

Consultation on proposals for a future commissioning framework for residential and nursing care

Published 1 September 2015
Consultation closes 24 November 2015

1. Introduction

This document is being made available to the provider market in Newcastle upon Tyne to commence formal consultation between the sector and the Council over establishing a Commissioning Framework for older peoples' residential and nursing care. It is intended to support consultation on setting fee rates for residential care in Newcastle for financial years 2015/16, 2016/17 and 2017/18. The information in this report is presented for public consultation between the dates above.

The purpose of the consultation is to:

- seek feedback about whether providers broadly agree with each of the principles we have used to arrive at the proposed fees; and whether there are any additional factors that need to be considered;
- understand providers' views on the likely impact of the proposed fees on the financial viability of their care home; and
- understand the views of providers and voluntary sector stakeholders on the likely impact of the proposals on residents.

Our approach to developing this proposal is as follows. We initially sought to engage directly with providers to determine an actual cost of care for the market in Newcastle. As providers refused to work either with the Council, or the independent third party we appointed Valuing Care Financial Management (VCFM), we have determined the cost of care by working with VCFM; using the model they have developed to understand the cost of care within our market. We have then considered (a) sustainability, (b) risk to the providers, (c) risks to the service users and (d) costs pressures on the Council's budget. Accordingly the fee levels which we propose for 2015/16 are as follows:

	Current Fee Levels 2014/15		Proposed fee levels 2015/16	
	non-EMI	EMI	non-EMI	EMI
Grade 1	£492.32	£511.79	£497.24	£516.91
Grade 2	£471.76	£491.24	£476.48	£496.15
Grade 3	£447.95	£467.43	£452.43	£472.10
Grade 4	£425.23	£442.54	£429.48	£446.97

Please refer to section 8 for details of our rationale and our proposal for 2016/17 and 2017/18.

2. How to participate

Consultation responses can be made via the Let's Talk portal www.letstalknewcastle.co.uk or can be emailed to catherine.stokes@newcastle.gov.uk

Alternatively you can write to:

Angela Jamson
Commissioner, Adult Social Care,
Wellbeing, Care and Learning Directorate
Newcastle City Council
Civic Centre
Newcastle NE1 8QH

All feedback to the consultation must be received by close of business on 24th November 2015.

Two consultation events will be held for providers and other interested stakeholders. These will take place on:

- Thursday 22nd October, 10.30am to 12.30pm; and
- Friday 13th November, 10.00am to 12.00pm

Both events will be held at the Civic Centre, Newcastle. Please email Catherine Stokes at the address above to book a place.

3. Care system strategic objectives

Residential and nursing care form part of an overall system of care and support delivery which is at the heart of the adult social care offer.

There are a number of key delivery elements within the system, which must be funded from the available resources. Firstly, we must fund a professional social work service. We must then fund a range of service offers, which can be summarised at a high level as:

- Preventative services
- Reablement
- Assistive technology
- Daytime support
- Homecare
- Extra care/assisted living
- Residential and nursing care

The service offers above are listed in order of their preventative impact, from services expressly focused on prevention and reablement, through to residential and nursing care which have limited preventative impact.

Our strategic objective, in line with the Care Act 2014, is to focus on an approach to support people in service types as near to the top of this list as possible. This is often referred to as “prevent, reduce and delay”. Doing so is critical to delivering the Council’s four priorities:

- We want to help people to continue to contribute to community life for as long as possible, and to help them have confidence in their community and neighbourhood. This is a key part of our work to deliver **decent neighbourhoods**.
- We want to help people to continue to access work and volunteering opportunities and meaningful daytime activities for as long as possible, because we know that these types of opportunities are key contributors to establishing and maintaining wellbeing. Helping people stay at home and access daytime support therefore contributes to our **working city** priority.
- We want to make sure that people with care needs are enabled to participate in community life on the same level as everyone else. We can achieve this best by helping them to stay in their own homes for longer. This is a key part of our work to **tackle inequalities**.
- We want to make sure that the Council’s funding is allocated fairly across all types of services, including but not limited to care. This is part of our commitment to being a **fit for purpose Council**. Creating a care system that is focused on prevention and reablement is the best way of managing costs within the care system, and this in turn enables us to maintain other important services for the whole community.

4. The Legal Framework

4.1 The legal framework governing care and support in England has just undergone fundamental reform. The Care Act 2014, replaces the piecemeal legislation across the previous sixty years.

The Act amongst many other things, gives statutory effect to the following:

- Section 5 requires that a local authority must promote the efficient and effective operation of a market of services for meeting care and support needs. The Act places new duties on local authorities to facilitate and shape their market for adult care and support as a whole, so that it meets the needs of all people in their area who need care and support, whether arranged or funded by the state, by the individual themselves, or in other ways.
- Section 26 specifies the requirements of a personal budget prepared for each adult needing care or support itemising the cost of meeting assessed need and individual financial assessment in terms of actual payment.
- Section 30 entitles an adult to express a preference for particular accommodation

In addition, “The Care and Support Statutory Guidance” was also issued under the Care Act 2014 by Department of Health, October 2014 (“the Guidance”). The Guidance is statutory guidance and consequently when performing its functions a local authority must “act under” that Guidance. The Guidance explains that local authorities must focus on outcomes when pursuing market shaping and commissioning. Section 4 of the Guidance further describes activity and behaviours that are pertinent to this consultation including:

- local authorities should commission services having regard to the cost-effectiveness and value for money services offer for public funds;
- local authorities should assure themselves and have evidence that service providers deliver services through staff remunerated so as to retain an effective workforce. Remuneration must be at least sufficient to comply with the national minimum wage legislation for hourly pay or equivalent salary;
- when commissioning services local authorities should assure themselves and have evidence that contract terms, conditions and fee levels are appropriate to provide the delivery of the agreed care packages with the agreed quality of care. ... Local authorities should have regard to guidance on minimum fee levels necessary to provide this assurance;
- local authorities must not undertake any actions which may threaten the sustainability of the market as a whole, for example by setting fee levels below an amount which is sustainable for providers in the long term.

4.2 Further legislative provision is also found in regulations made under the Act. In this context the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 (“the Choice Regulations”) are relevant. The Choice Regulations prescribe the circumstances in which a local authority has to meet the provision of preferred accommodation, including in appropriate circumstances where “additional cost” is met by the adult or a third party on their behalf (a third party top-up).

4.3 The effect of the Act, Choice Regulations and Guidance is to require the Council to facilitate and shape their market for adult care and support as a whole. In turn, adults are entitled to express a preference for accommodation of their choice and provided that accommodation meets certain criteria and is in accordance with assessed need, local authorities are then required to facilitate that choice.

4.4 As described above the Council's new responsibility for market shaping is prescribed by the Act (Sections 5, 18 and 20) however it is worth noting that, neither the Act nor the Guidance contain any specified mechanism by which the Council takes into account the actual cost of care when setting rates they are prepared to pay to providers, although the Council has sought to establish this.

4.5 The Choice Regulations

The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 ("the Choice Regulations") replace the National Assistance Act 1948 (Choice of Accommodation) Directions 1992 ("the Choice Directions") with effect from 1 April 2015. Under the Choice Directions the Council was not required to place a person in their preferred accommodation if (amongst other things) to do so would cost the Council more than it would usually expect to pay for accommodation for someone with the individual's assessed needs.

Under the new Choice Regulations the Council is not required to place a person in their preferred accommodation if (amongst other things) the cost to the local authority of providing or arranging for the provision of the preferred accommodation is greater than the amount specified in the adult's personal budget that relates to the provision of accommodation of that type.

A personal budget for an individual must specify the following;

- the cost to the local authority of meeting those of the adult's needs which it is required or decides to meet;
- the amount which, on the basis of the financial assessment, the adult must pay towards that cost;
- if on that basis the local authority must self-pay towards the cost, the amount which it must pay. (Section 26 of the Act)

The Regulations state choice must not be limited to those settings or individual providers with which the local authority already contracts or operates, or those that are within the local authority's geographical boundary. It must be a genuine choice across the appropriate provisions.

Annex A of the Guidance states that the Council must have regard to the cost of good quality care in deciding the personal budget to ensure that the rate is one that reflects local market conditions. The Council should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.

Although there is no requirement on the Council to set a Usual Cost of Care, the Council has the power to do so and it is a useful tool both for shaping the market and managing the Council's obligations under the Choice Regulations.

5. The cost of care

5.1 Determining the actual cost of care

In October 2014, we began to work with Care North East Newcastle, to determine the Usual Cost of Care within the City. The Council initially sought to engage with the providers directly to gather this information. It became clear through engagement with Care North East Newcastle, an organisation claiming to represent the majority of the providers in Newcastle that they were not willing to engage directly with the Council. As a result, the Council appointed Valuing Care Financial Management Ltd (VCFM) to act as an independent third party and gather the required information. Care North East Newcastle advised their members not to engage with VCFM as they did not believe that this was the most appropriate independent third party to conduct the exercise. The Council wrote directly to all providers seeking their co-operation however, co-operation was only forthcoming from 4 providers initially although one subsequently withdrew their engagement.

As such, the Council were prevented from gathering local data which would inform the Actual Cost of care. We therefore instructed VCFM to utilise their cost model, data base comparator records and national intelligence to calculate a value for money rate that would be used to inform our consultation with the market and the proposals for a Usual Cost of Care across the City.

Valuing Care Financial Management Limited's report on Fair Rates for Care Home Services is attached in full in Appendix 1. This report gives details of the methodology that underpins the VCFM calculations and the factors considered. For clarity and ease, we have extracted the key calculation below.

	Council Fees 2014/15		VCFM's Value for Money Rates	
	Residential Care	Residential Care – people with Dementia	Residential Care	Residential Care – people with Dementia
Grade 1	£492.32	£511.79	£476	£488
Grade 2	£471.76	£491.24		
Grade 3	£447.95	£467.43		
Grade 4	£425.23	£442.54		

In constructing this rate, VCFM looked at:

- direct staffing costs

- other operating costs, and
- return on capital and operations

5.2 The cost of nursing care

The Council is **not** legally responsible for funding any costs related to nursing care or nurse led tasks. As such, this consultation is only able to consider the social care element of any residential or residential and nursing care placement.

All costs for nursing care should be met by the NHS. The VCFM report clearly identifies a shortfall in the tariff for Funded Nursing Care available to meet people's needs, however the Council cannot mitigate this shortfall.

6 Relevant Factors

6.1 Risks to the sustainability of the market

- **There have been no failures in the market** which relate to the level of fees paid to date. During 2014-15, Newcastle was the highest paying Authority for Grade 1 general residential and nursing care in the Northumberland, Tyne and Wear sub-region, based on information gathered from other authorities.
- **There is an excess of capacity in the market** in our opinion as our market currently has an average 84% occupancy¹. This is lower than the 90% occupancy figure which is usually referred to when defining a sustainable market. We do however recognise that occupancy figures within this market can be cyclical and can fluctuate rapidly.
- **There has been a recent expansion in capacity in the market.** Newcastle appears to continue to be an attractive location in which to develop residential and nursing care provision. There are 2238 registered care home beds within the City. In the last two years we have had one service transfer its operation from one site to another and one new service open, bringing an additional 50 beds to the market. We are expecting 1 further home to open within the next few months and 1 home to expand, increasing market capacity by more than 100 new beds.
- **Most homes are demonstrably and routinely compliant with quality standards required by the CQC** which are also incorporated within the Council's own quality monitoring framework.

¹ This figure is based on those returns received from Newcastle providers and is an average over the two year period August 2013 – July 2015. Highest occupancy recorded was 87% in March 2014.

The Council's market position in relation to fees, together with the increasing capacity within the market would therefore indicate that the market is, and continues to be sustainable.

6.2 Risks to providers

We have considered potential financial risks to providers and have determined they may fall broadly within the following areas:

- increased costs associated from the implementation of the financial provisions within the Care Act and Deprivation of Liberty Safeguards (DoLs) associated with the Cheshire West judgment;
- increased pension costs;
- National Living Wage increases; and
- increases in non-direct revenue costs: e.g. food and utilities

we believe we have addressed these in section 8 below. **Providers are invited to suggest any further risks that we have not considered.**

6.3 Risks to service users

We have considered risks to residents as a result of either a fall in quality standards or the need to move home because of a closure, however as:

- there have been no home closures;
- there is no detectable failure in quality standards across the market;
- there is excess capacity in the market; and
- the market is continuing to expand,

we do not consider that there is or will be a risk to residents. **Providers are invited to suggest any further risks that we have not considered.**

7. Costs pressures on the Council's Budget

7.1 Context

Councils are legally required to set a balanced budget at the start of every year to meet financial responsibilities. During 2015/16 we are required to make savings of £40 million. Over the next two years we estimate we will be required to make further minimum savings of £50 million with:

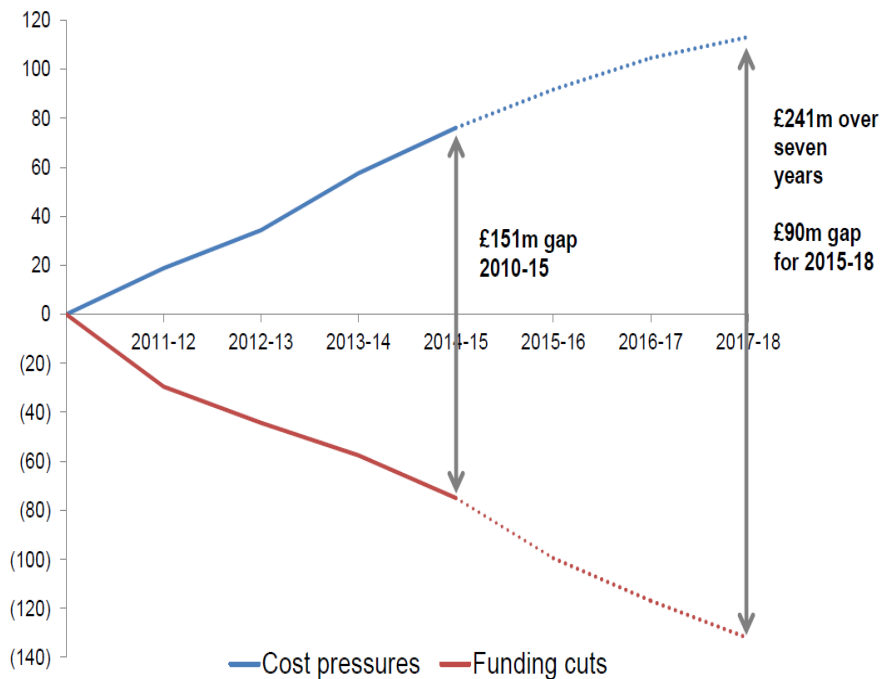
- £30 million in 2016-17; and
- £20 million in 2017-18.

In October 2014, the Council published 'Fair choices for tough times' which outlined the latest assessment of the steps we needed to take to respond to continued government cuts and cost pressures. This was the start of our

process to develop and agree our budget for 2015-16 and look ahead to the savings required in future years.

The 2015-16 financial year is a critical point. As the third year of our three year plan, it contains plans for Council services which will have a serious impact on the city. Many of the very difficult choices we delayed in the hope that alternative approaches could be found must now be contemplated. The edge of the “fiscal cliff” for these services has now been reached.

The graph and table below outline the cumulative impact of funding cuts and unavoidable cost increases (referred to as “cost pressures”) from 2010 and looking ahead to 2017-18.



All figures in £m	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Funding cuts	29	44	58	75	98	115	128
Cost pressures	19	34	58	76	93	106	113
Savings requirement	48	78	116	151	191	221	241

The Council must take into account its resources when setting fees to be paid to providers. When doing so it will need to balance the sustainability of any proposed rates against its ability to fund ongoing placements as necessary to meet assessed need. In this context the Council should reflect on the very difficult and unprecedented financial circumstances it finds itself in.

At the same time the Council faces pressures due to increased costs such as the City's increasing population and in particular, the impact on the Council's social care budgets of the increasing numbers of older people. The implementation of the Care Act 2014 is also likely to create further demand pressures on adult social care services as greater numbers of people are assessed as having eligible social care needs, the increased duties to carers and the added obligation on the Council to maintain sustainability in the market across all social care provision.

8. Fee proposal

8.1 Fees for 2015/16

As set out in section 1, above, our initial goal was to determine the actual costs of care. As we have not been able to do this as a result of the providers' failure to engage, we have instead utilised the information provided by VCFM. That report indicated that the Council rates in 2014/15 were in excess of those considered by VCFM as representing value for money. At Grade 1 Council fees were 3.3% higher for residential care and 4.6% higher for residential and nursing care.

The actual costs of care however do not necessarily equate to the Usual Costs of Care experienced across the City. The Council recognises that providers are also under increasing financial pressures as described in section 6.2 above. As such, and in line with our responsibility to ensure a sustainable market offer we are not proposing to reduce fees in line with the VCFM report, but are instead proposing to uplift fees by 1% in 2015/16. This proposal would increase rates paid to providers as follows:

	Proposed fee levels	
	non-EMI	EMI
Grade 1	£497.24	£516.91
Grade 2	£476.48	£496.15
Grade 3	£452.43	£472.10
Grade 4	£429.48	£446.97

Our approach to supporting an uplift in fees, despite our current rates being in excess of those considered by VCFM to represent value for money, reflects the Council's commitment to securing stability in the market and supporting quality provision.

8.2 Fees for 2016/17 and 2017/18

We are proposing to use this consultation to also establish our approach to setting fees for 2016/17 and 2017/18. Given that current rates are in excess of those considered by VCFM to represent value for money, and that any rates

need to be set within the financial context the Council works in, we are proposing the following annual increases:

- 2016/17 – 1%
- 2017/18 – 1%

As described above in section 6.2, we believe there are some risks to providers which fall broadly into the following areas:

- increased costs associated from the implementation of the financial provisions within the Care Act 2014 – implementation has now been delayed until 2020, so any associated costs fall outside of this proposal;
- following clarification of the DoLs process, no additional financial burdens have been identified by providers and as such, we are of the opinion that any additional costs in this area can be borne by providers from within the current fee structure;
- increased pension costs – given the Council’s current fees are in excess of those considered by VCFM to represent value for money, we are of the opinion that any additional costs in this area can be borne by providers from within the proposed fee structure;
- National Living Wage increases - as announced by the Chancellor in the Budget of July 2015, the country is expected to move towards the payment of a National Living Wage of £9.00 per hour by 2020. As of April 2016, the National Minimum Wage will be replaced by the National Living Wage at £7.20 per hour for those people who are over 25. We are in the process of measuring the cost pressure this Government policy will create however, until the Comprehensive Spending Review is published in November 2015, we have no information as to any funding the Government will make available to mitigate this pressure. We propose recognising the implementation of the National Living Wage as a change in law and will meet with providers in January 2016, to understand any resultant financial pressure;
- increases in non-direct revenue costs: e.g. food and utilities - given the Council’s current fees are in excess of those considered by VCFM to represent value for money, we are of the opinion that any additional costs in this area can be borne by providers from within the proposed fee structure.

In addition to those risks we have described above, we are also proposing to move away from net payments for care beds and pay providers at the gross rate defined within the pricing structure. We believe this will alleviate some of the excessive transaction costs within the market and enable providers to create efficiencies within their organisations. This, in turn, will further enable providers to meet future cost increases as well as ensure the long-term sustainability of the market.

For the avoidance of doubt, the gross rate will not include any third party top-ups that providers may charge and must collect directly.

As detailed at section 5.2 above, the Council cannot and will not take responsibility for any shortfall identified in relation to nursing care costs as part of this consultation. The Council will act as payment agent for nursing care costs but will not accept responsibility for the assessment of eligibility for nursing care.

8.3 It is important to note that this decision process is at proposal stage only and that providers and other stakeholders are free to comment as they see fit, and to identify any other factors which the Council should take into account in arriving at its decision.

9. The Equality Act 2010

A full Integrated Impact Assessment is attached in Appendix 2.

10. The Market Position Statement

The draft Market Position Statement also forms part of this consultation as it describes both our commissioning and contracting intentions. A copy is attached in Appendix 3 for comment and will be made available for public comment via Lets' Talk at the address above.

11. Request for feedback

Throughout this consultation document, the Council has raised questions around the risks that have been identified. The Council seeks feedback not only to the questions raised but would invite any other risks or issues to be part of the feedback that are believed to be relevant to the Council in making its final decision.