billingham Care Home Association (the Association). Whilst the Council did not accept the arguments put forward by the Association at that time, in the interests of maintaining the essential relationship with the providers and with a genuine aim of ensuring providers receive a fair fee for care that

takes account of the actual costs of that care, the Council agreed to review the decision afresh, subject the following conditions:

- a) *that each of the (care home) constituent members of the Claimant, who have not already submitted data agree now to provide to the Council a fully completed financial template in the format and for the periods previously required by the Council, to enable the Council to review its decision on the Usual Costs and take account of actual costs of providing care and other local factors. Such complete template to be provided by each (care home) constituent member of the Claimant on or before 22 November 2013.*
- b) *that the [providers] provide such other information to the Council that the [providers] require the Council to have due regard to in order to verify and review the actual costs of providing care and other local factors.*

- 3.4. The Council further agreed to backdate any change in fees for older people's care homes resulting from the review of the decision to 1st October 2012, which is the date when the Council received a formal written request. At that, stage fees for mental health homes were not part of the review.
- 3.5. Whilst the Council has not accepted all the arguments made by providers in respect of the sufficiency of fees and the financial burden said to be imposed, and does not agree with the providers contention as to why it has taken so long to conclude the review, it is recognised that to maintain and indeed improve provider goodwill, that once the fee is set (and subject to any scrutiny procedures or legal challenge), immediate steps should be taken to expedite the payment to providers of any backdated fees, so as to alleviate what providers perceive as historic underfunding.

4. INTERIM FEES

- 4.1. During the review period, the underlying rates that were implemented following the 25 July 2013 decision have been maintained, except in so far as they have been uplifted to keep pace with inflationary pressures. Details of interim payments are detailed in **Appendix 1**.
- 4.2. Increased fees have been implemented with effect from 1 October 2014, 1st October 2015, and most recently 1 April 2016 by 1.88%, 1.55%, and 3.72% (there are currently three assessed grades of home based on environmental standards). These were determined by applying inflationary indices (from the Office for National Statistics) across the respective elements of the cost categories in the fee rate, which included the national minimum wage and, more recently, the national living wage.
- 4.3. The Council recognised that a financial pressure was created for providers as a result of increases firstly to the National Minimum Wage and then the Government's introduction of a mandatory national living wage from April 2016. The latest National Living Wage (NLW) increase raised our highest care home (Grade 1) fee rate for older people without and with dementia from £448 and £471, to £465 and £489 per week respectively. This evidences the Council's aspiration to ensuring that care home employees are provided with the National Living Wage.

5. THE REVIEW

- 5.1. Council Officers have engaged with providers and the Association to collect information to help understand the actual costs of providing care home services in Stockton. In addition, the Council has obtained additional information relevant to the costs of care from a range of sources identified in this report. The Council observe that there is no clear correlation between level of fee, resource input and the actual quality of care delivered within the Borough. As in any sector, some providers are more efficient or simply perform better than others.
- 5.2. The Council has analysed all the information it has received from the market, together with the additional information it obtained. The Council has worked with representatives of the

Association to understand their preferred approaches, assumptions, and expectations to assessing actual costs and has sought, wherever possible and based on the evidence, to proceed on the basis of agreement with provider representatives.

- 5.3. These costs have been considered alongside local and other relevant factors, as well as the Council's duty of Best Value and its obligations under the Care Act 2014 and the Equality Act 2010. This approach has enabled the Council to set out in this report what it considers a rate that represents a fair cost of care and one that appropriately reflects local market conditions.

6. CHANGES IN LEGISLATION AND CURRENT LEGAL POSITION

- 6.1. The new decision will cover the period from 1 October 2012 onwards. On 1 April 2015 the legal framework governing the adoption by Councils of a usual cost for care home services for older people changed and, with effect from that date, the Council's responsibilities became governed by the Care Act 2014, the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 and published statutory guidance (Care and Support Statutory Guidance). The statutory guidance has been updated several times since the introduction of the Care Act, the most recent update being in December 2016; <https://www.gov.uk/guidance/care-and-support-statutory-guidance>
- 6.2. In summary, the Care Act 2014 gives effect to, amongst other things, the following provisions:
- a) Requiring the Council to promote individual wellbeing and apply the wellbeing principle in all cases where a local authority is carrying out a care and support function, or making a decision, in relation to a person.
 - b) The Council is responsible for preventing, reducing or delaying care and support needs
 - c) Requires that the Council must promote the efficient and effective operation of a market of services for meeting care and support needs.
 - d) Specifies the requirements of a personal budget for each person needing care or support.
 - e) Entitles residents to express a preference for particular accommodation
- 6.3. Prior to the Care Act, under the National Assistance Act 1948 the Council was required to set a "usual cost" for care home services with care providers. The Care Act 2014 and guidance does not require this. Instead, the emphasis has shifted to ensuring a sufficient personal budget, which must be adequate to ensure the needs of the person are met. In practical terms, the personal budget still relates to the usual cost of the type of residential care sufficient to meet the person's needs and it remains lawful to refer to the usual cost as a useful tool in market-shaping and complying with choice regulations.
- 6.4. The setting and purpose of a usual cost is, therefore, now determined by a range of factors, including a market-shaping duty and responsibilities in relation to personal budgets as well as meeting need and complying with the person's choice of accommodation.
- 6.5. In the context of the current decision, the key part of the Guidance is Chapter 4 "Market shaping and commissioning of adult care and support services". Within this chapter are significant principles that the Council must have full regard to in making the new decision, in particular:
- a) Authorities should commission services having regard to cost effectiveness and value for money (4.27);
 - b) Supporting sustainability: authorities must work to develop markets and ensure sufficiency of adequate provision (4.33);
 - c) The Council must understand the business environment of the providers and develop and articulate a Market Position Statement, or equivalent (4.34).

- d) Local authorities **must not** undertake any actions which may threaten the sustainability of the market as a whole, that is, the pool of providers able to deliver services of an appropriate quality, for example, by setting fee levels below an amount which is not sustainable for providers in the long term (4.35);
- e) Authorities **must** encourage a variety of different providers (4.37);
- f) Authorities **must** understand local markets: *“This should include reference to underpinning demographics, drivers and trends, the aspirations, priorities and preferences of those who will need care and support...”* (4.68-9);
- g) *“Contracts should incentivise value for money... Contracts and contract management should manage and eliminate poor performance and quality by providers and recognise and reward excellence”* (4.103).

6.6. Importantly, Councils must take account of providers’ actual costs, with the Guidance providing:

“In all cases the local authority must have regard to the actual cost of good quality care in deciding the personal budget to ensure that the amount is one that reflects local market conditions. This should also reflect other factors such as the person’s circumstances and the availability of provision. In addition, the local authority should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.”

6.7. The Council agrees with providers that the Guidance does not envisage a funding gap between efficient care providers’ actual costs and the rates paid to them by the Council and it is accepted and clearly right, that part of the makeup of actual costs is a reasonable rate of return for providers to ensure the market remains sustainable.

7. APPROACH AND ASSESSMENT OF ACTUAL COSTS

- 7.1. Care home services for older people in Stockton are provided by a diverse range of businesses that operate with a number of business models. There is no one single actual cost of care, but rather a range of costs incurred reflecting the diversity of providers in the market. The costs incurred for individual homes can and does vary, as do factors such as occupancy and quality.
- 7.2. With funding from local authorities contributing a substantial amount to the revenue of care homes there is understandable concern both nationally and locally of the impact that spending cuts could have on the sector. In Stockton recognising the importance of the services provided, there has been no attempt to make savings from the budgets for care home services, instead the proposals demonstrate an evidence based approach to continuing to fund and invest in the sector in a prudent way.
- 7.3. Whilst the Guidance is direct in explaining to Councils the need to take account of actual costs, neither the Act nor the Guidance contain any specific mechanism by which the Council should take into account the actual cost of care when setting the fees it pays to providers. It is fundamentally a matter of judgement exercised in the context of the legal duties placed on the Council and having due regard to local factors. This, however, creates a significant discretion for the Council in how it approaches this, with the obvious potential for disagreement with the provider sector. The approach outlined in **paragraph 5.2** has sought to minimise the risk of such disagreement.
- 7.4. It is possible to use some ‘off-the-shelf’ models to assist in determining a fee based on collected data, notably the Laing & Buisson Fair Price for Care model, which was developed for the Joseph Rowntree Foundation as part of their ‘Toolkit for Residential and Nursing Care Costs’, (‘the JRF toolkit’), along with others such as the PWC model (of which there are several variants), the ADASS model and the IESE Care Funding Calculator (CFC). None of these are, however, Stockton specific and, therefore, truly reflective of the local market.

- 7.5. Consequently, in assessing providers' actual costs, the Council has adopted an approach that does not rely solely on generic models where the mechanism and assumptions do not reflect the Stockton market, but instead has worked with local providers and the Association to gain a better understanding and, therefore, a more sensitised view of the actual costs to providers operating in Stockton.
- 7.6. The proposals are based on detailed data on actual costs, a rational methodology sensitive to local market conditions, and which have regard to the Council's obligations under statute, case law, and guidance.
- 7.7. The original consultation prior to the 2013 decision involved asking providers to complete a financial template. A detailed guidance document to assist with completion was agreed at the providers' meeting held on 31st May 2012 and providers were advised that they could submit the required information either electronically or as a 'hard' copy. The purpose of completing the financial template was:-
- To enhance understanding of the various provider businesses and the financial environment in which they operate;
 - To enable the Council to give due regard to the "actual costs of care" within Stockton when setting fee rates, particularly as the Council itself does not provide care home services for older people.
 - To ensure information was submitted from providers in a consistent format to enable comparability.
- 7.8. An essential part of the further fee review process was a period from October to December 2013 in which the Council invited any provider who had not already done so to provide to the Council a fully completed financial template, in the format and for the periods previously required by the Council, to enable the Council to review its decision on the usual costs and take account of the actual costs of providing care and other local factors. Providers were also requested to provide such other information to the Council that they wanted the Council to have due regard to in determining the actual costs. There were four resubmitted templates and six new submissions for care homes that had not previously provided information. Therefore, there are 19 homes in the refreshed fee review exercise.
- 7.9. The approach provides an analysis of the fixed and variable costs across the operation of a typical care home, and takes into account the factors mentioned in the below table:

Fixed Cost	Variable Cost
Management	Qualified nursing staff
Admin and reception staff	Care Assistants (excluding activities)
Rates	Care Assistants (activities)
Water	Chefs/cooks
Telephone and IT	Domestic staff (catering, cleaning & laundry)
Business Insurance	Other staff
Handyperson	Recruitment
Gardening	Training
Waste Disposal	DBS checks
Stationery and postage	Uniform and PPE
Head office recharges	Staff expenses
Depreciation	Electricity
Loan interest payable	Gas
	Repairs & Maintenance
	Furniture & furnishings
	Domestic equipment
	Cleaning materials
	Other professional fees

Other premises costs
Food
Medical supplies (including medical equipment rental)
Continence products
Other running costs

This is more particularly set out in the appendices. Fixed costs do not tend to vary with changes in bed occupancy level whereas variable costs do.

- 7.10. In terms of the financial information provided, analysis, clarification, and verification have been essential to ensure robustness of information. There have been several meetings and on-going dialogue with the providers' representative to work through any issues that they wished to see addressed, including, for example, the consideration of unpaid proprietor hours, capital maintenance costs and nursing costs. We have also reached agreement with the Association to exclude or reduce the costs in a number of areas in specific homes where their costs were agreed to be outliers.
- 7.11. Throughout the process, changes and adjustments have been made to the costs and/or treatment of the costs from the original decision to address legitimately raised concerns of the Association and where these were supported by new or additional evidence. This approach has ensured that important issues, including agency costs, unpaid proprietor hours and taxation, have all been reflected in the updated actual cost assessment in a manner consistent with provider expectations, whilst at the same time ensuring correctness and that 'double counting' of costs did not occur.
- 7.12. Taking into account comments from the Stockton and Billingham Care Home Association (SBCHA), instead of calculating the fees by ascertaining a new blended rate and comparing this to the previous blended rate and applying uplift, actual costs at 2012 have been used. We have removed 3 homes as their per bed costs were significantly higher or lower compared to other homes in the sample. The key point is that we have ceased reference to historic differentials and applying a percentage uplift to instead rebase the starting position at 2012 on actual costs.

8. OCCUPANCY

- 8.1. It is the Council's responsibility to ensure adequate provision of services to meet assessed need. The Council collects and maintains information from care home providers regarding occupancy levels and vacancy numbers. An analysis of capacity in the market as at 13th November 2012 is set out in the table below:-

Home Type	Total No. of Beds	No. of Beds Occupied	Vacancies	%age Vacant
Residential	852	723	129	15%
Res - Dementia	392	301	91	23%
Nursing	259	223	36	14%
Nursing - Dementia	235	198	37	16%
Mental Disorder	18	11	7	39%
TOTAL	1756	1456	300	17%

- 8.2. Occupancy is a factor where there are particular issues of concern in the Stockton market. There is currently and has been for some considerable time, a significant oversupply of residential capacity. As part of the Council's market shaping

responsibilities, the rate should appropriately incentivise providers to achieve a high level of utilisation. Surplus capacity that exists in the system currently drives a higher unit cost of care and, in consequence, hinders efficiency and value for money.

- 8.3. The Council is not expected to over-compensate for low occupancy rates and effectively pay for market over supply. The Council must ensure good value for money, and this cannot be achieved if the Council is disproportionately subsidising empty beds, by paying for a lower occupancy rate than is the case nationally. The Council considers that it is reasonable and consistent with its duties under the Care Act and the Guidance to promote an overall improvement in the efficiency of the local market and increase occupancy levels by reducing over-capacity.
- 8.4. The Council needs to balance the benefits of having a wide choice of providers against the sustainability of the market as a whole. Consequently, the Council will not set a cost that acts only to preserve that inefficient part of the market, but instead will use its market shaping responsibilities to work towards a market that is as efficient as that expected nationally, and does not carry unnecessary surplus capacity
- 8.5. The Council has placed, and continues to place, a higher than national average number of people in residential placements, in forming the commissioning requirements, officers have taken a view that the Council needs a level of capacity in the overall market sufficient to accommodate six months' worth of new placements without any reciprocal termination of placements in line with usual trends. Fluctuation is created through seasonal and demographic factors affecting demand (such as NHS Winter Pressures).
- 8.6. The Council's view based on its commissioning requirements is that 6% spare capacity is sufficient within the Stockton market and that 94% occupancy would, therefore, be an appropriate target for occupancy and market shaping should be used to move over time towards this figure. There is no evidence to suggest that additional residential capacity will be needed in the next few years, and indeed oversupply is itself a major factor that impacts the sustainability of the market. It is recognised that the Council will need to assist homes to diversify their offer, particularly into specialisms, or, indeed, accept that some homes will not be able to operate efficiently and will close.
- 8.7. In the current economic climate, recognising that market shaping to address the over-supply cannot be achieved overnight, with some providers needing time to develop and diversify and change business models, the Council's view is that the 94% occupancy figure should be approached gradually, with 92% being set as the rate at which a home is currently considered to be operating efficiently. The Council therefore accepts that, at least for a time, it will have continue to fund a degree of oversupply and spare capacity.
- 8.8. Overall occupancy in Stockton is around 83%; however that does not fully describe the market position, as in fact over 50% of Stockton homes do achieve over 90% occupancy, but there are outliers that have much lower occupancy. The Council needs to protect residents' welfare, but also needs to avoid using public money to protect and subsidise commercial organisations from the consequences of inefficient running, poor financial performance or simply being an unpopular choice. Preserving an inefficient part of the market in an area with too many homes runs contrary to the Guidance as it actually promotes inefficiency that reduces sustainability over time.

9. RATE OF RETURN AND CAPITAL

- 9.1. The Laing and Buisson model uses a 12% return on capital. Laing and Buisson say "A 'profit purchase' multiple of 8.5 implies that purchasers are willing to invest in good-quality care homes in the expectation of a return of 12% (that is, the reciprocal of 8.5)". The JRF toolkit suggests that:

"an adequate return on capital is the key to achieving a stable independent sector of sufficient size and appropriate quality to meet the commissioning needs of councils and their NHS partners. On the assumption that new and/or replacement care home

capacity is required ...councils throughout the country need to set fee rates such as to:

- a) incentivise existing operators to continue to offer services and to upgrade the physical assets where they are below NMS for newly registered homes;*
- b) attract investment in new care home capacity to meet increasing underlying demand driven by the ageing population; and*
- c) compete with private payers and residents funded by other public sector agencies for available home care places.”*

9.2. Within Stockton, it is not correct to assume that new/and or replacement home capacity is required now or in the foreseeable future. Based on information collected from care homes in November 2012, the occupancy level was 83% and is currently 81% for residential and 85% for nursing care. Similarly, in October 2012, Stockton had 37 care homes and there are currently 35, because of three homes closing and one new entrant coming into the market. Consequently, the essential tenet underpinning the JRF toolkit does not apply in Stockton as no new or replacement care capacity is required.

9.3. To address point (a) above, there is an excess of capacity and, whilst upgrading physical assets might be beneficial, it is not essential. What matters is the overall quality of care received and in Stockton 63% of Older Peoples care Homes and 100% of Mental Health Care Homes have been assessed by CQC as being "Good" or assessed as such by the Council where homes have yet to be inspected under the new regulations. Given the financial circumstances of the Council, encouraging providers to upgrade their provision cannot be a priority. In respect of (b) above, spare capacity in the market has been relatively stable at 19% in residential and 15% nursing at June 2016. The number of homes has remained fairly static over recent years with recent market shifts a consequence of workforce supply/cost outside the Council's control, resulting in bed reregistration rather than losses of beds. For example, difficulty in securing nursing staff has resulted in certain providers reregistering nursing beds as residential and, in part, this explains some increased capacity in residential beds overall.

9.4. The JRF toolkit was updated in 2004 and in 2008. The foreword to the 2008 edition states that it:

“allows its users to vary the data entered according to local circumstances and conditions, and is simply intended to inform negotiation from a transparent basis”.

It made provision for local rather than national baseline costs and fees because pay rates and land prices, the two main determinants of care home costs, vary significantly according to locality. Similarly, the approach adopted by ADASS promotes the use of costs generated locally.

9.5. In addition, incorporating the rate of return of 12% as quoted in the JRF model into the costs model, risks building inefficiency into the rate, as there is no incentive on providers to manage costs efficiently.

9.6. The Council's proposals use an approach that reflects the actual cost on the basis the assets were mortgaged. A repayment mortgage is where monthly repayments consist of repaying the capital amount borrowed as well as the accrued interest, so that the amount borrowed decreases throughout the term and by the end of the loan term has been fully repaid. This is a useful method, as it allows a common approach to be taken with all providers and avoids the need for an impossibly complex exercise trying to assess varying and diverse capital funding structures for the assets used.

9.7. Whilst determining a figure for return on capital assists within the calculation of the Usual Cost, the Council is not required to ensure that the provider achieves any or any given return on capital. The figure derived needs reasonably to recognise the provider's costs

in making assets available. In this case, the main asset deployed is the building used to deliver the service. Therefore the factors to include in the calculation are:-

- a) actual costs of the capital cost of a room in Stockton
- b) the number of years over which repayment is made
- c) interest rate

- 9.8. An analysis has been prepared of care homes for sale on the open market in March 2016 on a freehold basis, as advertised on several web based property agents, taking the advertised valuation of the home and the quoted number of registered places to establish an average value per room. The information obtained relating to care homes outside of Stockton was used for capital value purposes, as there was a lack of local information and a wider area was used to allow for a more detailed example. Due to the confidential nature of the adverts for care homes, it is not always possible to provide the information identifying which home is available for sale.
- 9.9. The survey identified fifteen care homes in the North East with the average value per room of £ 32,000 and 4 homes in Teesside with an average of £35,000 (summarised in the table below). Therefore, the capital value per bed has been based on the higher figure of £35,000.

Area / County	Number of homes	Average Value per Registered Bed
Teesside	4	£34,977
Darlington	1	£28,571
Durham	5	£36,333
Tyne & Wear	2	£34,320
Northumberland	3	£26,905
	AVERAGE NORTH EAST	£32,221
	AVERAGE TEESSIDE	£34,977
	ROUNDED	£35,000

- 9.10. Discounting the £35,000 back to 2012 prices using IPD Annual Healthcare Property Index information equates to a value per bed of £33,500. The approach establishes a single rate based upon the average room value within Stockton and more closely reflects the actual local factors rather than the hypothetical. There is no need for new homes to be set up due to current oversupply in the Borough. The use of sales values obtained does not largely affect the Council's decision in determining the fees, as there is no incentive to encourage new start-ups in a saturated market and, therefore, no replacement home capacity required.
- 9.11. According to Christies Finance (specialists in this field), a typical loan period for the purchase of care homes ranges from 15 to 25 years. It is proposed to use repayment over a 20 year period, i.e. the mid- waypoint. This is considered a reasonable timescale for a long-term business, such as adult social care. The interest rate to be used is 4.45% and is based on the average from the data provided by providers.
- 9.12. In the residential care market, it is recognised that buildings are required to deliver services. Providers have a range of options open to them to fund buildings e.g. mortgage, equity, leasing. To ensure a reasonable and consistent approach to this the Council has taken into account that the totality of the capital value needed to be

recognised for rate of return purposes given individual homes have differing asset financing arrangements and for this purpose assumes a 100% mortgage. This approach enables providers to be paid appropriately for their provision of accommodation.

- 9.13. The Council has since the consultation amended the rate of return calculation to reflect the increased capital value of the highest graded care home beds. This therefore, addresses providers concerns and recognises the enhanced capital investment needed for homes with greater environmental standards. The same capital value has been used but it has been proportioned across grades of home based on the last PWC True Cost of Care exercise. In other words grade 1 are 118.91% of the average, grade 2 72.41% and grade 3 49.78%⁵⁵) Applying all these factors, assuming a 100% mortgage and adjusting for 92% occupancy derives an actual cost of £70.33, £42.81 and £29.44 per bed each week for Grade 1, 2 and 3 care homes respectively. These figures allow for an additional cost for taxation, addressing the issue raised by the SBCCHA. In respect of a Grade 1 home this represents an annual payment per room of £3,373 and equates to total payments over 20 years of £67,476 (i.e. mortgage debt of £39,852 and interest of £20,400 plus the additional payment for taxation £7,224), assuming the home is occupied at 92% throughout. In a 48 bed Grade 1 home with an average 92% occupancy it amounts to a payment to cover the cost of the accommodation of approximately £161,935 ($£70.33 \times 48 \times 52.14 \times 0.92$) per annum to the Provider. The money can be used to pay existing mortgages/business loans or where the cost of the capital asset has already been defrayed to reinvest in the business or elsewhere or to take out as additional profit.
- 9.14. Therefore, the Council can be confident that these weekly rates are sufficient to compensate providers for making the accommodation available, as it enables the provider to recover the capital cost of the asset within 20 years whilst thereafter retaining an asset with a useful residual life, which can continue to generate returns for the provider.
- 9.15. In addition to the return for capital, it is recognised that businesses must make an appropriate profit. It is proposed that a profit element is added at a rate of 6% on operating costs (excluding the return on capital). The level reflects a low risk commercial return, given the nature of the care home business and the Council as a significant purchaser of care home places.
- 9.16. It is this figure that is important rather than the route by which it is arrived at and the figure needs to be tested against its projected financial effect to ensure that it continues to bear a reasonable relation to the cost of providing Council care.
- 9.17. In respect of mental health care home services, at the date of survey, there was only one home identified in the North East and its sales price per bed was close to that for older people's care homes. Given that this reflects the general position, the same methodology has been used for determining the return on capital and for profits.
- 9.18. The chosen rate of return should provide for recoupment of investment over a reasonable period. The return for capital and profit elements together for a Grade 1 home total approximately £91 per client per week.
- 9.19. The market indicators published by property advisors CBRE for quarter 4, 2014 suggested that the prime yield for care homes is between 5.5% and 6%. Prime yields for health care (which includes social care) of 5.5% to 6% refer to well-located and market rented properties let to a financially strong covenant on a long lease. Not all properties meet this definition and, therefore, fall into secondary yield properties with yields of 6.5% to 7.5%.

9.20. The rate of return on the capital value per Grade 1 care home bed of £39,852, at 92% occupancy, based on the potential different yields would be as follows:-

Assumed Yield	6%	11%
Return on Capital per bed per week	£50	£91

9.21. As the figure of £91 per week rate of return includes profit, it exceeds the primary yield of 6% and is, in fact, closer to 11.3%.

10. CONSULTATION

- 10.1. Prior to determining a final recommendation to Cabinet, officers have consulted all commissioned providers, and the Association about the proposed rates and the Council's approach to enquiring into actual costs. Providers and the Association were each provided with a report draft Cabinet report entitled 'Older People's And Mental Health Care Home Services Fees' along with its supporting appendices which detailed the proposals. The consultation period ran from 1 August 2016 until 30 September 2016 (which includes as extension of time request by the Association).
- 10.2. It would be inaccurate to look at this as a single consultation event, in isolation of the extensive work that has taken place between officers and the Association. However, it did represent a culmination of the work to date.
- 10.3. Comments were received from 3 individual providers and one coordinated response from the Association which represents 17 Care Providers (according to its own statement of membership).
- 10.4. When reaching a decision on the Usual Costs Cabinet must take into account the views of providers and to this end a number of changes to the original draft proposals have been. Clearly, the primary concern of providers is with regard to the fee levels and the need to maintain the standard of quality of care in the borough. Full details of consultation responses alongside views given by officers of the Council to address and respond to these are set out in **Appendix 2**.

11. PROPOSED FEES (USUAL COSTS)

11.1. The draft consultation report provided the following proposals for 2012 to April 2016:

Older People - Table of Revised Fee Rates (£)

	WEF Oct-12	WEF Oct-13	WEF Oct-14	WEF Oct-15	WEF Apr-16
Grade 1 Non-Dementia	431	439	448	456	475
Grade 1 Dementia	453	462	472	480	499
Grade 2 Non-Dementia	392	399	407	414	430
Grade 2 Dementia	412	420	429	437	454
Grade 3 Non-Dementia	366	373	381	388	403
Grade 3 Dementia	385	392	400	406	423

- 11.2. Following the consultation and taking fully into account comments made by providers and the Association the Council has adjusted and improved these proposals as well as applying a further year's inflationary uplifts to take account of April 2017 onwards as follows:

		WEF Oct-12	WEF Oct-13	WEF Oct-14	WEF Oct-15	WEF Apr-16	WEF Apr-17
Grade 1	Non-Dementia	442	450	459	468	485	496
Grade 1	Dementia	469	477	487	496	516	528
Grade 2	Non-Dementia	414	422	431	439	457	468
Grade 2	Dementia	441	449	459	468	487	499
Grade 3	Non-Dementia	401	409	417	425	443	454
Grade 3	Dementia	428	436	446	454	473	485

12. MENTAL HEALTH CARE HOMES

- 12.1. There are four Mental Health Care Homes in the Borough. Whilst they were originally not part of the pre-judicial review action, they have since become part of the Association and it was agreed that the Council would review their fee level in parallel. In October 2014, the Council made a decision to pay £391.18 from 6th December 2013 based on financial information provided by two homes. This was not accepted by providers. However, these fees have been uplifted by the same indices for Oct 2014, Oct 2015 and April 2016 applied to the Older People's homes without prejudice to the outcome of the further fee review being undertaken. This resulted in fee increases of 1.56%, 1.04% and 2.95% respectively.
- 12.2. As part of the agreement to review the decision afresh the areas covered in **paragraph 7.10** following discussion with the providers' representative have been considered in relation to Mental Health Care Homes.
- 12.3. In the light of all the considerations set out above in this report, the Council is prepared to backdate the Mental Health Care rate uplift to 1 October 2012 as well, even though this request was made secondary by the Association.
- 12.4. The draft consultation report provided the following proposals for 2012 to April 2017

	WEF Dec-13	WEF Oct-14	WEF Oct-15	WEF Apr-16
Mental Health Care Home	436	443	450	462

- 12.5. Following the consultation and taking fully into account comments made by providers and the Association the Council has adjusted and improved these proposals as well as applying a further years inflationary uplifts to take account of April 2017 onwards as follows:

	WEF Oct12	WEF Oct13	WEF Dec-13	WEF Oct-14	WEF Oct-15	WEF Apr-16	WEF Apr-17
Mental Health Care Home	442	449	449	457	464	476	485

13. COMMUNITY IMPACT IMPLICATIONS

- 13.1. Under the Equality Act 2010, public bodies must pay due regard to the 'equality duty' when planning, changing or commissioning services. It is up to public bodies how they implement the duty. However, they must be able to provide evidence that the duty was considered before a decision is made. The Council has undertaken an equality impact assessment on the assessment of actual costs and this has been reviewed and updated as appropriate.
- 13.2. Clearly, if the Usual Cost is set at a level that is too low to cover actual costs, then it is possible that there would be an adverse impact on people receiving care home services who are particularly vulnerable either by way of age or disability or both. This could happen either because the rates would lead to a reduction in quality or, more critically, could lead to unplanned home closures. In consideration of the two care homes that went into formal administration in 2014, the council notes that entering into administration is not a departure from the market affecting local capacity any more than a provider putting a home for sale on the market. The overall capacity remains the same, and it is clear that the homes entering into administration may well come out of administration.
- 13.3. The extent of each risk depends principally on a consideration as to whether or not the Council's Usual Costs are at or above the actual costs of care. The work the Council has done to get data from the market and model the actual costs means that in the view of the Council the Usual Cost is at or above the actual cost of care
- 13.4. Currently homes in Stockton are not failing at the current Usual Costs level, even though there is significant excess capacity within the markets. Consequently, the proposed increase in rates and to a level where the providers' costs are clearly covered will mean that the providers' financial position is stronger and the risk of unplanned home closure falls. The Council will, however, need to continue to work closely with providers, particularly those with the lowest occupancy levels to reduce the current levels of overcapacity and do so in a managed way, to ensure that any adverse impacts of reducing excess capacity are diminished. The council is therefore committed to good quality care in considering and facilitating continuous improvement within the care homes and an efficient and vibrant market.

14. FINANCIAL IMPLICATIONS

- 14.1. The Council is able to take into account its resources when setting a fee to be paid to providers. When doing so, it will want to ensure that the rates are sustainable and not such that they would have an unacceptable impact on the Council's ability to fund ongoing placements as necessary to meet assessed need to the detriment of clients and providers alike. In this context, the Council should reflect on the very difficult and unprecedented financial circumstances it finds itself in from most recent MTFP Cabinet Report. Members will be aware from previous MTFP reports the level of Government funding reductions in recent years and the significant challenges that this presents and the total reduction in Government funding between 2010/11 and 2019/20 is now £75m, (62% in cash terms) or 82% in real terms.
- 14.2. Notwithstanding the prevailing financial position, the Council nevertheless aspires to ensuring that its fees will enable sufficient provision of the right quality to continue to be provided, but without compensating for inefficiency or supporting excess capacity in the market.
- 14.3. The draft report proposed an increase in the Older People's Care Home Fee Rates results in a backdated cost of £1.1m from 1st October 2012 to 31st March 2016. The annual increased pressure in the current financial year would be approximately £416k. In respect of Mental Health Care Home fees, there are £160k backdated costs from 6th December 2013 and an on-going annual pressure of £70k (assuming continued NHS contributions for eligible clients).

14.4. Following the consultation and the changes made, the revised rates result in a backdated cost relating to Older People Care Home Fees of £4.0m from 1st October 2012 to 31st March 2017. The annual increased pressure for future financial years would be approximately £1.15m. In respect of Mental Health Care Home fees there is £530k backdated costs from 1st October 2012 and an on-going annual pressure of £120k (assuming continued NHS contributions for eligible clients).

14.5. These costs have been included in the Councils Medium Term Financial Plan.

15. LEGAL IMPLICATIONS

15.1. The legal implications and duties engaged by the proposed decision have been summarised and reflected in the body of the report. A key issue is that in order to comply with the duties when setting fees, the Council needs to have due regard to the actual cost of care, in particular in relation to local factors. If it fails to do so there is a potential for legal challenge from providers.

16. RISK ASSESSMENT

16.1. The decision to set fees for older people and mental health care home services is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

17. COUNCIL PLAN POLICY PRINCIPLES AND PRIORITIES

- Protecting the vulnerable through targeted intervention
- Creating economic prosperity

The recommendations will positively impact on older people and people requiring residential mental health services in that it will contribute to the longer term financial stability of the care home market.

18. CORPORATE PARENTING IMPLICATIONS

18.1. There are no implications for children and young people as a result of the recommendations made in this report.

19. CONSULTATION INCLUDING WARD/COUNCILLORS

19.1. There has been no formal consultation to date with ward members in relation to this issue, although briefings have taken place with the Cabinet Member for Adult Services and Health. Care Home providers have been consulted on the proposals as outlined at **paragraph 10.1** and within the appendices.

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Education related?

No

Background Papers

None

Ward(s) and Ward Councillors:

All

Property

Not Applicable