



CABINET REPORT

Date Written	30 th March 2021*
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Service Area	Financial Assessment & Charging
Committee Division	Portfolio
Exempt/Non Exempt	Non Exempt
Committee Date	21 st April 2021

To: Chair, Ladies and Gentlemen

PAYMENT OF CARE HOME FEES 2021/2022

1.0 SUMMARY OF THE REPORT

- 1.1 Members will recall that Pembrokeshire County Council was taken to Judicial Review by Forest Care Home Limited in December 2010 over the care fees set by Pembrokeshire for the 2010/2011 financial year.
- 1.2 As a result of this Local Authorities had to ensure that they had a methodology for setting care home fees that complied with “Fulfilled Lives, Supportive Communities Commissioning Framework Guidance and Good Practice”.
- 1.3 The payment of care fees for contracted placements in independent sector residential and nursing homes is an issue that is highly significant for all authorities in Wales. The Judicial Review gave and has continued to give a sharp focus to and identified a challenge for all local authorities to have a robust methodology in place to calculate fees paid to independent sector care home providers.
- 1.4 Rockhaven Healthcare who had significant experience in the area of developing fee toolkits, were commissioned to develop a bespoke care fee toolkit for the setting of care fees for 2016/2017 for independent sector residential and nursing care homes for use by Merthyr Tydfil County Borough Council.
- 1.5 Rockhaven Healthcare’s report “Costs of Care Analysis in Merthyr Tydfil 2016/2017” recommended the appropriate level of fees for independent sector residential and nursing care homes in Merthyr Tydfil County Borough Council for 2016/2017 and was accepted by Council and used to form the basis of the fees paid for placements in independent sector residential and nursing care homes.

- 1.6 It was agreed with the Independent Providers that instead of going through the process of collecting detailed financial and other statistical information every year; that this exercise would only be carried out every three years. In the interim years, the care fees would be uplifted by an agreed inflationary increase to recognise the increasing costs of providing care. Due to the current Covid-19 situation and pressures faced by all it is decided that an inflationary uplift would continue to be used.
- 1.7 The cost of paying the revised fee levels uplifted by an agreed inflationary increase, for the current number of individuals in residential and nursing care, has been estimated as being £235,620 for 2021/2022.
- 1.8 Funding for this was identified in the Medium Term Financial Plan for the Authority and has been included in the People and Performance Directorate's budget for 2021/2022.

2.0 RECOMMENDATIONS that

- 2.1 The payment of fees to independent sector residential and nursing care service providers at the rates shown in Appendix 1 be approved.
- 2.2 The back dating of the increase in fees for 2021/2022, effective from 1st April 2021, be approved.

3.0 INTRODUCTION AND BACKGROUND

- 3.1 The payment of care fees for contracted placements in independent sector residential and nursing homes is an issue that is highly significant for all local authorities in Wales. The Judicial Review in Pembrokeshire in 2010 gave a sharp focus to and identified a challenge for all local authorities to have a robust methodology in place to calculate fees paid to independent sector care home providers.
- 3.2 All toolkits developed had to be in accordance with the "Fulfilled Lives, Supportive Communities Commissioning Framework Guidance and Good Practice" that was issued in August 2010 by the Welsh Assembly Government under Section 7 of the Local Authority Social Services Act 1970.
- 3.3 Section 7 Guidance means that Councils must "act under" the general guidance of the relevant minister or in respect of a devolved function the Welsh Ministers. While following guidance is not mandatory an authority can only depart from it for good reason. If a Council deviates from guidance without a considered and cogently reasoned decision it acts unlawfully and in a manner which is amenable to challenge and judicial review, as was the case with Pembrokeshire County Council and Forest Care Homes.

- 3.4 Fee setting toolkits therefore need to comply with “Fulfilled Lives, Supportive Communities Commissioning Framework Guidance and Good Practice” in particular they must take account of the providers costs and the factors that may affect them on the basis of good local evidence. Fee setting must take into account the legitimate current and future costs faced by providers as well as factors that affect these costs, and the potential for improved performance and more cost-effective ways of working. The fees set need to be adequate to enable providers to meet the specifications set by the commissioners together with regulatory requirements.
- 3.5 In order to support the care home sector during the Covid 19 pandemic additional funding has been provided via Welsh Government via the hardship fund and this will continue for the early part of 2021/2022 therefore any additional costs associated with the pandemic have not been factored into the calculations.
- 3.6 At the time of writing the report Welsh Government are consulting on future arrangements for fee setting on a regional and national level and the impact on future care fee setting will be factored into any longer-term financial planning.

4.0 METHODOLOGY

- 4.1 The approach that was taken was that the bespoke toolkit previously developed for Merthyr Tydfil County Borough Council that complied with “Fulfilled Lives, Supportive Communities Commissioning Framework Guidance and Good Practice” was re-populated and updated with current up-to-date financial information and costs.
- 4.2 Rockhaven Healthcare was re-commissioned to undertake this task again for the setting of care fees for residential and nursing care homes for 2016/2017. Rockhaven Healthcare was re-commissioned as they have detailed and specialised knowledge of the methodology used to develop the care fee toolkit in Merthyr Tydfil as well as significant experience in the area of developing fee toolkits for independent sector residential and nursing care homes.
- 4.3 Data was provided by the Independent Sector Care Home providers in Merthyr Tydfil for the 12-month period ending March 2016. This information was used as the base data for the calculation of the legitimate costs of providing care and from this data the rates of care fees was calculated for the 2016/2017 financial year.
- 4.4 When Rockhaven Healthcare presented their Cost of Care Analysis Report there was no challenge from the Independent Providers that it was not a true and accurate reflection of the actual costs of providing residential and nursing care in Merthyr Tydfil.
- 4.5 It was agreed with the Independent Providers that instead of going through the process of collecting detailed financial and other statistical information every year; that this exercise would only be carried out every three years. In the interim years, the care fees would be uplifted by an agreed inflationary increase to recognise the increasing costs of providing care.

- 4.6 2019/2020 was the third year of the three-year cycle; however, given current pressures, this has been extended and as such an inflationary increase has been added to the care fees rather than undertaking a detailed financial and statistical exercise.
- 4.7 Two potential options were identified as being available to calculate the increase for 2021/2022:
- i) To uplift the total fee levels by a recognised inflationary indices, such as the Consumer Price Index.
 - ii) To apply recognised inflationary indices such as the Consumer Price Index to the fee levels but to apply differing inflationary increases to the different elements that make up the constituent costs eg.
 - Staffing costs - increase in minimum wage.
 - Power - specific element of CPI relating to utilities.
 - Water - specific element of CPI relating to utilities.
 - Food - specific element of CPI relating to food and non-alcoholic beverages.
- 4.8 The Independent Care Home Providers were consulted on what their preferred option would be and the preferred option expressed by the majority of providers who responded to use when calculating the fee increase for 2020/2021 was Option 2 which is to apply a recognised inflationary indices such as the Consumer Price Index to the fee levels but to apply differing inflationary increases to the different elements that make up the constituent costs.
- 4.9 As this is an extended year after the three-year cycle, a further report will be submitted later in the year outlining options/recommendations for the care fee setting for 2021/2022 onwards.

5.0 FINANCIAL IMPLICATIONS

- 5.1 Using the methodology that has been agreed with the Independent Providers the care fees for 2021/2022 would be as follows:

PERSONAL CARE	2020/2021 weekly rate £	2021/2022 weekly rate £
Older Person	585	592
Dementia	650	657
Learning Disability	969	981

NURSING CARE (excludes the health board & social care FNC)	2020/2021 weekly rate £	2021/2022 weekly rate £
Older Person	649.73	660.91
Dementia	696.73	708.71

- 5.2 The cost of paying the revised fee levels uplifted by an agreed inflationary increase, for the current number of individuals in residential and nursing care, has been estimated as being £235,620 for 2021/2022.
- 5.3 Funding for this was identified in the Medium Term Financial Plan for the Authority and has been included in the People and Performance Directorate’s budget for 2021/2022.
- 5.4 The work that has been undertaken by Rockhaven Healthcare in producing the Costs of Care Analysis in Merthyr Tydfil Report relates exclusively to the financial position of the care homes that sit within the geographical boundaries of Merthyr Tydfil.
- 5.5 It is therefore difficult to compare fee rates across different local authorities as the financial circumstances for the care homes in other local authorities will be different and will not bear comparison. This is because to comply with “Fulfilled Lives, Supportive Communities Commissioning Framework Guidance and Good Practice” fee setting toolkits must take account of the providers’ costs and the factors that may affect them on the basis of good local evidence.

6.0 INTEGRATED IMPACT ASSESSMENT

6.1	Positive Impacts	Negative Impacts	Neutral/Not Applicable
1. Merthyr Tydfil Well-being Objectives	0 of 4	0 of 4	4 of 4
2. Sustainable Development Principles - How have you considered the five ways of working? <ul style="list-style-type: none"> • Long term • Prevention • Integration • Collaboration • Involvement 	0 of 5	0 of 5	5 of 5
3. Protected Characteristics (including Welsh Language)	0 of 10	0 of 10	10 of 10
4. Socio-economic Disadvantage	0 of 6	0 of 6	6 of 6
5. Consultation and Engagement	Undertaken	Due to be Undertaken	Not Required
	0 of 1	0 of 1	1 of 1
6. Data and Evidence to inform the proposal	Yes		No
	1 of 1		0 of 1

7. Biodiversity and the resilience of Ecosystems	Maintained	Enhanced	Reduced	Neutral/Not Applicable
	0 of 1	0 of 1	0 of 1	1 of 1
Summary				
The main positive impacts are:	There are no positive impacts.			
The main negative impacts are:	There are no negative impacts.			

LISA CURTIS JONES
CHIEF OFFICER (SOCIAL SERVICES)

COUNCILLOR CHRIS DAVIES
CABINET MEMBER FOR
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BACKGROUND PAPERS		
Title of Document(s)	Document(s) Date	Document Location
Fulfilled Lives, Supportive Communities Commissioning Framework Guidance and Good Practice	August 2010	Unit 5
England and Wales High Court (Administrative Court) Decision Forest Care Home Limited v Pembrokeshire County Council	December 2010	Unit 5
Merthyr Tydfil County Borough Council Cost of Care Analysis 2016/2017	September 2016	Unit 5
Does the report contain any issue that may impact the Council's Constitution?		No

Consultation has been undertaken with the Corporate Management Team in respect of each proposal(s) and recommendation(s) set out in this report.

MERTHYR TYDFIL COUNTY BOROUGH COUNCIL

Independent Sector		
Proposed Payments for Residential and Nursing Care Services 2021/2022		
	Rates 1 April 2020	Rates 1 April 2021
<u>Residential Care Homes</u>	£	
Old Age	585	592
Elderly Mentally Infirm	650	657
Physical Disability		
a (under pensionable age)	1487	1509
b (over pensionable age)	585	592
Mental Handicap (Learning Difficulty)	969	981
Others	585	592
<u>Nursing Homes</u>		
(Excludes the Local Health Board & social care FNC)		
Old Age	649.73	660.91
Elderly Mentally Infirm	696.73	708.71
Drug Alcohol Dependency	649.73	660.91
Mental Illness	649.73	660.91
Others	649.73	660.91

Local Health Board Free Nursing Care Contribution (FNC) is £179.13 and LA Social Care element of FNC is £7.27 effective from 1st April 2020 and is not included in the above. 2021/2022 rates for FNC have not yet been confirmed by the Local Health Board.