

Adult Social Care Committee

Item No.....

Report title:	Usual price of residential and nursing care in Norfolk
Date of meeting:	10 October 2016
Responsible Chief Officer:	Catherine Underwood, Acting Executive Director of Adult Social Services

Strategic impact

One of Norfolk County Council's (the Council) statutory functions is arranging the provision of residential and nursing care for older people whose assessed unmet needs show that they are best met in this way. The Council invests over £73m a year on these services and relies upon contractual arrangements with the market as the means of providing them. These arrangements include the prices that the Council would usually expect to pay which have to be determined within a legal framework set out in statute and guidance.

Executive summary

The Adult Social Care Committee (the Committee) agreed to a number of resolutions at its meeting on 29 April 2016 including, amongst other things:

- a) A phased approach for setting usual prices for residential and nursing care in Norfolk for older people for the period 2016/17 to 2018/19.
- b) The proposed approach to applying a fee uplift to the 2016/17 usual prices for older people in Norfolk

This report sets out the steps taken since the Committee's April meeting to arrive at the recommended usual prices for residential and nursing care for older people in Norfolk for 2016/17 including the recommended fee uplift to those prices to reflect inflationary pressures having effect in 2016/17. The report also sets out the previously agreed phased approach to such prices for the years 2017/18 and 2018/19. The report also gives consideration to the treatment of third party top ups.

Recommendations

The Committee is recommended to:

- (a) Agree to the usual prices for residential and nursing care for older people in Norfolk in 2016/17 which include inflationary pressures as set out in Table A in this report**
- (b) Agree to the proposed treatment of third party top up agreements in 2016/17 as set out in this report**

1. Background

- 1.1 The Council made a decision on 9 March 2015 to set its usual prices for residential and nursing care for the 2015/16 financial year by way of applying a percentage uplift to the

prices for the previous year. This had been the approach adopted by the Council for a number of years.

- 1.2 An application was made by a group called Fair Price for Care, Fair Pay for Carers (FPCFPC) to judicially review that decision based on the assertion, amongst other things, that the process was unlawful and as a result the Adult Social Care Committee (the Committee) decided at its meeting on 29 June 2015 that a new decision should be taken replacing the original decision regarding the usual prices for 2015/16.

2. Cost of care process following the June 2015 Committee meeting

- 2.1 The steps that the Council then took are set out in detail in a report entitled 'Usual price of residential and nursing care in Norfolk' that was considered by the Committee on 29 April 2016. At that meeting the Committee resolved to adopt the following recommendations:
- a) Consider and note the terms of the agreement to settle the cost of care judicial review dated 9 June 2015
 - b) Consider and agree to the proposed usual prices for residential and nursing care for older people in Norfolk for the year 2015/16
 - c) Consider and agree to the simplification of the residential care banding system for older people that has been in operation during the 2015/16 financial year by moving from five usual price bands to four usual price bands
 - d) Consider and agree to the proposed approach to back date payments due to providers where the new usual prices for care provided between 6 April 2015 and 31 March 2016 are greater than the prices actually paid for the relevant bands
 - e) Consider and agree the proposed approach to concluding the cost of care process and the setting of usual prices for working age adults in Norfolk for 2015/16 through the exercise of delegated powers
 - f) Consider and agree to the phased approach for setting usual prices for residential and nursing care in Norfolk for older people and working age adults for the period 2016/17 to 2018/19 through the exercise of delegated powers
 - g) Consider and agree the proposed approach to applying a fee uplift to the 2016/17 usual prices for older people and working age adults in Norfolk through the exercise of delegated powers
 - h) Consider and note the proposed approach for engaging with and consulting providers on fee rates, uplifts and related matters
 - i) Consider and agree to the proposal that the exercise of delegated powers in respect of recommendations e), f) and g) is carried out by the Executive Director of Adult Social Services in consultation with the Chair of the Adult Social Care Committee and Group Spokespersons

3. Cost of care process following the April 2016 Committee decisions

- 3.1 This report sets out in detail the steps taken following the adoption by the Committee of the above recommendations insofar as they apply to the establishment of the usual prices for older people for 2016/17 including the inflationary uplift for that year and phased increases for 2017/18 and 2018/19. The process comprises a consultation phase, an analysis phase and a decision phase.
- 3.2 **Consultation Phase 10 May 2016 to 24 June 2016**
- 3.2.1 A full consultation was commenced by way of a letter dated 10 May 2016 which was sent to all providers. The letter put into effect the Committee resolutions (f) and (g)

above by setting out the proposed increases in the usual prices as a result of the cost of care adjustments and proposed further increases due to inflationary pressures.

These were set out in a table reproduced below.

	A	B	C	D	E	F
Single Room Only	2015/16 Usual Price	Cost of Care % uplift	2016/17 Pre-inflation Usual Price	2016/17 Inflation % uplift	2016/17 Usual Price	% Total price increase
Band						
Residential - Standard	£425.00	2.31%	£434.82	2.22%	£444.46	4.58%
Residential - Enhanced	£473.00	2.50%	£484.84	2.29%	£495.93	4.85%
Nursing - Standard	£442.57 + FNC of £112 = £554.57	2.43%	£453.33 + FNC of £112 = £565.33	2.17%	£463.17 + FNC of £112 = £575.17	4.65%
Nursing - Enhanced	£489.78 + FNC of £112 = £601.78	0.58%	£492.60 + FNC of £112 = £604.60	2.20%	£503.45 + FNC of £112 = £615.45	2.79%

- 3.2.2 The letter dated 10 May stated that the consultation would close on 7 June 2016 (28 days). The letter was also posted on the Council's website.
- 3.2.3 On 19 May an e-mail was received from FPCFPC in relation to, amongst other things, the Council's approach to determining the level of inflationary uplift requesting:
"...the actual numerical inputs (and source) and formulae that would be necessary for us to recalculate the Council's figures and enable us to comment on the methodology and approach to the data used"
- 3.2.4 The Council wrote to providers including FPCFPC in a letter dated 6 June which contained the detailed rationale requested and set out the indicative actual costs model for 2015/16 and the revised model for 2016/17 based on the information available at that time. The letter explained that a two week extension to the consultation deadline to 21 June was being granted in order to enable providers sufficient time to fully digest the new information. The letter was also posted on the Council's website.
- 3.2.5 So far as the treatment of increases in usual prices for 2016/17 involving a third party top up was concerned the Council set out its position in a letter dated 20 June sent to all providers and posted on the Council's website attached to this report as Appendix D. The letter states that any increases in the usual price would be passed on in full to providers together with an inflation increase applied to the value of the third party top up.
- 3.2.6 Following a further request from FPCFPC the Council agreed to extend the date for receipt of the FPCFPC formal consultation response from the 21 June to 24 June 2016.
- 3.2.7 FPCFPC sent their consultation response on 24 June in the form of a letter entitled 'Response of FPCFPC and the NIC (Norfolk Independent Care) working group to the Council's proposals for changes to its usual prices for 2016/17 for older person's residential care'. The letter is attached to this report as Appendix A. The letter was accompanied by an analysis of National minimum Data Set (NMDS) pay rates for care workers and information regarding direct care costs.

3.3 **Analysis phase June 2016 to September 2016**

- 3.3.1 The Council carefully considered all the feedback and additional data and information that it received during the extended consultation phase. The Council gave careful consideration to the FPCFPC and Norfolk Independent Care working group response attached as Appendix A. As a result of these considerations the Council's position in relation to the substantive points raised is set out below.
- 3.3.2 **The consultation is invalid as there is no clarity on the price that most providers will receive under the proposals.**
- 3.3.2.1 The Council has carefully considered all the information that it has sent to providers and posted on its website and in particular the letters dated 10 May, 6 June and 20 June inclusive and is of the view that there was enough information to enable providers to be clear on the prices being proposed in its consultation.
- 3.3.2.2 Providers had two concerns about the Council's treatment of third party top ups. The first concern was about the fact that the Council had reduced the value of the third party top up element of the gross price for contracts active in 2015/16. The second concern was about the Council's approach to applying an inflationary uplift to the usual price and top up elements to such agreements in 2016/17.
- 3.3.2.3 The Council's policy in relation to the 2015/16 cost of care exercise was that there would be no increase in the prices that it paid to providers in that year if those prices already exceeded the revised usual price. The Council's view was that the gross price paid to providers at the time consisting of the then usual price and a third party top up was a price agreed with providers and that there were no in year increases in provider costs to justify any increase.
- 3.3.2.4 The effect of the increase in the value of the usual price in 2015/16 was to decrease the contribution required by the third party by the same amount to retain the gross price agreed in that year. So far as the reduction in the value of the third party top up element of the gross price is concerned after careful consideration the Council takes the view that it is not necessary to adjust this value as the reduction was fully offset by the corresponding increase in the usual price element of the gross price.
- 3.3.2.5 So far as 2016/17 is concerned the Council has given further consideration to the position regarding contracts with a third party top up in place in 2015/16 where the amount of third party contribution was reduced as described above. The Council has decided to apply both the cost of care and inflation increases to the usual price element and inflation only to the reduced third party contribution in such contracts. For contracts entered into on and after 11 April 2016 the Council will apply the cost of care increase and inflation to the usual price element and inflation only to the third party contribution.
- 3.3.2.6 As previously communicated to providers, current and future year contracts involving third party top up payments will receive the cost of care phased increase plus the inflation increase for the usual price element and inflation only for the third party element.
- 3.3.3 **The Council fails to use empirical evidence in relation to staffing levels.**
- 3.3.3.1 The position in relation to staffing levels is clearly set out in the 29 April Committee report at paragraph 3.8.5. The Council's approach has been to determine the amount of care that it believes is sufficient to meet the care needs of a resident in the care band in

question. The Council has then calculated the cost of that quantity of care and used the resultant figure to populate its indicative actual cost model.

- 3.3.3.2 The FPCFPC position appears to be that the Council needs to purchase more hours of care to secure the standard of care it purports to be purchasing. The Council has carefully reviewed its assessments as to the hours of care required to be purchased to meet eligible needs and is satisfied that they are reasonable and adequate.
- 3.3.4 **The Council underestimates the impact of national living wage (NLW) and national minimum wage (NMW) on provider costs and ignores the importance of maintaining pay differentials.**
- 3.3.4.1 This issue relates to the Council's approach to determining direct care pay inflation as set out in its 29 April Committee report. The Council has carefully reviewed its approach in the light of the observations in the FPCFPC letter and has undertaken additional work as described below.
- 3.3.4.2 The Council had developed a pay inflation model to estimate the additional cost to providers as a result of the national living wage (NLW) in 2016/17 and applied it to the indicative actual costs model as set out in the April Committee report at paragraphs 5.1 to 5.9. The Council accepts that the output of the model did not have regard to the maintenance of pay differentials. The council recognises the need to do so and has incorporated this into its revised calculations which are set out later in this report.
- 3.3.4.3 The Council used the NMDS to inform its inputs into the indicative actual costs model including the median pay rates. The Council accepts the argument set out in the FPCFPC letter that the NMDS data used in its calculations contained wage data from NorseCare and, that due to the scale of the NorseCare operation and its higher wage rates, that its calculations could have been skewed upwards as a result. The effect of this was likely therefore to generate a median pay rate that overstated the actual median pay rate in the independent sector.
- 3.3.4.4 Accordingly the Council commissioned Skills for Care, which is the government funded organisation that maintains the NMDS, to carry out further analyses, after the removal of all the NorseCare data, in order to arrive at values which would therefore be more representative of median independent provider pay rates in 2015/16 and 2016/17.
- 3.3.4.5 Median pay data for direct care workers in both residential and nursing care in Norfolk excluding Norse

Care covering the period September 2014 to September 2015, October 2015 to March 2016 and April 2016 to the present day were compared to determine actual changes in pay for carers and senior carers.

- 3.3.4.6 The table below set out the pay rates and changes in those rates for carers and senior carers in residential care homes in Norfolk

Skills for Care NMDS information: Older People Residential Hourly Pay Rates:

		Sept 14-Sep15	% Change	Oct15-Mar16	% Change	Since April 16
Carers	Over 25	£6.75	3.70%	£7.00	3.00%	£7.21
	Under 25	£6.55	3.82%	£6.80	5.88%	£7.20
Senior Carers	Over 25	£7.25	3.45%	£7.50	4.00%	£7.80
	Under 25	n/a	n/a	n/a	n/a	n/a

- 3.3.4.7 The following table shows the split of care workers and senior care workers in residential care homes in Norfolk and also the split between 25 and over and under 25s.

Skills for Care NMDS information: Older People Residential Level of Data:

		Sept 14-Sep15		Oct15-Mar16		Since April 16	
		Worker s	Home s	Worker s	Homes	Worker s	Homes
Carers	Over 25	757	66	476	46	529	35
	Under 25	279		127		167	
Senior Carers	Over 25	232		93		146	
	Under 25	nil		nil		nil	

- 3.3.4.8 The table below set out the pay rates and changes in those rates for carers and senior carers in nursing care homes in Norfolk

Skills for Care NMDS information: Older People Nursing Hourly Pay Rates:

		Sept 14-Sep15	% Change	Oct15-Mar16	% Change	Since April 16
Carers	Over 25	£6.52	3.07%	£6.72	7.14%	£7.20
	Under 25	£6.50	3.08%	£6.70	0.00%	£6.70
Senior Carers	Over 25	£7.25	8.97%	£7.90	-1.27%	£7.80
	Under 25	n/a	n/a	n/a	n/a	n/a

- 3.3.4.9 The following table shows the split of care workers and senior care workers in nursing care homes in Norfolk and also the split between 25 and over and under 25s.

Skills for Care NMDS information: Older People Nursing Hourly Pay Rates:

		Sept 14-Sep15		Oct15-Mar16		Since April 16	
		Worker s	Home s	Worker s	Homes	Worker s	Homes
Carers	Over 25	823	33	603	24	682	22
	Under 25	272		200		204	
Senior Carers	Over 25	80		29		63	
	Under 25	nil		nil		nil	

- 3.3.4.10 By calculating the ratios of carer to senior carer and 25 and over and under 25s the Council determined a single representative blended pay rate for residential care and nursing care incorporating the changes in pay for 2016/17. This blended rate fully reflects the pay differentials between care workers and senior care workers. The Council then recalculated the direct care pay costs.
- 3.3.4.11 The table below sets out the indicative direct care costs as originally calculated including the skewing effect of including Norse Care pay data on the median pay rates and included in the consultation cost tables.

2016/17 Consultation Direct Care Pay	Residential		Nursing	
	Standard	Enhanced	Standard	Enhanced
Carer Hourly Rate	£7.52	£7.52	£7.52	£7.52
Senior Carer Hourly Rate	£8.53	£8.53	£8.53	£8.53
Proportion of Carer to Senior	71%/29%	71%/29%	71%/29%	71%/29%
Blended rate	£7.81	£7.81	£7.81	£7.81
Oncosts	24.34%	24.34%	24.34%	24.34%
Rate applied	£9.71	£9.71	£9.71	£9.71
Hours of Care per Week	20.91	25.76	21.40	23.40
Cost per placement per Week	£203.06	£250.15	£207.81	£227.24

It can be seen that the resultant rate applied including oncosts was £9.71 per hour

- 3.3.4.12 The following table sets out the indicative direct care costs as recalculated using the actual median pay rates and changes in those rates of independent providers with the NorseCare pay data removed.

2016/17 Post-Consultation Direct Care Pay	Residential		Nursing	
	Standard	Enhanced	Standard	Enhanced
Carer Hourly Rate	£7.21	£7.21	£7.11	£7.11
Senior Carer Hourly Rate	£7.80	£7.80	£7.80	£7.80
Proportion of Carer to Senior	71%/29%	71%/29%	71%/29%	71%/29%
Blended rate	£7.38	£7.38	£7.31	£7.31
Oncosts	24.34%	24.34%	24.34%	24.34%
Rate applied	£9.18	£9.18	£9.09	£9.09
Hours of Care per Week	20.91	25.76	21.40	23.40
Cost per placement per Week	£191.88	£236.38	£194.51	£212.69

- 3.3.4.13 It can be seen that the recalculated pay rate including oncosts has reduced from £9.71 per hour to between £9.09 and £9.18 per hour. The effect of this is to significantly reduce the value for indicative actual direct pay costs.
- 3.3.4.14 Whilst not an issue specifically raised in any of the feedback received, the Council recognised the fact that planned changes to the NMW rates would be implemented from October 2016 as set out in the table below.

Rate	25 years and over	21 years and over	18-20 Years	Under 18 years	Apprentice
1 Oct 2015 – 31 Mar 2016	£6.70		£5.30	£3.87	£3.30
1 Apr 2016 – 30 Sep 2016	£7.20	£6.70	£5.30	£3.87	£3.30
1 Oct 2016 – 31 Mar 2017	£7.20	£6.95	£5.55	£4.00	£3.40
1 April 2017 – 30 Sep 2017					
1 Oct 2017 – 31 Mar 2018					

- 3.3.4.15 It can be seen that there will be increases in the NMW rates for all bands except the NLW band with effect from 1 October 2016. The NMDS data showed that the median rate for carers in nursing care being paid from 1 April is £6.70 per hour which will increase by £0.25 per hour from 1 October 2016. This increase has been factored into the recalculated rates for 2016/17.
- 3.3.4.16 As all the other median pay rates for 2016/17 are significantly higher than the proposed increased rates the Council is not convinced that increases equal to the increase in NMW will in fact be necessary or actually be offered to workers. The Council therefore takes the view that it is reasonable to see what actually happens to these pay rates following the rises in NMW rates in October rather than estimate what providers might do, and incorporate any such actual rises in its inflation calculations for 2017/18 as part of its dialogue process to identify inflationary pressures.
- 3.3.5 Returns on capital**
- 3.3.5.1 The Council has carefully considered the observations made regarding returns on capital set out in the FPCFPC letter and revisited its rationale which was clearly set out in the April 2016 Committee report at paragraphs 3.14.1 to 3.14.12.
- 3.3.5.2 The Council has reviewed its approach to determining a reasonable allowance for returns on capital and remains of the view that it reflects the realities of the market in Norfolk and is based on a clear rationale and evidence. The Council recognises that changes in commercial mortgage rates and building and land costs would impact on the value of the return on capital allowance. Such changes would be fully taken into account in the Council's new dialogue process for determining inflationary pressures for 2017/18.
- 3.3.5.3 There have been no material changes in the inputs to the Council's return on capital model since the 29 April 2016 and accordingly the Council does not intend to make any adjustments to the value for return on capital in its indicative actual costs model for 2016/17.
- 3.3.6 The Council's indicative actual costs model.**
- 3.3.6.1 The Council first developed its indicative actual costs model as part of its 2015/16 cost of care exercise. The model was based on the information available to the Council at the time. The values for direct care costs included the NorseCare pay rates as the Council had not been alerted to nor was it aware that these pay rates had been overstated. The 2015/16 indicative actual cost model is reproduced here for reference purposes.

2015/16 indicative actual cost of care

	Residential		Nursing	
	Standard	Enhanced	Standard	Enhanced
Direct Social Care Costs	£197.08	£242.79	£201.69	£220.54
Nursing Supervision			£137.57	£137.57
			-£25.57	-£25.57
Non Direct Staff Costs	£91.14	£91.14	£91.14	£91.14
Accommodation Costs	£111.29	£111.29	£116.30	£116.30
Overheads	£19.98	£22.26	£27.33	£28.28
Total Operating Costs	£419.48	£467.48	£548.46	£568.25
Returns	£70.11	£72.51	£76.56	£77.55
Operating cost incl returns	£489.59	£539.99	£625.03	£645.81

3.3.7 Funded Nursing Care (FNC)

3.3.7.1 Funded Nursing Care (FNC) is paid by the Clinical Commissioning Groups (CCGs) to nursing homes to cover the cost of the nursing supervision required in such homes. The rate at which FNC is paid is set by NHS England and has been £112 per resident per week for some years. In Norfolk the Council administers this payment on behalf of the CCGs paying the £112 and reclaiming it from the CCGs. Whilst the Council calculated the cost of nursing supervision to be greater than £112 it adjusted the relevant figure in its cost model to reflect the actual rate of FNC.

3.3.8 2016/17 pre consultation indicative actual costs model

3.3.8.1 In preparation for the 2016/17 consultation on the proposed usual prices for that year the Council calculated changes in the 2015/16 indicative actual costs due to the impact of inflation and adjusted its indicative actual costs model for 2016/17 accordingly. The Council set out both the original 2015/16 indicative actual cost model and its adjusted model for 2016/17 in the letter to providers dated 6 June 2016 referred to previously in this report. At this time the Council was not aware of the NorseCare median pay rates issue and the model therefore continued to include overstated median pay rates. This revised 2016/17 model is set out for reference purposes below:

	Residential		Nursing	
	Standard	Enhanced	Standard	Enhanced
Direct Social Care Costs	£202.93	£250.00	£207.68	£227.09
Nursing Supervision			£137.57	£137.57
			-£25.57	-£25.57
Non Direct Staff Costs	£93.84	£93.84	£93.84	£93.84
Accommodation Costs	£112.62	£112.62	£117.69	£117.69
Overheads	£20.47	£22.82	£27.84	£28.81
Total Operating Costs	£429.87	£479.29	£559.06	£579.44
(lower cost limit)				
Returns	£70.63	£73.10	£77.09	£78.11
Operating cost plus returns	£500.50	£552.40	£636.15	£657.55
(higher cost limit)				

3.3.9 2016/17 post consultation indicative actual costs model

- 3.3.9.1 As explained previously in this report the Council has had due regard to the feedback received from providers and provider representatives as set out in the separate report entitled *Analysis of responses to Norfolk County Council Cost of Care Consultation on the proposed usual prices for Residential and Nursing Care in Norfolk for the year 2016/17* attached as Appendix B to this report.
- 3.3.9.2 The 2015/16 indicative actual costs model used median pay rates skewed by the NorseCare pay data resulting in direct care costs being overstated. The net effect is that even when the inflationary pressures are factored in they are outweighed by the lower actual median pay rates resulting in a slight reduction in these costs. Other costs in the 2016/17 model have been increased from the 2015/16 values as shown in the table below:

15/16 to 16/17 Post Consultation	Residential		Nursing	
	Standard	Enhanced	Standard	Enhanced
Direct Social Care Costs	-2.64%	-2.64%	-3.56%	-3.56%
Non Direct Staff Costs	2.97%	2.97%	2.97%	2.97%
Accommodation Costs	1.20%	1.20%	1.20%	1.20%
Operating cost incl returns	-0.26%	-0.48%	-0.66%	-0.77%

- 3.3.9.3 The change in indicative actual direct care costs has accordingly been incorporated into the revised indicative actual costs model from 2016/17.
- 3.3.9.4 During the consultation period, the Council was informed that the NHS Funded Nursing Care (FNC) rate for 2016/17 had changed. The 2015/16 rate was £112 per week and an increase of 40% to £156.25 has been accepted by government. The increase follows an independent review of the rate paid by the NHS to nursing homes carried out by Mazars LLP. The increase will be backdated to 1 April 2016 for individuals who were in receipt of NHS-funded nursing care from that time. The new rate is being paid on an interim basis while further work is done to review the element of the rate for agency nursing staff (which could lead to a reduction to the rate from 1 January 2017) and to consult on introducing regional variation from April 2017.
- 3.3.9.5 The Council acts as agents for the local Clinical Commissioning Groups (CCGs) who are responsible for paying FNC. The CCGs have now confirmed that they will pay at the increased rate and the indicative actual costs model for 2016/17 has therefore been altered accordingly. The revised indicative actual cost model for 2016/17 is set out below.

2016/17 Post-Consultation indicative actual costs model:

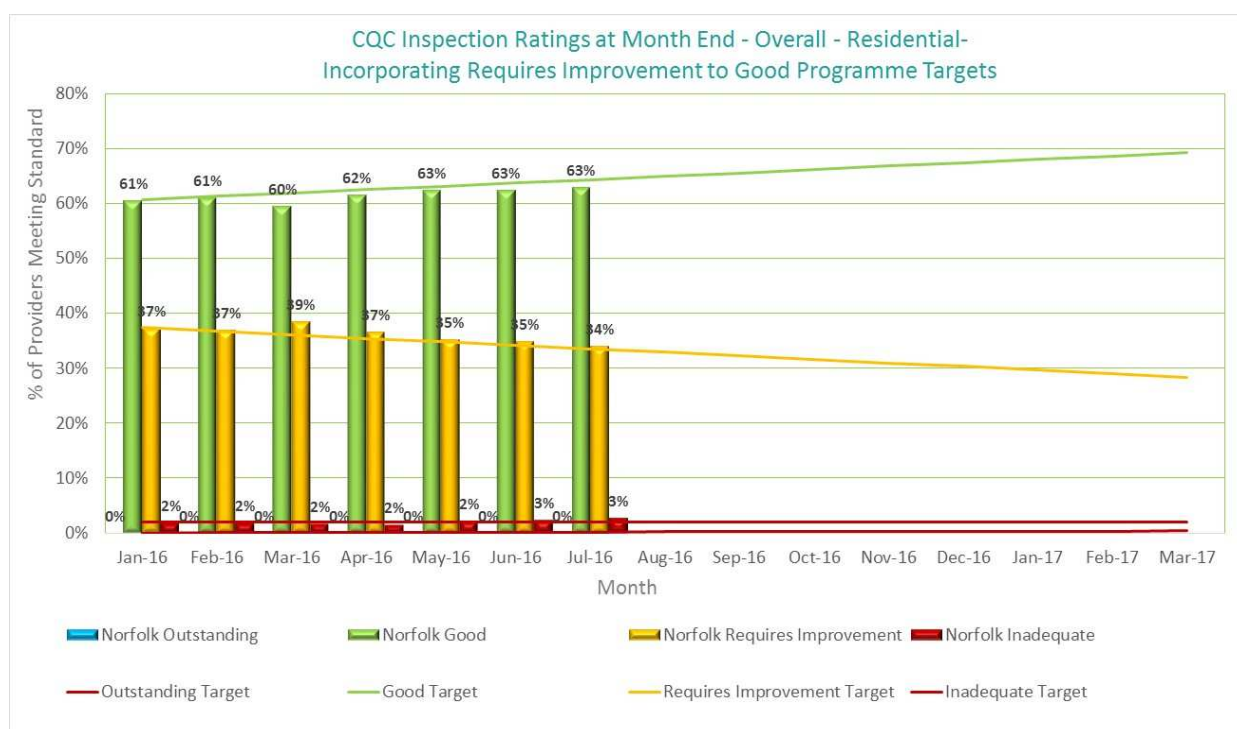
	Residential		Nursing	
	Standard	Enhanced	Standard	Enhanced
Direct Social Care Costs	£191.88	£236.38	£194.51	£212.69
Nursing Supervision			£156.25	£156.25
Non Direct Staff Costs	£93.84	£93.84	£93.84	£93.84
Accommodation Costs	£112.62	£112.62	£117.69	£117.69
Overheads	£19.92	£22.14	£27.18	£28.09
Total Operating Costs	£418.26	£464.99	£589.48	£608.57
Returns	£70.05	£72.39	£76.40	£77.36
Operating cost incl returns	£488.32	£537.38	£665.88	£685.92

3.3.10 The Council's approach to setting its fee

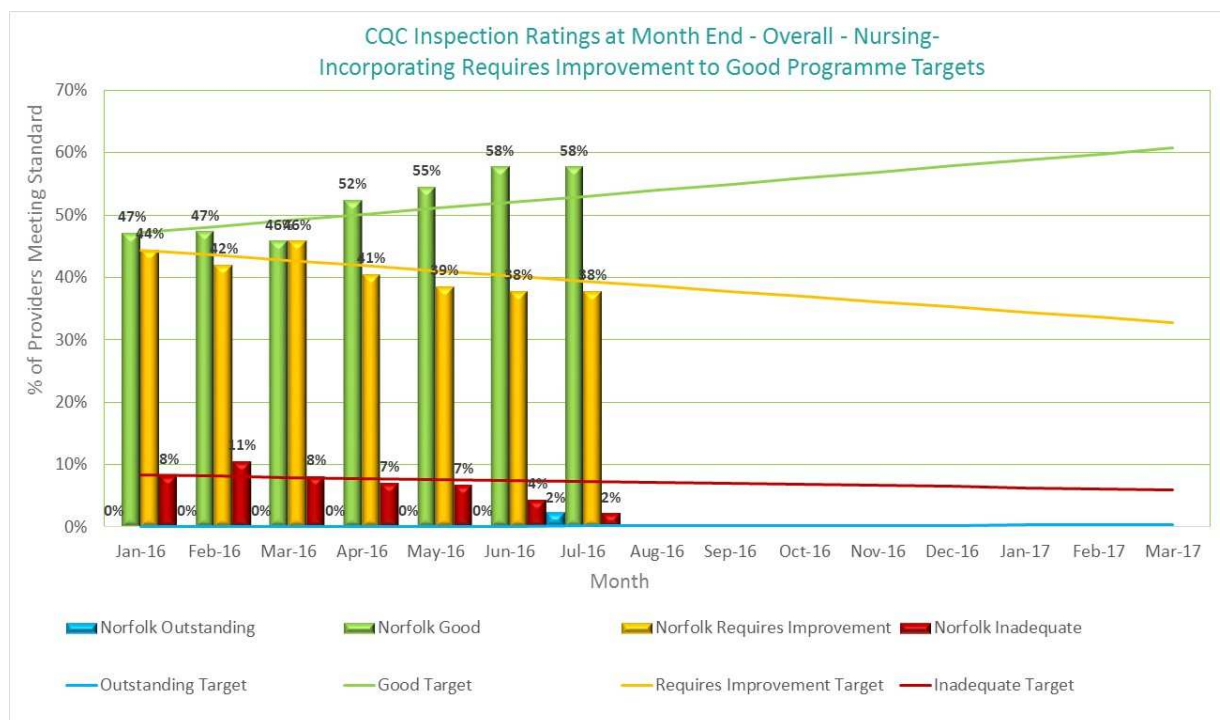
- 3.3.10.1 In having regard to the actual costs of care the Council has always aimed to set the price between the total operating costs (the lower limit) and operating costs plus returns (the upper cost limit) in its indicative actual costs model. The Council has reviewed this approach and remains of the view that a usual price set within the lower and upper cost limits of its indicative actual costs model is rational, reasonable and demonstrates due regard to actual costs.
- 3.3.10.2 In setting its usual prices the Council must also have regard to its legal duty to promote the effective and efficient operation of the market securing quality services which are sustainable over the long term. In discharging these duties the Council has to have regard to what it can afford to pay from the resources available to it.

3.3.11 Quality

- 3.3.11.1 The Council has had regard to the impact that its proposed usual prices might have on the quality of care provided by care homes for older people in Norfolk. The Care Quality Commission (CQC) is the national statutory body responsible for the quality rating of residential and nursing care providers. The latest regime results in care homes being rated as either “outstanding”, “good”, “requires improvement” or “inadequate”. Ratings began to be awarded against revised fundamental standards of care from April 2015.
- 3.3.11.2 When the CQC began assessing care homes they made it clear that they would initially target those care homes that they considered to be highest risk. This is reflected in the diagram below which shows that the proportion of residential care homes in Norfolk assessed as good has increased while the proportion assessed as requires improvement has decreased in the period January 2016 to July 2016.
- 3.3.11.3 Improving quality in Norfolk care homes is a key concern for the Council and quality in the market is kept under constant review. The Council has its own dedicated quality assurance team and supports quality initiatives through its market development fund. The Council intends to continue to support quality in the market through an overarching quality improvement strategy.
- 3.3.11.4 The Council has reviewed CQC assessments of both residential and nursing care homes in Norfolk in the period January 2016 to July 2016. In both sectors the proportion of homes rated as ‘Good’ has steadily increased over that period and while this trend cannot be guaranteed into the future it does not support the contention that quality has deteriorated.



The diagram below shows the position in relation to nursing homes. Whilst there is clearly room for improvement the direction of travel is equally encouraging in the sector.



3.3.12 Long term market sustainability

- 3.3.12.1 The Council has fully considered the market related requirements set out in the Care Act and in particular section 5 of the Act and the related statutory guidance referenced by the providers most particularly in the FPCFPC feedback in the context of long term market sustainability.
- 3.3.12.2 The Council believes that long term sustainability is achieved through balancing supply with demand for residential and nursing care with stable prices that provide a reasonable return to providers. The Council is continually developing its commissioning strategies to this end with a particular focus on preventing, reducing or delaying the need for funded social care including residential and nursing care.
- 3.3.12.3 The Council believes that there is currently a degree of over-capacity in the residential and nursing market as a whole in Norfolk and that there will be opportunities for providers to diversify into reablement and shorter term intermediate care services helping people to regain sufficient independence to be looked after in their own homes.
- 3.3.12.4 There will of course be an ongoing requirement for long term residential and nursing care in Norfolk and the usual prices that the Council pays for such services in what will continue to be a mixed market of privately and publicly funded care must be at a level that will not undermine the long term sustainability of the market.
- 3.3.12.5 Feedback in the FPCFPC letter suggested that the fee rates being offered by the Council were too low to be sustainable in the long term. In particular the closure of nursing homes is cited. The Council has carried out an analysis of nursing home provision in Norfolk during the period May 15 – August 16. Provision changed in seven care homes as detailed below:

Sunnycroft, Taverham

10 nursing placements were affected by the decision to remove nursing provision

Millbridge, Heacham

15 nursing placements needed alternative accommodation following decision to remove nursing provision

Hamilton House, Catfield,

This was Mental Health Nursing Home which closed. 27 residents required alternative accommodation

The Mayfields, Long Stratton

Eight nursing placements needed alternative accommodation following decision to remove nursing provision

Brundall Nursing Home, Brundall

24 residents were affected by the decision to remove nursing provision.

Iceni House, Swaffham

Eight nursing placements were affected by the decision to remove nursing provision.

Cedar House,

This home closed. Alternative accommodation needed for all 22 residents.

- 3.3.12.6 In summary over the last 16 months Norfolk has lost nursing provision in seven homes, two of which have closed completely with the other five remaining open but only providing residential services. This has affected 114 residents all of whom have been placed in alternative accommodation although not all in Norfolk. In total this is a loss of some 160 nursing beds out of 2929 or a little over 5 %
- 3.3.12.7 These placements were commissioned through a mix of adult social care, Funded Nursing Care (FNC) and Continuing Health Care (CHC)
- 3.3.12.8 Reasons for the cessation of the service vary but the main one in all cases has been the difficulty in recruiting and retaining nurses of the right calibre. The shortage of nurses has meant a reliance on agency usage which has caused problems because of the calibre of agency nurses and the lack of stability to be able to move staff groups forward and implement required improvements. As a result of this and other factors, environmental, vacancies, providers have felt that they cannot deliver the nursing service to the standard that they would want.
- 3.3.12.9 As explained previously in this report the NHS is responsible for the funding provided to nursing care homes to support the provision of nursing care by a registered nurse. This is paid at the NHS-funded Nursing Care rate. This is separate from and additional to the responsibility of Local Authorities for funding the personal and social care elements of the overall care package.
- 3.3.12.10 The relevant legislation (section 22 of the Care Act 2014) makes clear that the costs of providing nursing care by a registered nurse are the responsibility of the NHS. The significant increase in the rate of FNC will result in over £2,300 additional income in 2016/17 for every resident receiving nursing care in nursing homes in Norfolk. This should enable providers who wish to do so to continue to operate nursing homes going forward.
- 3.3.12.11 The picture in residential care where costs are lower is very different. There are 7,650 registered residential care beds and only 20 beds specialising in mental health residents were lost over the same period following the closure of one residential care home.

3.3.13 Affordability

- 3.3.13.1 Adult Social Services is projecting an overspend in 2016/17 of £8.151m, based on the position at Period 4 (July 2016). This is also in the context of a current forecast overspend for the Council as a whole. Services are delivered within a net budget of £247m, the majority of which is contract spend on statutory direct care provision. Following the funding reductions within the 2015 Spending Review and Local Government Finance Settlement, plans have been shaped on estimated cumulative reduction of £60m funding over the next five years. In addition growth pressures are

some £11m each year. To achieve a balanced budget, the service is working to deliver £10.9m savings in 2016/17, a further £17.9m in 2017/18 and £21m in 2018/19.

3.3.13.2 In 2016/17 the Council took the decision to increase Council tax, included a 2% increase for the Adult Social Care precept. This increased income to the Council by £6.4m. The decision of the Council was to use this funding to support the Adult Social Care service and enabled a decision to be taken in the round to protect some services in 2016/17. For comparison, the total cost of inflationary pressures (including the impact of cost of care and national living wage) across the market as a whole, totals some £8.4m in 2016/17.

3.3.13.3 Clearly any further increases in the usual prices proposed to be paid in 2016/17 for residential and nursing care in Norfolk will put additional financial pressure on the Council over and above the pressures set out in the April 2016 Committee report.

3.4 **Decision phase**

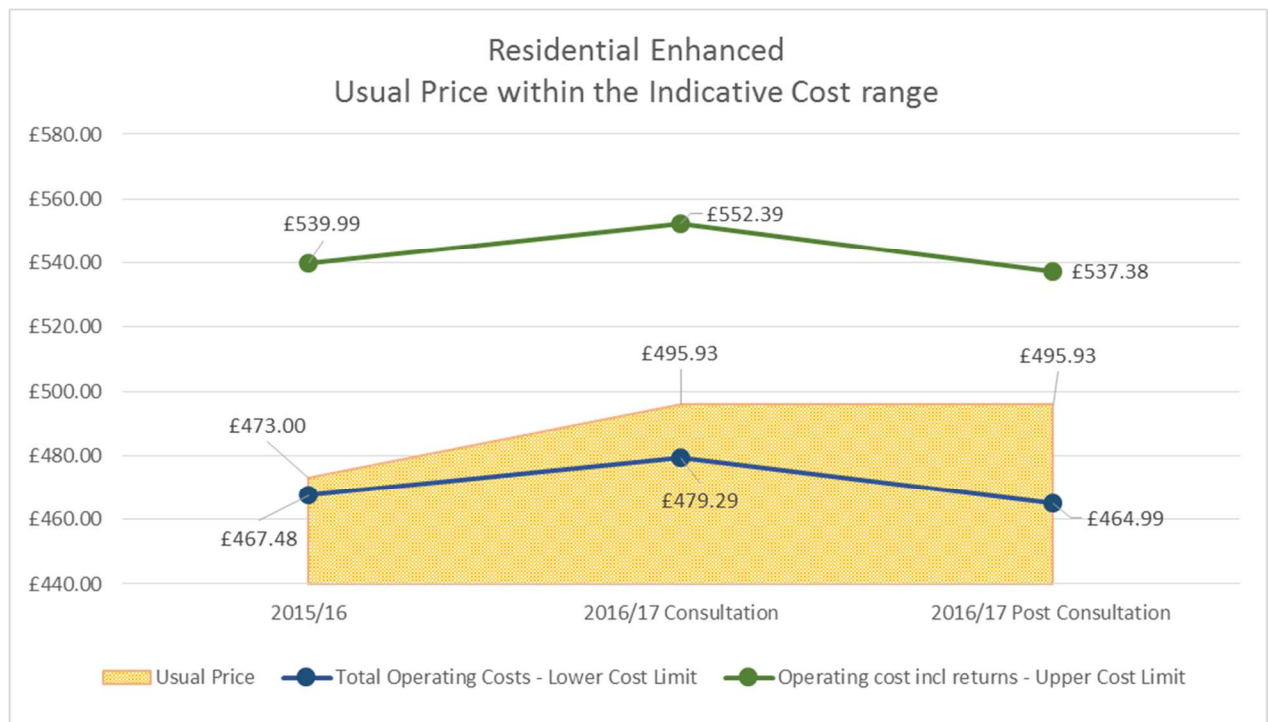
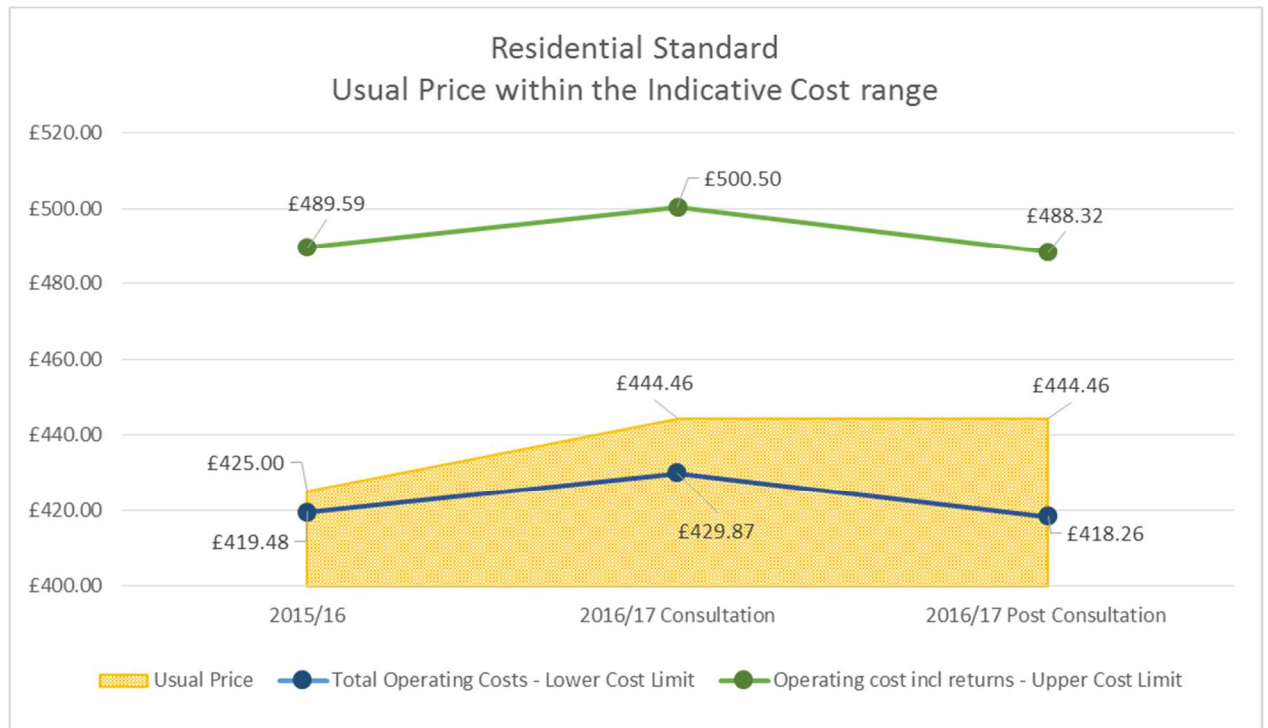
3.4.1 **Usual prices for 2016/17**

3.4.1.1 The Council has consistently stated that it considers usual prices that are set between the lower and upper limits in its indicative actual costs model are rational and reasonable having regard to its duties under the Care Act.

3.4.1.2 The proposed usual prices for 2016/17 that the Council consulted upon were all within the lower and upper cost limits of the indicative actual costs model constructed at that time.

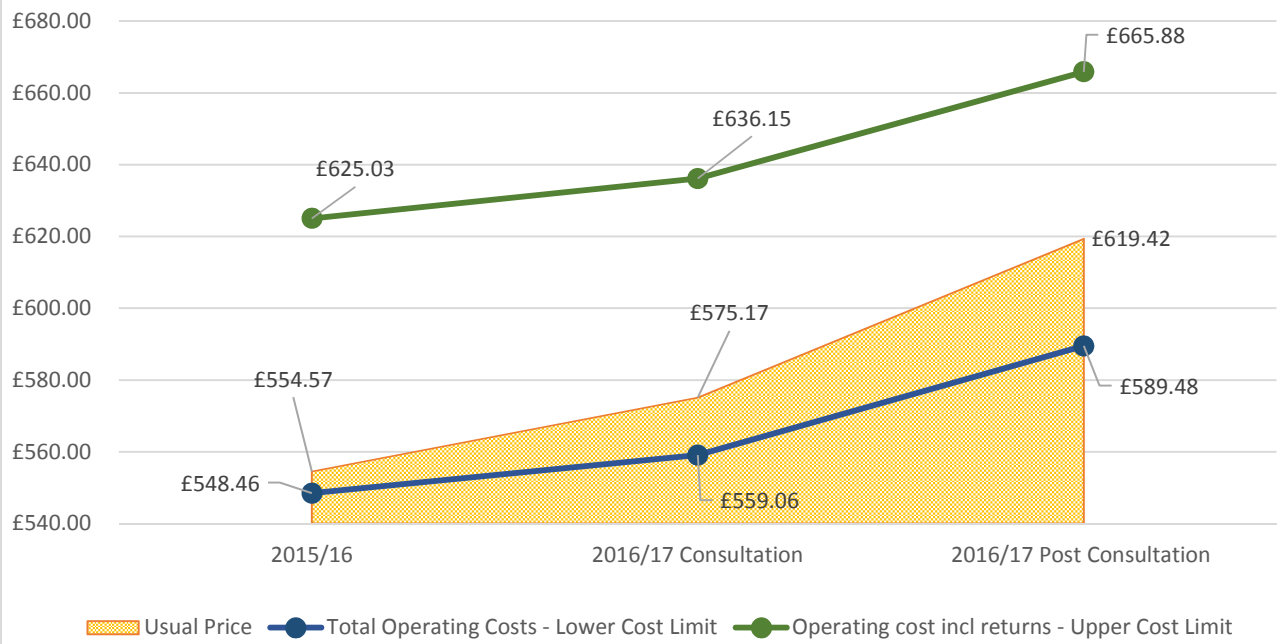
3.4.1.3 The changes to the indicative actual costs model for 2016/17 caused by the recalculation of the direct care median pay rates meant that the Council could have reduced its proposed usual prices for 2016/17 and still remained within the lower and upper costs limits in its revised model.

3.4.1.4 The tables below show the relative position of the usual prices to indicative actual costs in 2015/16 and the proposed prices consulted upon against the indicative actual costs originally calculated for 2016/17 and the same usual prices compared with the recalculated indicative actual cost for 2016/17.

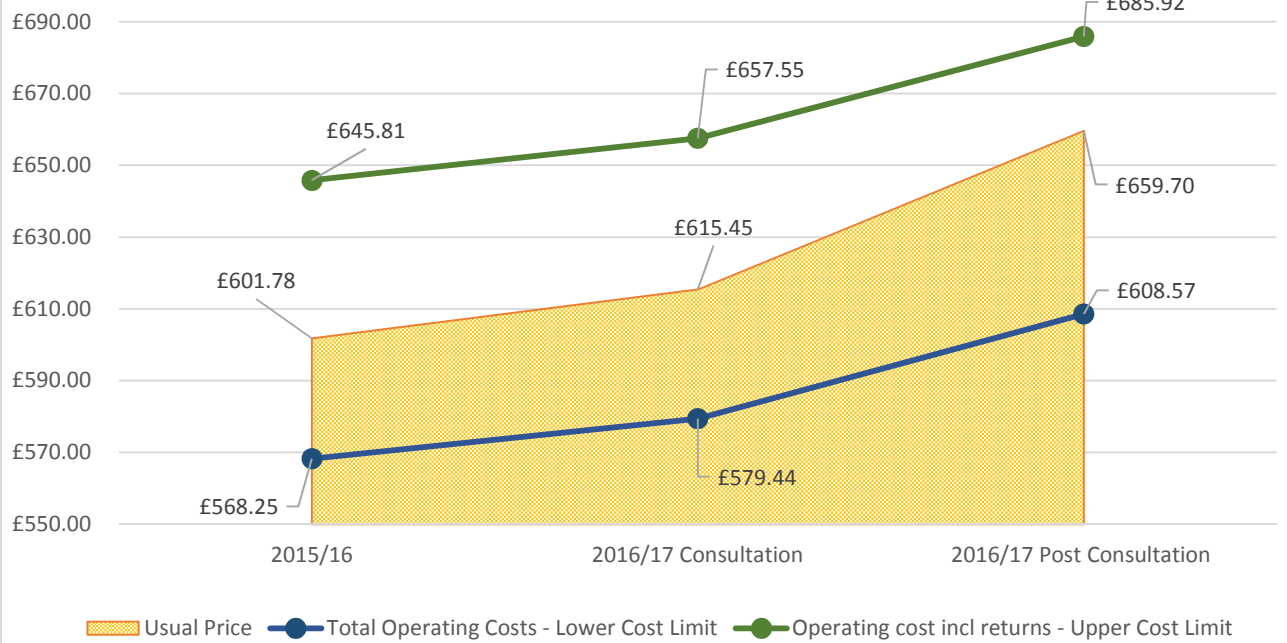


The tables below illustrate the position in relation to nursing homes including the new rate of FNC

Nursing Standard Usual Price within the Indicative Cost range



Nursing Enhanced Usual Price within the Indicative Cost range



- 3.4.1.2 The recalculated indicative actual costs for 2016/17 fully reflect inflationary pressures and pay differentials as described previously in this report. Notwithstanding the reduction in indicative actual costs the aspiration of the Council remains that it wishes to set usual prices as close to the upper limit in its indicative actual costs model as affordability will allow. Rather than make any reductions, therefore, in its proposed usual prices for 2016/17 the Council intends to implement the usual prices it consulted upon for 2016/17 in full. These represent an above inflation increase. These prices are set out in Table A below:

Table A

	A	B	C	D	E
Single Room Only	2015/16 Usual Price	Cost of Care and inflation % uplift	2016/17 Usual Price	% Total price increase	% Total price increase (including FNC)
Band					
Residential - Standard	£425.00	4.58%	£444.46	4.58%	4.58%
Residential - Enhanced	£473.00	4.85%	£495.93	4.85%	4.85%
Nursing - Standard	£442.57 + FNC of £112 = £554.57	4.65%	£463.17 + FNC of £156.25 = £619.42	4.65%	11.69%
Nursing - Enhanced	£489.78 + FNC of £112 = £601.78	2.79%	£503.45 + FNC of £156.25 = £659.70	2.79%	9.62%

- 3.4.1.3 The Council continues to aspire to increasing its usual prices in both 2017/18 and 2018/19 and to add inflationary uplifts informed by its new dialogue process in each of those years. The table below is reproduced from the consultation materials and serves to illustrate the Council's aspirations for further increases in future years subject to affordability and consultation in due course.

	A	B	C	D	E	F
Single Room Only	2015/16 Usual Price	2016/17 Usual Price	Provisional			
Band			2017/18 Cost of Care % uplift	2017/18 Usual Price*	2018/19 Cost of Care % uplift	2018/19 Usual Price*
Residential - Standard	£425.00	£444.46	2.26%	£454.50	2.21%	£464.53
Residential - Enhanced	£473.00	£495.93	2.44%	£508.04	2.38%	£520.15
Nursing - Standard	£442.57 + FNC of £112 = £554.57	£463.17 + FNC of £156.25 = £619.42	2.37%	£474.16 + FNC of £156.25 = £630.41	2.32%	£485.16 + FNC of £156.25 = £641.41

Nursing - Enhanced	£489.78 + FNC of £112 = £601.78	£503.45 + FNC of £156.25 = £659.70	0.57%	£506.33 + FNC of £156.25 = £662.58	0.57%	£509.22 + FNC of £156.25 = £665.47
---------------------------	---------------------------------	------------------------------------	-------	------------------------------------	-------	------------------------------------

*excluding any relevant inflationary award and changes in NHS FNC rate.

3.4.1.4 If these aspirations can be achieved the effect will be to further move the usual price towards the upper cost limit in the Council's indicative actual costs model as shown in the diagrams below: Neither the indicative cost range nor the usual prices shown in the tables below is adjusted for future inflationary increase in 2017/18 and 2018/19.





4. Financial Implications

- 4.1 At the 29th April 2016 Adult Social Care Committee, section 9 of the report “Usual Price of Residential and Nursing in Norfolk” outlined the cost implications for 2016/17 of the settling of the 2015/16 Older People Residential and Nursing Cost of Care exercise.

Budget impact to Norfolk County Council of proposed usual price				
Financial Year	2015/16 £m	2016/17 £m	2017/18 £m	2018/19 £m
Total Cost	2.185	3.315	4.486	5.690
From one-off funding sources	2.185	3.315		
Recurrent additional savings required as part of budget setting process.			4.486	1.204

- 4.2 In agreeing the Usual Price for 2016/17, the above must be updated to include the impact of the consultation and the revisions included within this report.

Full budget impact to Norfolk County Council of proposed usual price				
Financial Year	2016/17	2017/18	2018/19	
	£m	£m	£m	
Cost of Care uplift (29 th April)	3.315	4.486	5.690	
2016/17 additional uplift in usual price*	1.577	1.577	1.577	
Total Cost	4.892	6.063	7.267	

*2016/17 price adjustment is a recurrent cost

Incremental budget impact to Norfolk County Council of proposed usual price				
Financial Year	2016/17	2017/18	2018/19	
	£m	£m	£m	
Cost of Care uplift (29 th April)	3.315	1.171	1.204	
2016/17 additional uplift in usual price**	1.577	0.000	0.000	
Total Cost	4.892	1.171	1.204	

**2017/18 and 2018/19 will be subject to separate price adjustment decisions

- 4.2.1 The cost of implementing the proposed usual prices within this paper are £4.034m more than the Adult Social Care budget set in February. The use of the Corporate Business Risk Reserve to provide one-off funding for this pressure in 2016/17 was agreed by Policy & Resources Committee on 18th July 2016. The table below shows the one-off and recurrent funding implications.

4.3 The funding implications of the proposal are as follows:

Funding of budget impact to Norfolk County Council of proposed usual price			
Financial Year	2016/17	2017/18	2018/19
	£m	£m	£m
Total Cost	4.892	6.063	7.267
From one-off funding sources	-4.034		
Recurrent Funding (ASC base budget)	-0.858		
Recurrent Additional savings required as part of budget setting		-5.205	-1.204

4.3.1 Within 2016/17, the proposed £4.892m will be met by a combination of current Adult Social Care base budget and one-off corporate business risk reserves. The 2016/17 decision creates a recurrent cost of £4.034m, which will require recurrent savings to be implemented in 2017/18. For planning purposes the impact of the proposed usual price for 2017/18 and 2018/19 will require a further £2.375m recurrent savings.

4.3.2 The above figures are subject to variations in volume and changes in care packages. Any variance to plan will be included within the forecast position for Adult Social Care.

5. Equality Impact Assessment (EqIA)

5.1 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. Equality impact assessments (EqIA) are an effective way of demonstrating that. The Council has undertaken an equality impact assessment on the cost of care review and throughout the project, the EqIA has been reviewed and updated as appropriate. The Council will continue to update it throughout the process and publish it on the Council's Cost of Care web page. The EQIA is attached as Appendix C

6. Legal Risks

6.1 The Council has carried out a thorough cost of care exercise in order to enable it to propose and consult upon the usual prices in 2016/17.

6.2 Whilst the Council has acted upon legal advice throughout the process and believes that all reasonable steps have been taken to avoid further legal challenges it is not possible to rule out further legal challenges at this time.

7. Conclusion

7.1 Since the Council adopted the resolutions at its Committee meeting on 29 April 2016 set out at the beginning of this report it has conducted a thorough and proper consultation on its proposals as a whole and in particular the proposed usual prices for residential and nursing care for older people in Norfolk for 2016/17.

7.2 The Council extended its consultation period to fully accommodate all requests for additional time and has given careful consideration to all the feedback it received as a consequence of its consultation.

7.3 As a result of its considerations the Council has adjusted its indicative actual costs model to better reflect changes in the actual costs of direct care staff including pay

differentials in the market. In all other respects the model remains unchanged except for the increased rate of FNC.

- 7.4 The council has carefully reviewed its position regarding the treatment of third party top up payments and proposes to treat such payments as set out in this report.
- 7.5 At its 29 April 2016 meeting the Committee agreed to delegate authority to implement any new usual prices for 2016/17 to the Executive Director of Adult Social Services in consultation with the Committee Chair and Committee spokespersons. The consultation resulted in a significant amount of new information that has required material changes to the Council's indicative actual costs model. Under the circumstances it is considered appropriate to ask the Committee to make the decision.

The Committee is recommended, therefore, to:

- a) Agree to the usual prices for residential and nursing care for older people in Norfolk in 2016/17 which include inflationary pressures as set out in Table A in this report**
- b) Agree to the proposed treatment of third party top up agreements in 2016/17 as set out in this report**

Officer Contact

If you have any questions about matters contained or want to see copies of any assessments, eg equality impact assessment, please get in touch with:

If you have any questions about matters contained in this paper please get in touch with:

Officer Name:
Steve Holland

Tel No:
01603 638353

Email address:
steve.holland@norfolk.gov.uk



If you need this report in large print, audio, Braille, alternative format or in a different language please contact 0344 800 8020 or 0344 800 8011 (textphone) and we will do our best to help.