



Adult Social Care Committee Additional Meeting

Date: **Friday 29 April 2016**

Time: **2:30pm**

Venue: **Edwards Room, County Hall, Norwich**

Persons attending the meeting are requested to turn off mobile phones.

Membership

Ms S Whitaker (Chair)

Mr B Borrett
Ms J Brociek-Coulton
Mr D Crawford
Mr T Garrod
Mr A Grey
Mrs S Gurney
Ms E Morgan
Mr J Perkins

Mr A Proctor
Mr W Richmond
Mr M Sands
Mr E Seward
Mr B Spratt
Mrs M Stone
Mrs A Thomas
Mr B Watkins

**For further details and general enquiries about this Agenda
please contact the Committee Officer:**

Nicola LeDain on 01603 223053
or email committees@norfolk.gov.uk

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A g e n d a

1. To receive apologies and details of any substitute members attending

2. Members to Declare any Interests

If you have a Disclosable Pecuniary Interest in a matter to be considered at the meeting and that interest is on your Register of Interests you must not speak or vote on the matter.

If you have a Disclosable Pecuniary Interest in a matter to be considered at the meeting and that interest is not on your Register of Interests you must declare that interest at the meeting and not speak or vote on the matter.

In either case you may remain in the room where the meeting is taking place. If you consider that it would be inappropriate in the circumstances to remain in the room, you may leave the room while the matter is dealt with.

If you do not have a Disclosable Pecuniary Interest you may nevertheless have an Other Interest in a matter to be discussed if it affects

- your well being or financial position
- that of your family or close friends
- that of a club or society in which you have a management role
- that of another public body of which you are a member to a greater extent than others in your ward.

If that is the case then you must declare an interest but can speak and vote on the matter.

3. Usual Price of Residential and Nursing Care in Norfolk

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Report by the Executive Director of Adult Social Services

4. Review of 9 March 2015 Adult Social Care Committee Decision

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Report by the Executive Director of Communities and Environmental Services

Group Meetings

Conservative	1pm	Conservative Group Room
UK Independence Party	1pm	UKIP Group Room
Labour	1pm	Labour Group Room
Liberal Democrats	1pm	Liberal Democrat Group Room

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Adult Social Care Committee

Item No. 3.

Report title:	Usual price of residential and nursing care in Norfolk
Date of meeting:	29 April 2016
Responsible Chief Officer:	Harold Bodmer
Strategic impact One of Norfolk County Council's (the Council's) statutory functions is arranging the provision of residential and nursing care for people whose assessed needs show that they are best met in this way. The Council invests over £130m 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 Council made a decision on 9 March 2015 to set its usual prices for the 2015/16 financial year. An application was made to judicially review that decision 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.

This report updates Committee on the settlement of the judicial review application and sets out the steps that have been taken following the legal challenge and within the legal framework to enable the Committee to decide its usual prices for 2015/16 in respect of older people.

The report also enables the Committee to note and agree proposals for fee uplift of usual prices for older people in 2016/17 and the approach to settling usual prices for older people through a phased programme covering the period 2016/17, 2017/18 and 2018/19.

The report also enables the Committee to consider and agree the proposed approach for concluding the cost of care exercise in respect of working age adults for 2015/16 and for settling usual prices for 2016/17 for working age adults.

The report proposes that with the exception of usual prices for older people for 2015/16 these processes are concluded through the use of delegated powers to be exercised by the Executive Director of Adult Social Care in consultation with the Committee Chair and Group Spokespersons.

Recommendations:

The Committee is recommended to:

- a) Consider and note the terms of the agreement to settle the cost of care judicial review
- 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 5,6 and 7 is carried out by the Executive Director of Adult Social Care in consultation with the Chair of the Adult Social Care Committee and Group Spokespersons

1. Proposal

- 1.1 The background to this proposal is that the Council made a decision on 9 March 2015 to set its usual prices for residential and nursing care in Norfolk by increasing the usual prices in 2014/15 by 1.5% for providers of such care to older people and 1% for providers of such care to working age adults, with the new prices taking effect from 6 April 2015. The intention was that these should be the usual prices that the Council would expect to pay throughout the remainder of the 2015/16 financial year.
- 1.2 At the same time, the Council undertook to carry out a cost of care exercise to enable it to establish its usual prices for the 2016/17 financial year and the Council's next planning period. Before this work could be completed, however, the Council was challenged on the lawfulness of its approach to making the original decision in March 2015 and decided that a new decision should be taken.
- 1.3 As a result of, and following the legal challenge described above, a major cost of care exercise has been undertaken which has resulted in new proposed usual prices for 2015/16 for older people to replace the former usual prices for older people in 2015/16, together with proposals for settling the usual prices for working age adults in 2015/16 and usual prices for both older people and working age adults for 2016/17, 2017/18 and 2018/19 as part of a phased implementation process reflecting affordability.

2 Evidence

2.1 Legal challenge through judicial review

- 2.1.1 The claimant to the judicial review, namely an organisation known as 'Fair Price for Care Fair Pay for Carers', challenged the decision of 9 March 2015 to raise provider fees on the basis of the Council having 'acted irrationally and unlawfully'. The claimant relied on two grounds:
 - (a) that the Council '...acted unlawfully by failing to conduct any or any legally adequate consultation prior to reaching its...decision'; and
 - (b) the decision having been '...taken without consultation, is further flawed by virtue of a failure to take into account a range of material factors, namely the actual cost

of care, which was significantly higher than the fees being offered, the impact of external factors, (including expressly competition from NorseCare, by virtue of its practice of targeting privately funded residents - thereby reducing the profits of providers, and the differential fee rates being provided to NorseCare homes) and the potential adverse impact of the decision as to fees, upon providers and residents'

- 2.1.2 The Council accepted that the consultation was not adequately conducted and that its decision did not attain a proper regard of all that would follow in consequence. The Council therefore conceded to an order of the Court that (i) the decision of 9 March 2015 be quashed and (ii) the Council pays a contribution of £25,000 plus VAT to the claimant's legal costs of the court action. These terms were submitted to the Court by way of a consent order, which was duly approved as an Order of the Court on 10 February 2016

2.2 **Legal framework for setting usual prices for residential care**

- 2.2.1 Where the Council has assessed an adult as being in need of care, it may lead to a decision to make a placement in a residential care home or a nursing care home. Where that person expresses a preference for particular accommodation, the Council is obliged to arrange for care in that accommodation, provided that the price required by the provider does not exceed the amount specified in the adult person's personal budget for accommodation of that type.
- 2.2.2 The Committee is required to set the usual rates it will pay for residential care placements. The key to this exercise, as always, is to determine what the actual cost of care in the local area is and thereafter set usual rates at a level that complies with the Norfolk County Councils various statutory duties and obligations.
- 2.2.3 The statutory framework is explained fully in Appendix 1 to this paper and needs to be considered when making this decision. The Appendix includes consideration of the Care Act 2014 and the introduction of personal budget as the means through which resources (in this case the costs of residential accommodation) will be allocated.

2.3 **The cost of care process**

- 2.3.1 In order to review and decide on what the Council would propose as its usual prices for the 2015/16 financial year (and its next planning period) a cost of care exercise has been carried out with due regard to the legal framework. This sought to understand what the actual costs of providing residential and nursing care in Norfolk are and any other relevant matters including local factors to which it should have due regard.
- 2.3.2 This exercise involved the following process (and the Council corresponded regularly with providers throughout to keep them updated):

2.3.3 **Stage 1 – Information Gathering**

The Council engaged with providers to collect information from them on their actual costs of providing residential and nursing services in Norfolk. This took place between 22 July 2015 and 10 September 2015. In addition the Council gathered and researched further information about the costs of care from a variety of cost models and data sets throughout this period.

2.3.4 **Stage 2 - Initial analysis and the setting of proposed usual prices for consultation**

A large majority of the information supplied by providers related to older people with a much smaller amount of information relating to working age adults. Between 11 September 2015 and 11 December 2015 the Council analysed all the information it received from the market during stage 1, together with anything it obtained from its own

investigations. These were considered alongside any local or other relevant factors, having proper regard to the legal framework.

This information, analysis and consideration enabled the Council to set out what it provisionally considered its usual prices for publicly funded care should be for older people and the reasons why in a consultation report dated December 2015. This report was published on 11 December 2015 and is attached as Appendix 2.

Whilst the information supplied in respect of working age adults provided a basis for understanding actual costs it was not considered sufficient at that time to enable a full report for consultation to be completed. An interim report was issued instead in order to set out the position reached and signal that further work was required before recommendations about the usual prices for working age adults for 2015/16 could be confidently formulated. This report is was published on 11 December 2015 and is attached as Appendix 3.

2.3.3 Stage 3 – Consultation

The consultation began with the publication of the report attached at Appendix 2 regarding older people on 11 December 2015 and lasted until 22 January 2016 making due allowance for the intervening Christmas period.

The consultation report itself was sent as part of a pack to every provider which included:

- a) An equality impact assessment
- b) The timelines
- c) Who could be contacted in case of queries
- d) Details about how providers could respond using an online consultation facility and how they could participate in the consultation in other ways including but not limited to further evidence, critique of methodology, additional reports, comments and concerns, or data that they might want to share to support their arguments

2.3.4 Stage 4 – Analysis

The consultation resulted in the provision of considerably more cost related data, correspondence from individual providers and provider representative groups including the group which had launched the judicial review and the completion of an online questionnaire. All the feedback and anything else considered to be relevant was fully considered and analysed. A summary of the consultation responses is set out in Appendix 4.

2.3.5 Summary position following stages 1, 2, 3 and 4

The legal requirement to consult on the Council's proposed usual prices was built into the process at stage 3 and was undertaken at the most appropriate time, being after:

- a) engagement with providers to collect their actual costs of providing residential and nursing services in Norfolk;
- b) gathering and researching further information about the costs of care from a variety of cost models and data sets;
- c) analysing all the information it received;
- d) considering information it received alongside any local or other relevant factors, as well as the Council's duty of Best Value and its obligations under the Care Act 2014;
- e) doing an Equality Impact Assessment; and
- f) setting out in a report what the Council provisionally considered its usual prices for publicly funded care should be and the reasons why,

At this stage of the process final proposals were still to be made meaning that at this time the decision was still at a formative stage.

The distribution of the consultation pack including the consultation report at Appendix 2 meant that providers were given sufficient information to allow them to have a reasoned consideration of the matter and the ability to give their informed response to the proposed usual prices and questions posed.

Providers were given 6 weeks for their consideration, questions and their responses. This was extended from the original proposal of four weeks to take into account the Christmas and New Year Period and is therefore considered both reasonable and sufficient.

The consultation itself included a structured online facility that asked a series of questions to help the Council understand provider views. The consultation also enabled providers to give their views in any other way they might choose and is therefore considered to have been a reasonable and adequate process to give the Council a proper grasp of providers' views.

2.3.6 Stage 5 - Decision Making

The analysis described above together with considerable further research has enabled the original proposals and assumptions set out in the consultation report to be revisited and re-evaluated including the indicative actual costs model. This was after all the purpose of the consultation. The remainder of this report sets out the position reached at this stage of the process which enables recommendations to be made to the Committee both in relation to the retaking of the original March 2015 decision and regarding next steps to conclude the cost of care process for working age adults for 2015/16 and future arrangements for the period 2016/17 to 2018/19.

3 Current position

3.1 Cost of care process 2016/17 to 2018/19 (the Council's next planning period)

- 3.1.1 The Council consulted on a proposed process that would enable indicative or planned prices to be established for the period 2016/17 to 2018/19 by reference to the costs in a baseline year which would be 2015/16. The consultation proposal was to carry out a data collection exercise in 2018/19 to establish 2019/20 as a new baseline year in a four yearly cycle.
- 3.1.2 Following consultation the proposal is to proceed as described above but rather than being locked in to a full data collection exercise every four years we would undertake such an exercise as and when required to ensure that our usual prices reflect significant changes in provider costs.
- 3.1.3 In addition we would undertake to determine annual inflation adjustments in discussion with provider representatives in a new annual fee adjustment process that would feed into the Council's budget planning cycle. We would consult the market as a whole on any such adjustments prior to any final determination. The consultation report proposed the development of a cost adjustment mechanism to support this process and that continues to be the intention.
- 3.1.4 This approach not only provides a sound basis for financial planning on the part of providers but also allows the Council to prepare its own budgets accordingly. Operating in this way also supports the Council's market shaping duties and the promotion of an effective and efficient market in residential care. Work is continuing with the market to

enable provider representatives to fully participate in this new approach.

3.2 **Payment of usual prices**

3.2.1 The Council consulted on a simplification of the current five band system to a new four band system as shown in the table below:

	Existing Care Home Banding	Current category of need	New category of need
Care Home	Band 1	Older people and other (including physically disabled pension age)	Residential standard
	Band 2	Very dependent or blind older people	
	Band 3	Very highly dependent older people with mental health problems	Residential enhanced
Care Home with Nursing	Band 9	Older people and other (including physically disabled pension age)	Nursing standard
	Band 10	Very highly dependent older people with mental health problems	Nursing enhanced

3.2.2 The Committee is asked to consider and agree to the implementation of this simplified banding structure.

3.2.3 The consultation also proposed that if the usual prices determined for 2015/16 are above the rates actually paid in the relevant bands then any difference will be calculated and paid retrospectively to the providers in question for care provided between 6 April 2015 and 31 March 2016. This remains the proposed approach and the Committee is asked to consider and agree to this approach.

3.3 **The care economy**

3.3.2 The consultation report set out an overview and analysis of the residential and nursing home market in Norfolk using data available at the time. Whilst there have been some changes the fundamental characteristics remain unchanged. The Council currently purchases about 47% of the available residential care beds in Norfolk and 28% of the nursing beds. Average occupancy across the market as a whole is 90% and the Council's Promoting Independence strategy points to reducing reliance on residential care. This suggests that there is adequate capacity in the market to meet current and future demand at least in the medium term.

3.3.3 The consultation report also included information about closures of care homes and new care homes being registered in Norfolk. The evidence showed that over the past few years there has been a small net increase in the number of registered care homes. This suggests that the market is sustainable under current conditions.

3.3.4 Taken together these are relevant factors in considering the price required by the market.

3.4 **Quality**

3.4.1 The consultation report explained that the quality of care as judged by the Care Quality Commission (CQC) in Norfolk residential and nursing homes was broadly similar to other counties in the region. By the end of February 2016 38% of homes in Norfolk had been inspected and the position has not materially altered. There is no evidence of any

deterioration in quality as assessed by CQC during the 2015/16 year.

3.5 **Actual cost of care**

3.5.1 The consultation report emphasised that there was no single actual cost of care due to the wide variation in the actual costs that individual providers would experience in providing their services. This means that any one value for the actual costs however determined can only be indicative.

3.5.2 The consultation also explained that there was no single method of calculating the price from such an indicative cost. Ultimately a judgement needed to be made about how good a proxy value the indicative cost might be for the actual costs of an individual provider having regard to local factors and legal duties. This remains the position.

3.6 **Indicative actual costs model**

3.6.1 The Council developed an indicative actual costs model for each of the four bandings in order to generate proxy values of typical costs of providing residential and nursing care in Norfolk. The proxy values have been used to inform the Council's judgement as to what its usual prices should be.

3.6.2 The model identifies five specific categories of cost:

- **Direct Care Costs** covering staff costs that relate to the direct provision of care
- **Indirect Care Costs** covering staff costs that do not relate to the direct provision of care and includes registered manager, deputy manager, administration and reception staff and other non-direct care staff
- **Accommodation costs** covering non staffing operating costs that Norfolk County Council would expect a care home to incur in the delivery of an effective and efficient and safe service
- **Overheads** covering costs such as Central / Regional Management, Support Services (finance / HR / Payroll / legal etc.)
- **Returns** covering a reasonable allowance for return on capital employed and operating profit

3.6.3 The indicative actual cost model is driven by a number of key assumptions that were set out in the consultation report and Appendix 1 to that report. Following careful consideration of all the evidence it has been necessary to refine or change some of the assumptions driving the determination of indicative costs as described below.

3.7 **Occupancy of care homes**

3.7.1 The consultation proposed an assumed increase in the occupancy of care homes from a level of 90% in 2015/16 rising in stages to 93% by 2018/19. Increases in efficiency have the effect of reducing the amount of income required per bed and therefore put downward pressure of prices. After careful consideration it is not now proposed to factor in such increases in efficiency across the board recognising that further work will be needed if such increases in efficiency can be safely assumed. The model now assumes a 90% occupancy level throughout the four year planning period.

3.8 **Direct care costs**

3.8.1 Direct care costs are a function of the number of hours of direct care needed by an individual and the cost of employing the carers concerned. In the case of nursing homes

the cost of nursing supervision also has to be factored in.

- 3.8.2 The Council originally approached the determination of the number of hours of care needed by dividing the overall direct care costs supplied by providers by the number of residents receiving care in an average sized care home operating at 90% occupancy.
- 3.8.3 The Council used this approach to determine the average hours of care provided at the older people standard level and added additional hours to reflect assumed greater need in the enhanced band.
- 3.8.4 This approach resulted in assumed average hours per resident per week as shown in the table below:

Pre-consultation staffing hours		
Band	Care Hours per Resident per Week	Nursing Supervision per Resident per Week
Residential - Standard	18.90	n/a
Residential - Enhanced	21.25	n/a
Nursing - Standard	19.90	7.70
Nursing - Enhanced	22.25	7.70

- 3.8.5 Following the consultation and with the benefit of considerable additional provider supplied data the Council revised its approach. Rather than calculating from direct care costs the Council took the view that a better approach was to determine the staffing ratios required to ensure that safe good quality care could be provided throughout both the day and night for residents. In doing so the Council had full regard to the new information and its own requirements as a commissioner of care for publicly funded adults. This resulted in the following changes to care hours:

Post-consultation staffing hours		
Band	Care Hours per Resident per Week	Nursing Supervision per Resident per Week
Residential - Standard	20.91	n/a
Residential - Enhanced	25.76	n/a
Nursing - Standard	21.40	7.70
Nursing - Enhanced	23.40	7.70

- 3.8.6 The Council also adjusted the hourly cost of direct care from £8.88 to £9.42 to reflect pay inflation between 2014/15 and 2015/16 and adjustments to on costs. The cost of providing nursing supervision remains unchanged at £112 per week as this is a rate set at national level and funded through the health system.

3.9 Indirect care costs

- 3.9.1 Following consultation the cost of indirect care has been adjusted upwards by 2.5% to account for pay inflation between 2014/15 and 2015/16 and the cost of other non direct care has been further increased to fully cover the cost of activities coordination.

3.10 Accommodation costs

- 3.10.1 Following consultation all values have been increased by 0.2% to reflect non pay inflation between 2014/15 and 2015/16. In addition a new cost line has been included to account for the cost of capital expenditure to replace buildings and equipment. This element of capital expenditure was considered to be incorporated within the original return on capital figure set out in the consultation report.

3.11 Overheads

- 3.11.1 Following consultation the approach to evaluating the cost of overheads remains unaltered and is 5% of the sum of total direct care costs together with the indirect care costs and the accommodation costs.

3.12 Operating costs

- 3.12.1 For the purposes of the indicative actual costs model the sum of the direct care costs, the indirect care costs, the accommodation costs and the overheads costs comprise the operating costs. We have used this figure to delineate the lower limit in our range of costs.

3.13 Operating profit

- 3.13.1 In the consultation the Council pointed out that strictly speaking profit is not a cost but a reflection of the expectations of the return on operations. The Council said that it judged operating profit of up to 5% of operating costs to be reasonable. The indicative actual costs model continues to use an assumed 5% operating profit.

3.14 Return on capital

- 3.14.1 In the consultation report the Council clearly pointed out that there is no one accepted method of determining what providers might expect or require as a return on the capital that they may have employed in acquiring, developing or running their businesses. The report went on to say that the Council judged the value of the land and buildings used for the business provided the best proxy for the value of capital employed.
- 3.14.2 90% of care homes in Norfolk are older adapted buildings with only 10% being new(er) purpose built care homes. The Council therefore calculated a weighted average value for capital employed in land and buildings. It did so by using an average value for older Norfolk care homes which were for sale and by using the approach in the Laing & Buisson (L&B) Fair Price for Care model 6th Edition. This approach involved an assessment of the value of land used for a purpose built new(er) 50 bed care home with an assumed turnkey build cost per resident.
- 3.14.3 Finally the Council decided to use the rate of return suggested by L&B in their model which was 7%.
- 3.14.4 Since the publication of the consultation report the Council has revisited its method and calculations not only in the light of consultation feedback but also following the publication in February 2016 by L&B of the 7th Edition of their model now renamed Care Cost Benchmarks which fully replaces the former model.

- 3.14.5 The revised model is accompanied by a separate publication; Cost Benchmarks 7th Edition Explanatory Guide. It is clear from this guidance that the entire model is still based on a brand new purpose built 50 bed care home. The Council has continued to use the (now updated) key assumptions in the new model to derive values for new purpose built homes in Norfolk. This is because the Council judges the approach in the model to be suitable for new(er) homes in Norfolk.
- 3.14.6 The model cannot however be used to derive building values for older care estate and the Council has continued to use sale values as a better proxy for capital employed in older care estate.
- 3.14.7 The Council noted in particular that the assumed rate of return on capital employed has been downgraded from 7% to 6% to reflect changes in the care property market. The Council also noted that the returns figure itself is a component of what is described as a whole business rate of return which is in turn is based on the earnings of the business and an assumption about expectations of investors leasing out the property to a care home operator.
- 3.14.8 Taken together, assumptions about the expected rate of return of investors based on a leasing model of financing (which is not prevalent in Norfolk) and the assumed rate of return being reduced from 7% to 6% because of changes in the market and the behaviour of investors, have caused the Council to review the soundness of the L&B approach in the context of the market in Norfolk.
- 3.14.9 The leasing model of finance whilst characteristic of major chains who have a small presence in Norfolk is not typical for owner operators who make up the vast majority of providers in Norfolk. A commercial mortgage is much more likely to be the financing model and the Council consequently researched the likely financing costs of a commercial mortgage for someone with a good covenant and experience in running a care home business acquiring an average sized care home in Norfolk with 90% occupancy and a good CQC rating.
- 3.14.10 The advice from specialist brokers in the care home market suggests that under these circumstances a typical commercial mortgage would have a loan to value ratio from 65% to 80% with interest rates from 3.0% to 3.5% with a repayment period of 20 years on a full capital repayment basis. This results in a range of likely costs and the figure chosen for the indicative actual costs model is in the middle of the range as shown in the final row in the table below:

LTV	Loan	%	Annual	Per week/per resident
65%	1,093,534.95	3.0%	£72,776.62	£43.74
80%	1,345,889.16	3.5%	£93,667.38	£56.29
72.5%	1,219,712.05	3.25%	£83,017.86	£49.89

The equivalent annual rate of return on the sum financed using this method is 6.8%

- 3.14.11 There is no actual financing cost for the providers own capital however there is of course an opportunity cost but this is mitigated by the fact that this capital is not lost but is incorporated into the value of the land which is likely to appreciate in value. The buildings too are likely to maintain their value if properly maintained and the indicative actual cost model allows for such maintenance through a separate cost line. In addition the provider is gaining 100% of the value of the land and building assets. In spite of these considerations if the whole capital employed sum were to be taken into account the

equivalent rate of return is 4.935%.

- 3.14.12 Significantly the Council is under a legal duty to secure value for money in its commissioning activities and it is perfectly reasonable for commissioners to take advantage of risk sharing based on typical commercial arrangements.

3.15 Indicative actual costs of care

- 3.15.1 Following the consultation and the incorporation of revised values determined as described above the final indicative actual costs of care for each of the four new bands are set out in the revised indicative actual costs of care model for the period 6 April 2015 to 31 March 2016 inclusive below:

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
Less: Nursing Supervision above FNC			-£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	£548.47	£568.26
Returns	£70.11	£72.51	£76.56	£77.55
Operating cost incl returns	£489.59	£539.99	£625.03	£645.81

3.16 Range of indicative actual costs

- 3.16.1 The range of indicative actual costs has a lower limit which is equal to the operational costs as defined earlier and an upper limit which is equal to the operational costs plus the return on operations (profit) and return on land and buildings (return on capital)

4 Setting the usual prices

- 4.1 The Council is required to set the usual prices that it will allow under personal budgets and pay to providers for different categories of care. In doing so it is required to abide by the framework and guidance summarised in Appendix 1.
- 4.2 Amongst other things the council must have regard to the actual cost of good quality care and should consider local market conditions and intelligence. We have done this in our consideration of the actual cost of care (above) and determined that there is no one indicative costs but a range of costs.
- 4.3 The Council is also required to ensure a sustainable and improving market. Sustainability requires a level of usual prices that allows providers to maintain and

enhance their operations. Prices also have to be set at a level that the local authority can pay and sustain in the medium and long term. The council also has duties to design and facilitate a healthy, vibrant, responsive and cost-effective market.

- 4.4 It should be noted that the council will meet its Care Act obligations not solely through its setting of usual prices but also via other instruments and tools. For example the Council has already established a market development fund and is considering setting up an innovative capital loans facility to help care providers develop choice and quality. The Council wishes to engage providers in a more effective and timely manner to work together to develop the person centred services focussed on the wellbeing and independence of people as set out in the Act and the statutory guidance (the guidance).
- 4.5 Having consideration of the various obligations that the council is required to meet in setting the usual price, including the requirement to have regard to actual local prices, the Council considers that it would be reasonable to set any prices within the range of actual prices set out above – ie: above the total operating costs but below the operating costs including returns and profit. In this way all providers should be able to meet their operating costs and sustain their business. Moving further upwards in the range over coming years will enhance the ability of providers to enhance quality and delivery of services. Setting prices too high would not be cost effective and would discourage searches for operating cost efficiency.
- 4.6 The local authority is mindful that the range of prices set out in the table above all represent a significant increase on the prices paid in previous years. There is already sufficient capacity in the provider market, notwithstanding the lower prices previously paid. Quality has not diminished and the number of care homes has increased. It is therefore anticipated that any price within the range of actual prices will serve to increase provider revenue and therefore enhance investment and quality thereby allowing the council to meet its various market obligations as set out in statute and guidance.
- 4.7 Furthermore the council proposes real terms increases in usual prices in future years. This allows the provider market to plan for the future and gives them an important increased level of certainty when investing and seeking finance to enhance their homes. Increases over this timescale also allows the council to increase fees in a sustainable manner.
- 4.8 We consider that the usual prices set out below provide long term sustainability for the market. The prices allow the provider pool to be maintained and to enhance quality at a level that is cost effective and affordable and gives tax payers value for money.
- 4.9 The Association of Directors of Adult Social Services (ADASS) have calculated that unfunded pressure on adult social care budgets nationally amount to a gap of £1.4bn in 2016/17 and £1.6bn in 2017/ 18 resulting in a gap of £1.1bn by 2020 when the additional funding from the Comprehensive Spending Review which is back loaded will have been paid. This assumes that most councils take advantage of the 2% council tax precept for social care each year until then. Other reputable sources such as the Kings Fund, the Health Foundation and the Nuffield Trust estimate the funding gap to be higher.
- 4.10 The Council as a whole is continuing to manage the challenge of reductions in grant from government, changing demographics and, in previous years, no increase to council tax. Between 2011 and 2016 the Council made savings of £245m and the Council has approved a savings programme for 2016-19 to deliver a further £115.182m of savings across all council services.
- 4.11 The 2016/17 total net budget for Adult Social Services is £246.852m, of which budget spend on nursing and residential care for older people is £71.2m (29% of the total budget). The proposed usual prices will represent additional pressures of £5.690m,

equating to 8% of the residential and nursing care budget for older people.

- 4.12 In reaching a decision on the implementation timescale for meeting the full usual price, consideration needs to be given to not only the risks and issues set out in this paper that affect the market, but also the affordability of the proposals to the Council and the impact and risks for delivery of council services. The proposal is to implement the usual price over the next two years, to enable a planned approach and more stable impact on Council services.
- 4.13 The financial context for the service and the Council sets out a challenging position. As part of the Re-Imagining Norfolk programme and approved budget for 2016-19, the service is already working to achieve £49m of additional budget savings totalling £10.926m in 2016/17; £17.895m in 2017/18 and £20.012m in 2018/19. The costs set out in the report will further increase the savings that need to be delivered by the Council. The savings programme will be met primarily through implementing a new strategy for adult social care based on promoting independence by offering preventative alternatives to formal social care; delivering a new customer pathway and supporting people to live safely at home for longer. This will reshape the type of services required and will impact on the volume and type of services commissioned by the Council in future years.
- 4.14 An alternative to a phased implementation of the usual price would be to fully implement the proposed usual price in 2016/17 financial year. However, consideration needs to be given to the financial position in 2016/17. The latest reported monitoring position for Adult Social Services for 2015/16 financial year (Period 10), set out a forecast overspend of £2.785m. This overspend will increase the financial challenge for the service in 2016/17, as it represents additional and recurrent underlying expenditure against the 2016/17 budget. It is considered that meeting the costs in full in 2016/17 would place significant unplanned financial pressure on the Council's budget and increase risk around delivery of services in year.

5 Inflation uplift for residential and nursing care 2016/17

- 5.1 The overall inflation uplifts to the usual prices being proposed for 2016/17 for residential and nursing care is made up of pay inflation and non-pay inflation.
- 5.2 Pay inflation is affected by the introduction of the National Living Wage (NLW) which came into effect on 1 April 2016 and is in effect an additional band in the national minimum wage structure and applies to workers who are at least 25 years old.
- 5.3 The National Minimum Wage (NMW) still applies minimum hourly wage rates for adults below the age of 25. It is not practical to determine the precise financial impact of the legal obligation placed on each provider of residential and nursing care in Norfolk. In order to gauge the likely effect of the legal obligation to pay eligible workers at the new rate an analysis of the National Minimum Data Set (NMDS) managed by Skills for Care was undertaken. The NMDS provides comprehensive information about the care workforce in Norfolk.

- 5.4 The table below shows the proportion of care workers by hourly rate bands. (Source: NMDS-SC November 2015. Base: Care workers in Norfolk with quality pay data).

Table 1. Proportion of care workers by hourly rate bands

Source. NMDS-SC Nov 2015

Base. Care workers in Norfolk with quality pay data

	All ages	25 and over					
	All bands	All bands	Under £7.20	Under £6.75	£6.75 to £6.99	£7.00 to £7.19	£7.20 & over
All services	7,339	5,993	39%	23%	6%	10%	61%
Adult residential	3,857	3,035	49%	36%	8%	6%	51%
Adult Day	119	100	16%	7%	2%	7%	84%
Adult domiciliary	2,574	2,196	35%	12%	4%	19%	65%
Adult community care	187	181	0%	0%	0%	0%	100%
Other	602	481	5%	0%	3%	2%	95%

- 5.5 The data show that the average hourly rate for care workers in the residential sector slightly exceeds the NLW rate and that 51% of direct care workers are paid above the NLW rate already. However some 49% of direct care workers are being paid at varying degrees below the new NLW rate, with a significant proportion of those being paid less than £6.75 an hour.
- 5.6 Pay inflation is also affected by the Pensions Act 2008 which requires every employer in the UK to enrol certain staff into a pension scheme and contribute towards employee pensions. The implementation is being staged over a number of years, but by 1 April 2017 all current employers including those with only one employee must have implemented a scheme. Until April 2018 the employer minimum contribution is 1% of adjusted pay. Not all staff will be eligible for enrolment and staff can opt out.
- 5.7 The combined effect of both the NLW and pensions obligations on pay inflation in this sector is estimated to require an uplift of 2.97% to the values in the direct and non-direct care staff categories in the indicative actual costs model.
- 5.8 Turning to non-pay inflation the Office for Budget Responsibility produces forecast inflation information. The Consumer Price Index (CPI) takes account of a range of factors across all areas of spending. It reflects price increases, but also deflation for some areas of spending such as energy costs. The forecast CPI for financial year 2016/17 is 1.2% and was calculated using the November OBR Economic and Fiscal Outlook for 2016/17. This requires an uplift of 1.2% to be applied to the accommodation category of the indicative actual costs model.
- 5.9 The combined effect of 2.97% on pay and 1.2% on non-pay prices results in an overall uplift to 2015/16 prices of between 2.17% and 2.29% depending upon the band in question. This is a weighted average taking into account a range of factors and recognising that the impact of the increase in the national minimum wage in October 2015 is accounted for within the proposed usual prices for 2015/16.

6 Usual prices for 2015/16 and planned prices for 2016/17 to 2018/19

- 6.1 The table below includes seven key items of information:

1. The current and proposed simplified bands
2. The 2014/15 usual prices

3. The current usual prices for 2015/16
4. The proposed usual prices for 2015/16
5. The planned price for 2016/17 including proposed inflationary uplift
6. The planned price for 2017/18 excluding further inflationary uplift
7. The planned prices for 2018/19 excluding further inflationary uplift

Single Room Only		2014/15 Price Bands	2015/16 Current Price Bands	Proposed usual weekly price bandings			
New Band	Existing Band			2015/16	2016/17	2017/18	2018/19
					(including 16/17 inflation proposal)	(at 2016/17 prices subject to further price adjustment in 17/18 and 18/19)	
Residential - Standard	Band 1	£329.04	£333.98	£425.00	£444.46	£454.50	£464.53
		%age uplift from 14/15 rate	1.50%	29.16%	35.08%	38.13%	41.18%
	Band 2	£391.48	£397.35	£425.00	£444.46	£454.50	£464.53
		%age uplift from 14/15 rate	1.50%	8.56%	13.53%	16.10%	18.66%
Residential - Enhanced	Band 3	£453.90	£460.71	£473.00	£495.93	£508.03	£520.14
		%age uplift from 14/15 rate	1.50%	4.21%	9.26%	11.93%	14.59%
Nursing - Standard	Band 9	£410.51 + FNC of £110.89 = £521.40	£416.67 + FNC of £112 = £528.67	£442.57 + FNC of £112 = £554.57	£463.17 + FNC of £112 = £575.17	£474.17 + FNC of £112 = £586.17	£485.16 + FNC of £112 = £597.16
		%age uplift from 14/15 rate (Excluding FNC)	1.50%	7.81%	12.83%	15.51%	18.18%
Nursing - Enhanced	Band 10	£472.93 + FNC of £110.89 = £583.82	£480.02 + FNC of £112 = £592.02	£489.78 + FNC of £112 = £601.78	£503.45 + FNC of £112 = £615.45	£506.33 + FNC of £112 = £618.33	£509.22 + FNC of £112 = £621.22
		%age uplift from 14/15 rate (Excluding FNC)	1.50%	3.56%	6.45%	7.06%	7.67%

The Committee is asked to note items 1, 2 and 3 which provide context.

- 6.2 The Committee is asked to consider and agree the proposed usual prices for 2015/16 (item 4). Whilst these prices are below the lower limit in the indicative actual cost model, reflecting in year affordability constraints, they are higher than the current prices for the 2015/16 year. This has the effect of retaking the original decision in March 2015 regarding the uplift to fees for older people.
- 6.3 The Committee is asked to consider and agree the proposed approach to inflationary uplift for 2016/17 which is incorporated into the planned prices for 2016/17 (item 5). These proposed usual prices represent a significant increase over the previous year and are within the lower and upper cost ranges. The Council is required to consult the market on these proposed usual prices in accordance with the legal framework and implement the prices with or without modification following proper consideration of any feedback in its consultation. This will conclude the cost of care process for older people for the 2016/17 year. The Committee is asked to agree to the implementation of any resultant usual prices through the exercise of delegated powers.
- 6.4 The Committee is asked to consider and agree the proposed approach to the planned prices for 2017/18 and 2018/19 (items 6 and 7) which build on the proposed usual price for 2016/17 and are intended to give an indication of prices in those years. These prices are within the lower and upper cost ranges but do not include any allowance for inflation. The purpose of setting these prices out now is to aid provider business planning and Council budget planning and to set out a pathway for supporting a sustainable market as part of the Council's market shaping duties under the Care Act. These planned prices will be subject to adjustment for inflation and adjustment following a consultation process in accordance with the legal framework. The Committee is asked to agree to the

implementation of any resultant usual prices through the exercise of delegated powers.

6.5 Working Age Adults

- 6.5.1 Since the publication of the interim report regarding the cost of care for working age adults (Appendix 3) was published the Council has continued to engage with a working group of provider representatives in this market. This engagement has resulted in some further progress and a broad consensus being reached on how to proceed. A further piece of analysis will now be carried out to enable indicative actual costs to be determined. This is expected to be completed within next few weeks. The Council will then publish a consultation report and carry out a 28 day consultation. All consultation feedback will be duly analysed and given proper consideration to enable proposed usual prices for 2015/16 and 2016/17 to be formulated.
- 6.5.2 The Committee is asked to consider and agree the proposed approach to concluding the cost of care exercise 2015/16 for working age adults and the proposed approach to setting the usual prices for 2016/17 for working age adults. The Committee is asked to agree to the implementation of any resultant usual prices through the exercise of delegated powers. This will enable the remaining element of the original March 2015 decision to be retaken.

7 Equality Impact Assessment (EqIA)

- 7.1 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.

8 Legal Risks

- 8.1 The application for judicial review has caused the Council to reconsider its entire approach to the setting of usual prices for residential and nursing care in Norfolk. In addition the Council has paid towards the legal costs of the applicant, Fair Price for Care, Fair Pay for Carers (FPCFPC)
- 8.2 During this period dialogue has been maintained with FPCFPC and other providers and it has been clear that in spite of the considerable efforts of the Council to determine usual prices in a legally compliant manner the threat of further legal action has remained throughout.
- 8.3 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 impossible, however, to rule out the possibility of such a challenge at this time.

9 Financial Implications

- 9.1 The cost to Norfolk County Council of the proposed usual prices is set out in the table below. The recommendation within this paper is for the increase to the final usual price to be managed across the next three years to April 2018, in order to provide both provider certainty but also to enable the County Council to manage the additional recurrent costs within forward planning for 2017/18 and 2018/19.

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

- 9.2 In determining the cost of the proposed change to the Council, the proposed usual prices have been applied to the 2015/16 packages of care and compared to actual costs. The additional cost pressures that arise will need to be met through a mix of one off funding for the previous financial year and current financial year and recurrent funding sources for future financial years. The table below sets out the recommended funding sources in each year.

Recommended funding of additional cost pressures		
Financial Year	Amount £m	Funding Source
2015/16	2.185 (one-off)	Adult Social Care Reserves £1.533m and Purchase of Care budget £0.652m
2016/17	3.315 (one-off)	Corporate Business Risk Reserve
2017/18	4.486 (recurrent)	Additional 2017/18 budget saving proposals
2018/19	1.204 (recurrent)	Additional 2018/19 budget saving proposals

- 9.3 For providers, the revised prices for 2015/16 will be applied to activity in 2015/16 and backdated to 6th April 2015. Increases to 2016/17 prices will be applied following consultation and final agreement and backdated to 11th April 2016.
- 9.4 Where providers currently owe the Council a sum of money, this will be offset as part of the back payment to the provider.
- 9.5 For service users who pay for their care in full it is proposed that charges are increased for future service received. Service users will not be charged retrospectively at new rates, for care received in 2015/16. For this financial year, it is proposed that service users will be charged at the revised rates for 2016/17 for care received from the date that the new rates are agreed and following the consultation period. However, service users will be notified in writing of the increase following the decision of this Committee, in order to provide advance notice. The increase in charges for service users will reflect the increase from the original 2015/16 prices to the new 2016/17 prices.

Table setting out the increase in weekly charges for self-funders					
New Band	Existing Band	Current Charges 15/16	New Prices 15/16 (not charged)	Proposed Charges 16/17	Increase for self-funders from 15/16 to 16/17
Residential Standard	Band 1	£333.98	£425.00	£444.46	£110.48
	Band 2	£397.35	£425.00	£444.46	£47.11
Residential Enhanced	Band 3	£460.71	£473.00	£495.93	£35.22
Nursing Standard	Band 9	£416.67 +FNC	£422.57 +FNC	£463.17 +FNC	£46.50
Nursing Enhanced	Band 10	£480.02 + FNC	£489.78 +FNC	£503.45 +FNC	£23.43

- 9.6 Following agreement by Committee, the work to implement the revised usual prices for 2015/16 to providers will commence immediately but due to a significant amount of manual work needed to implement the change, it will take further time for the payments to be received by providers. In relation to the increase for 2016/17, this will be implemented following the consultation period and final approval.
- 9.7 Additional resources will be required in Finance Exchequer Services and Care Arranging Services to implement the changes to the agreements and to enable payments to providers. This will be mainly through overtime. The additional cost to the Council for implementation work is expected to be £25,000. The additional cost will be met within the Adult Social Services budget.

10 Recommendations

10.1 The Committee is recommended to:

- a) Consider and note the terms of the agreement to settle the cost of care judicial review
- 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 5,6 and 7 is carried out by the Executive Director of Adult Social Care in consultation with the Chair of the Adult Social Care Committee and Group Spokespersons

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COST OF CARE REPORT

LEGAL FRAMEWORK

The Council is seeking to set the *usual prices* it will pay for residential and nursing care accommodation in the financial year from 6 April 2015. This decision was initially taken on 9 March 2015 but a new decision is now being taken. The Council are also setting out a pathway for future prices. These prices for future years will be need adjusting at the appropriate time to account for changing circumstances and will also be subject to their own consultation and decision-making process.

The Committee has set *usual prices* in a number of previous years. This was done pursuant to s.21 of the *National Assistance Act 1948* under which the Council has an obligation to make arrangements for providing “*residential accommodation for persons aged 18 or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them.*” This duty can be fulfilled by making arrangements with the private sector (s.26 of the 1948 Act).

When making such arrangements the local authority had regard to *National Assistance Act 1948 (Choice of Accommodation) Directions 1992* by which it was required to place individuals in their “*place of...choice within the UK if he has indicated that he wishes to be accommodated in preferred accommodation.*” But the local authority was only required to make arrangements for the person to be accommodated in his preferred accommodation if “*the cost of making arrangements for him at his preferred accommodation would not require the authority to pay more than they would usually expect to pay having regard to his assessed needs*”. When determining what *they would usually expect to pay* the local authority was assisted by *Local Authority Circular LAC (2004) 20*. It states at paragraph 2.5.4 that a “*council should set more than one usual cost where the cost of providing residential accommodation to specific groups is different. In setting and reviewing their usual costs, councils should have due regard to the actual costs of providing care and other local factors. Councils should also have due regard to Best Value requirements under the Local Government Act 1999.*” Further paragraph 3.3 states that “*When setting its usual cost(s) a council should be able to demonstrate that this cost is sufficient to allow it to meet assessed care needs and to provide residents with the level of care*

services that they could reasonably expect to receive if the possibility of resident and third party contributions did not exist.”

The Care Act 2014 then came into force on 1 April 2015, making the shift towards personal budgets. The amounts set out in the budgets must always be sufficient to meet an adult’s care needs, including any need to be accommodated in a residential home. The local authority needs to determine the rates it will usually pay for care in different types of placements (eg: residential standard; residential enhanced; nursing standard; nursing enhanced) as has always been the case. These usual prices will be starting points. They can be adjusted in individual cases if required. The usual prices will however provide a clear indicator to the provider market in Norfolk of what fees they will usually receive for those placed in different care bands. This in accordance with paragraph 11.4 of the statutory guidance which encourages the establishment of *clear upfront indicative (or ‘ball-park’) allocation sums*.

The present decision as regards rates, and any associated decisions going forward, must be made in accordance with the Care Act, in particular part 1 of the Act, as well as the regulations issued under it and the statutory guidance issued by the Department of Health – *Care and Support Statutory Guidance*.

Section 1 of the Act places a general duty on local authorities, when making relevant decisions such as this one, to promote the well-being of the individual whose needs are being met. Well-being includes suitability of living accommodation.

Under s.18 of the Care Act the local authority is required to meet an adult’s needs for care and support in certain conditions. Section 8 makes clear that there are various ways of meeting an adult’s needs, including care and support at home or in the community, or accommodation in a care home.

Therefore under the Care Act once an adult’s needs have been assessed, and their eligibility determined, a care and support plan must be devised pursuant to s.24 of the Act. This plan must include a personal budget. As stated above this sets out the cost to the local authority of meeting the adult’s needs, including provision of residential care in appropriate circumstances.

The key first step in the determination of usual rates, as was the case in previous years, is an assessment of the actual cost of care in the local area. Paragraph 11.25 of the statutory Guidance states the following:

The Act states the personal budget must be an amount that is the cost to the local authority of meeting the person's needs. In establishing the 'cost to the local authority', consideration should therefore be given to local market intelligence and costs of local quality provision to ensure that the personal budget reflects local market conditions and that appropriate care that meets needs can be obtained for the amount specified in the budget. [emphasis added]

Annexe A to the Statutory Guidance is concerned with “Choice of Accommodation and Additional Payments” and is relevant to the decision being made here. Paragraph 11 states the following: *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* [emphasis added - the wording adopted is similar to that seen in the *Local Authority Circular LAC (2004) 20* above]. Paragraph 11 goes on to state that *the local authority should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.*

Once the local authority has determined that a person needs to live in a specific type of accommodation to meet their care and support needs the person must have the right to choose between different providers of that type of accommodation provided that:

- The accommodation is suitable in relation to the person's assessed needs;
- To do so would not cost the local authority more than the amount specified in the adult's personal budget for accommodation of that type;
- The accommodation is available; and

- The provider of the accommodation is willing to enter into a contract with the local authority to provide the care at the rate identified in the person's personal budget on the local authority's terms and conditions.

The position therefore remains that service users must have a reasonable choice of accommodation provided that the local authority is not required to pay more than it would usually expect to pay (as per the *National Assistance Act 1948 (Choice of Accommodation) Directions 1992*).

Paragraph 12 of the Annexe is also relevant: *"A person must not be asked to pay a 'top-up' towards the cost of their accommodation because of market inadequacies or commissioning failures and must ensure there is a genuine choice."* Therefore third party contributions or top ups cannot be taken into account when setting the usual rates (as per paragraph 3.3 of *Local Authority Circular LAC (2004) 20*).

Paragraph 26 of the Annexe also states that *"when considering the cost of care in its area, the local authority is likely to identify a range of costs which apply to different circumstances and settings."* The local authority will do this by having four different care bands for which it will set a usual price.

Section 5 of the Care Act is relevant to the decision being made. It requires the local authority to promote diversity and quality of provision of services:

5 (1) A local authority must promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishing to access services in the market—

(a) has a variety of providers to choose from who (taken together) provide a variety of services;

(b) has a variety of high quality services to choose from;

(c) has sufficient information to make an informed decision about how to meet the needs in question.

Subsection 5(2) sets out matters the local authority must have regard to when meeting its duty under section 5. This includes:

- the need to ensure that it is aware of current and likely future demand for such services and to consider how providers might meet that demand;
- the importance of ensuring the sustainability of the market (in circumstances where it is operating effectively as well as in circumstances where it is not);
- the importance of fostering continuous improvement in the quality of such services and the efficiency and effectiveness with which such services are provided and of encouraging innovation in their provision;
- the importance of fostering a workforce whose members are able to ensure the delivery of high quality services (because, for example, they have relevant skills and appropriate working conditions).

In having regard to the matters mentioned in subsection (2)(b), a local authority must also have ensure that sufficient services are available for meeting the needs for care and support of adults in its area and the needs for support of carers in its area.

Chapter 4 of the Statutory Guidance assists further with regards to how the local authority should meet its s.5 obligations. Clearly the Council must be mindful of the entirety of the guidance and the chapter but the following paragraphs require emphasis here:

4.1. High-quality, personalised care and support can only be achieved where there is a vibrant, responsive market of service providers. The role of the local authority is critical to achieving this, both through the actions it takes to directly commission services to meet needs, and the broader understanding and interactions it facilitates with the wider market, for the benefit of all local people and communities.

4.2. The Care 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. The ambition is for local authorities to influence and drive the pace of change for their whole market, leading to a sustainable and diverse range of care and support providers, continuously improving quality and choice, and delivering better, innovative and cost-effective outcomes that promote the wellbeing of people who need care and support.

....

4.5. At a time of increasing pressure on public funds, changing patterns of needs, and increasing aspirations of citizens, together with momentum for integrated services, joint commissioning, and choice for individuals, it is suggested that fundamental changes to the way care and support services are arranged may be needed, driven through a transformation of the way services are led, considered and arranged. Commissioning and market shaping are key levers for local authorities in designing and facilitating a healthy market of quality services.

4.6. Market shaping means the local authority collaborating closely with other relevant partners, including people with care and support needs, carers and families, to facilitate the whole market in its area for care, support and related services. This includes services arranged and paid for by the state through the authority itself, those services paid by the state through direct payments, and those services arranged and paid for by individuals from whatever sources (sometimes called 'self-funders'), and services paid for by a combination of these sources. Market shaping activity should stimulate a diverse range of appropriate high quality services (both in terms of the types, volumes and quality of services and the types of provider organisation), and ensure the market as a whole remains vibrant and sustainable.

4.8. Commissioning is the local authority's cyclical activity to assess the needs of its local population for care and support services, determining what element of this needs to be arranged by the authority, then designing, delivering, monitoring and evaluating those services to ensure appropriate outcomes.....

4.21. Local authorities must facilitate markets that offer a diverse range of high-quality and appropriate services. In doing so, they must have regard to ensuring the continuous improvement of those services and encouraging a workforce which effectively underpins the market.....The quality of services provided and the workforce providing them can have a significant effect on the wellbeing of people receiving care and support, and that of carers, and it is important to establish agreed understandable and clear criteria for quality and to ensure they are met.

4.22. When considering the quality of services, local authorities should be mindful of the capacity, capability, timeliness, continuity, reliability and flexibility of services delivered to support well-being, where appropriate, using the definitions that underpin the CQC's fundamental standards of care as a minimum, and having regard to the ASCOF framework of population outcomes.

4.24. Local authorities should encourage a wide range of service provision to ensure that people have a choice of appropriate services; appropriateness is a fundamental part of quality.

4.25. When arranging services themselves, local authorities must ensure their commissioning practices and the services delivered on their behalf comply with the requirements of the Equality Act 2010, and do not discriminate against people with protected characteristics, this should include monitoring delivery against the requirements of that Act. When shaping markets for services, local authorities should work to ensure compliance with this Act for services provided in their area that are not arranged and/or paid for by them. Local authorities should consider care and support services for their appropriateness for people from different communities, cultures and beliefs

4.30. When commissioning services, 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.

4.31. When commissioning services, local authorities should assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care. This should support and promote the wellbeing of people who receive care and support, and allow for the service provider ability to meet statutory obligations to pay at least the national minimum wage and provide effective training and development of staff. It should also allow retention of staff commensurate with delivering services to the agreed quality, and encourage innovation and improvement. Local authorities should have regard to guidance on minimum fee levels necessary to provide this assurance, taking account of the local economic environment. The tools referenced may be helpful as examples of possible approaches.

4.33. Local authorities must work to develop markets for care and support that – whilst recognising that individual providers may exit the market from time to time – ensure the overall provision of services remains healthy in terms of the sufficiency of adequate provision of high quality care and support needed to meet expected needs. This will ensure that there are a range of appropriate and high quality providers and services for people to choose from.

4.34. Local authorities should understand the business environment of the providers offering services in their area and seek to work with providers facing challenges and understand their risks. Where needed, based on expected trends, local authorities should consider encouraging service providers to adjust the extent and types of service provision.

4.35. Local authorities should consider the impact of their own activities on the market as a whole, in particular the potential impact of their commissioning and re-commissioning decisions, and how services are packaged or combined for tendering, and where they may also be a supplier of care and support. The local authority may be the most significant purchaser of care and support in an area, and therefore its approach to commissioning will have an impact beyond those services which it

contracts. 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.

4.37. Local authorities must encourage a variety of different providers and different types of services. This is important in order to facilitate an effective open market, driving quality and cost-effectiveness so as to provide genuine choice to meet the range of needs and reasonable preferences of local people who need care and support services, including for people who choose to take direct payments, recognising, for example, the challenges presented in remote rural areas for low volume local services.

4.68. Local authorities must understand local markets and develop knowledge of current and future needs for care and support services, and, insofar as they are willing to share and discuss, understand providers' business models and plans. This is important so that authorities can articulate likely trends in needs and signal to the market the likely future demand for different types of services for their market as a whole, and understand the local business environment, to support effective commissioning.

The Care Act 2014 and its statutory guidance must be considered when setting the usual prices to be paid for residential care. The promotion of well-being, market development, ensuring choice, sustainability and future improvement of services, amongst other things stated above, are all relevant and important matters. The foundation of the assessment process for determining the usual prices to be paid remains a proper understanding of the the local market and a real appreciation of the actual cost of providing care. The Care Act 2014 enhances the obligations of the local authority but does not in itself envisage any dramatic rise in the fees that will usually be paid for residential care provision when compared with the previous statutory regime, albeit that when the usual cost is being determined its provisions must be followed.

**Norfolk County Council
Cost of Care
Report for Consultation**

**Proposed usual prices for Residential and Nursing
Care for Older People in Norfolk for the year 2015/16
and pathway for updating rates for the three year
planning period 2016/17 to 2018/19 inclusive**

**Steve Holland
Head of Quality Assurance & Market Development
December 2015**

Foreword

Norfolk County Council is committed to promoting the continued independence of all adults in Norfolk by helping to prevent, reduce or delay the need for care and support. The Council recognises, of course, that for many people care and support provided in a residential or nursing care home may be required and in these circumstances the Council relies in the main on a market of independent care home operators to provide the high quality care needed and expected.

The Council is required to promote the effective and efficient operation of this market in care and does so in a number of ways and in particular by funding the care costs of people who are unable to fund their own care. It is important that the usual prices paid for this publicly funded care taken together with privately funded care is enough to ensure that the care provided is safe, of the right quality and is commercially sustainable.

The Council is undertaking a cost of care exercise aimed at establishing its usual prices for publicly funded residential and nursing care. In doing so the Council will have regard to its own financial position and is proposing its usual prices for 2015/16 for consultation. In addition the Council is setting out a proposed pathway and mechanisms for assessing prices for the next three years which will be subject to further amendment to reflect changes in provider's costs. The Council is now seeking your views to help it to make a final determination on the prices that it would usually expect to pay for residential and nursing care in Norfolk.

Signed by

Harold Bodmer - Executive Director of Adult Social Services, Norfolk County Council



Simon George - Executive Director of Finance, Norfolk County Council



Proposed usual prices for Residential and Nursing Care for Older People in Norfolk for the year 2015/16 and pathway for updating rates for the three year planning period 2016/17 to 2018/19 inclusive

1 Introduction

1.1 Proposed usual prices for financial year 2015/16

- 1.1.1 Norfolk County Council (the Council) made a decision on 9 March 2015 to increase its 2014/15 financial year's usual prices for residential and nursing care in Norfolk by 1.5% for providers of such care to older people and 1% for providers of such care to working age adults, with the new prices taking effect from 6 April 2015. The intention was that these should be the prices that the Council would usually expect to pay for such care (the usual prices) throughout the remainder of the 2015/16 financial year.
- 1.1.2 At the same time the Council undertook to carry out a cost of care exercise to enable it to establish its usual prices for the 2016/17 financial year and the Council's next planning period. Before this work could be completed, however, the Council was challenged on the lawfulness of its approach to making the original decision in March 2015. As a result of the legal challenge the Council decided that a new decision should be taken.
- 1.1.3 Until that new decision is taken by the Council, the usual prices that were implemented following the 9 March 2015 decision have been left in place.
- 1.1.4 The background and position to date has been communicated to providers in a letter dated 10 November 2015. This and all previous letters are all available on the Council's [cost of care web pages](#).
- 1.1.5 In order to review and decide on what the Council would propose as its usual prices for the 2015/16 financial year a cost of care exercise has been carried out. This sought to understand what the actual cost of providing residential and nursing care in Norfolk is and any other relevant matters including local factors. This report explains how the Council has had due regard to these matters, as well as to its requirements to both achieve Best Value under the Local Government Act 1999 and its market development duties under the Care Act 2014.

1.2 The Cost of Care Process for 2015/16 financial year

- 1.2.1 The cost of care process involves a number of stages.

Stage 1 – Information Gathering

The Council has engaged with providers to collect information from them on their actual costs of providing residential and/or nursing services in Norfolk. In addition the Council gathered and researched further information about the costs of care from a variety of cost models and data sets. (see below)

Stage 2 - Initial Analysis and the Setting of a Provisional Rate

The Council has analysed all the information it received from the market, together with anything it obtained from its own investigations. These have been considered alongside any local or other relevant factors, as well as the Council's duty of Best Value and its obligations under the Care Act 2014. This enabled the Council to set out

in this report what it provisionally considers its usual prices for publicly funded care should be.

Stage 3 – Consultation

Stage 3 is the consultation process with providers of residential and/or nursing services in the County. This includes sending out a consultation pack which will set out:

- the equality impact assessment
- the timelines
- who can be contacted in case of queries
- this report with the process followed, explanations as to how the Council arrived at its proposed usual prices, the proposed usual prices themselves and the proposed pathway and mechanisms for updating provisional rates
- how providers can set out whatever they think is appropriate, including but not limited to further evidence, critique of methodology, additional reports, comments and concerns, including any data that they might want to share to support their arguments

The Council was planning for a consultation period of 28 days, however, in recognition of the proximity of the Christmas period the Council proposes to extend the consultation to 6 weeks.

The Council recognises that some providers may have been intending to provide their actual costs data to the 2016/17 cost of care exercise when it recommenced. As previously notified to providers the 2016/17 data gathering process will not now take place and the Council, therefore, welcomes any further actual costs data during the consultation period. Such data as may be provided will be taken fully into account during Stage 4.

Stage 4 – Analysis

Once the consultation closes the Council will analyse all the consultation feedback to support its final proposals as to its usual prices having due regard to any relevant local or other factors, any legislative changes that are likely to affect costs, its statutory duties and affordability and will set out its final proposed prices with its reasons in a further report.

Stage 5 - Decision Making

The Council's Adult Social Care Committee (the Committee) is the body that will make the formal decision about the usual prices and the related proposals on behalf of the Council.

The Council has corresponded regularly with providers throughout the process and will continue to do so.

1.3 Cost of Care process for financial years 2016/17, 2017/18 and 2018/19 (the Council's next planning period)

- 1.3.1 The Council had begun a separate cost of care exercise for the 2016/17 financial year and for a new planning period. This exercise began as a separate process and was put on hold as a result of the legal challenge to the Council's original 9 March 2015

decision. This was communicated to providers in a letter dated 10 November 2015.

- 1.3.2 As the process for the 2015/16 financial year has developed it has become clear that the data collected and the analyses undertaken are capable of being used to establish the 2015/16 prices as a baseline for planning future pricing in the market for a further period without the need for renewed data collection.
- 1.3.3 As a consequence, therefore, rather than carrying out full data collection processes every year for an annual planning period which would be burdensome and resource intensive for all concerned the Council is now proposing a new pathway in a four year planning cycle.
- 1.3.4 The cycle would consist of establishing a new baseline every fourth year involving a data collection and cost of care process followed by a three year period in which proposed updated prices derived from the baseline year were set out. The first new three year planning period would cover the 2016/17 to 2018/19 financial years inclusive. The next baseline year would be 2019/20 followed by a three year planning period and so forth.
- 1.4 **Proposed pathway for updating rates in 2016/17 to 2018/19 inclusive**
 - 1.4.1 The Council considers that giving providers an insight into its future provisional pricing intentions will be a significant aid to provider business planning as well as supporting market shaping as required by the Care Act 2014.
 - 1.4.2 Therefore, as part of the 2015/16 cost of care process to set its usual prices in the baseline year of 2015/16 the Council is also setting out planned prices for the following three years.
 - 1.4.3 These planned prices are the Council's best estimate of what its prices are likely to be over the next three years given all the information available at this time. It is important to note that these prices are provisional planned prices to aid business planning and market shaping reflecting the Council's current aspirations and intentions and are subject to amendment and consultation following the proposed process described in more detail below.
 - 1.4.4 The Council recognises that these planned prices will be subject to variation because of changes beyond the Council's control. These changes include but are not limited to:
 - Provider costs inflation/deflation
 - Changes in market conditions
 - Government policy and changes in legislation
 - Performance of the economy
 - The Council's financial position
- 1.5 **Provider costs inflation/deflation**
 - 1.5.1 In respect of changes in provider costs the Council proposes to co-produce a cost adjustment tool directly linked to its costs model by working with provider representatives and Norfolk Independent Care in the first quarter of 2016.
 - 1.5.2 This tool will enable the effect of new costs such as the National Living Wage and any other changes in the 2015/16 costs of care to be quantified and applied to the planned

2016/17 prices set out on the price planning pathway in this report.

1.6 Other changes affecting the market

- 1.6.1 The Council proposes to fully consider any other changes including market conditions, government policy, economic performance and the Council's financial position that could affect provider costs in dialogue with provider representatives and Norfolk Independent Care. To support this dialogue the Council is currently developing new arrangements based on a new Concordat with Norfolk Independent Care and on which the Council plans to consult all providers in the first quarter of 2016.

1.7 Consultation

- 1.7.1 Having applied the cost adjustment tool and fully considered any other changes affecting provider costs in dialogue with provider representatives the Council would then consult providers as a whole on the proposed prices for the 2016/17 financial year and finalise the prices in the light of that consultation and implement the new prices accordingly.
- 1.7.2 The Council proposes to carry out this process as soon as possible for the 2016/17 financial year with any adjustments backdated to the beginning of that financial year.
- 1.7.3 For 2017/18 and 2018/19 the Council proposes to apply the cost adjustment tool and have dialogue with provider representatives followed by full market consultation in October 2016 and October 2017 respectively using relevant data from the preceding 12 month period to inform any adjustments to the provisional planned prices set out in this report for those financial years.

1.8 Data collection

- 1.8.1 The Council recognises that this is a new process and proposes, therefore, to carry out a fresh cost of care exercise including data collection during the 2018/19 financial year which will mirror the 2015/16 process including full consultation to establish the baseline for the 2019/20 financial year and the next three year planning period.
- 1.8.2 In summary the Council is proposing to establish a cyclical process in which data gathering takes place every four years to establish the price baselines for the baseline year from which the planned prices for the following three years are set out to aid business planning and market shaping. These prices are subject to adjustment as described in this report and consultation before being implemented.
- 1.8.3 For the avoidance of doubt the usual prices being proposed later in this report for 2015/16 include the Council's current assessment of changes in costs impacting in the 2015/16 financial year. These proposed usual prices are, however, subject to further change in the light of the consultation process.
- 1.8.4 The planned prices set out later in this report for the years 2016/17 to 2018/19 are what the Council is currently planning and reflect the Council's aspirations and intentions at this time. They represent real terms increases in each year to support the quality of services and the sustainability of the market. In addition they are intended to support business planning and aid market shaping. They do not yet include any adjustments that may be applied as a result of the cost adjustment process and dialogue described above.
- 1.8.5 The prices that the Council will propose as its usual prices in respect of 2016/17 to 2018/19 will be consulted on once the cost adjustment process described above has been applied. The final prices will be determined in the light of the consultations and

implemented accordingly.

1.9 **Efficient and effective operation of the care market**

- 1.9.1 The Council recognises that occupancy rates vary from provider to provider and over time. The average occupancy rate for residential and nursing care homes in England in 2014 as determined by Laing & Buisson was a shade below 90%. The mean occupancy rate determined from the data supplied by Norfolk providers is 90% and provider representatives agreed at a meeting prior to the legal challenge that assuming a 90% occupancy rate for Norfolk is reasonable. The Council has therefore assumed a 90% occupancy rate in its calculations for the 2015/16 financial year.
- 1.9.2 Occupancy rate is a measure of efficient asset use. Many other councils use an assumed occupancy rate of 95% and at least one other council in the East of England region is planning to use an assumed rate of 98%.
- 1.9.3 As occupancy rate increases the unit price per bed required to generate the same income reduces. The Council believes that it is reasonable and consistent with its duties under Best Value and the Care Act to assume that the market improves the efficiency of its asset use and is proposing, therefore, to adjust the usual prices it pays to reflect a gradual increase in efficiency from 2016/17 to an occupancy rate of 93% by 2018/19 which is the final year of the proposed new planning period.
- 1.9.4 The Council understands that this may not be possible for some providers to achieve, however, its market shaping duties under the Care Act 2014 require it to seek a better balance of supply and demand in the care home market in Norfolk. The Council will keep its proposals regarding occupancy rates under review as part of the dialogue process described earlier in this report.
- 1.9.5 These proposals will require the Council to adjust its current contracts for residential and nursing care so that they are fully aligned to the final usual prices and other proposals in this report.

1.10 **Equality Impact Assessment (EqIA)**

- 1.10.1 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. An EqIA report will be made available as part of the cost of care consultation. Later in this report there is an explanation of how the Council's proposals have taken account of findings in the equality impact assessment.

1.11 **The consultation process**

- 1.11.1. Providers will be able to participate in the cost of care consultation. The consultation has been set up online and enables providers to respond anonymously if they prefer to do so. It also provides the opportunity for additional information to be submitted by uploading documents via the website, this should be more efficient and cost effective for providers and will ensure that the Council receives as much additional information that may be helpful as possible during the consultation. The Council understands that not all providers may wish to submit their consultation response online and provision

has been made for hard copy postal submissions.

- 1.11.2 Providers will be notified about the consultation via email, unless they do not have an email account in which case a letter will be sent. Correspondence notifying providers that the consultation has commenced will consist of a covering letter incorporating a summary of the proposals letter with links to the full online consultation.
- 1.11.3 The online consultation will include the detailed cost of care report, equality impact assessment, any other supporting documentation and details of how to participate in the consultation. The online consultation poses a number of questions about the cost of care exercise and the proposed usual prices which providers are encouraged to respond to. The consultation provides an opportunity for providers to submit further information, challenge any part of the report, pose questions and to seek clarification of any points they may wish to raise.
- 1.11.4 As there will no longer be a separate 2016/17 data collection process some providers may wish to provide cost data if they have not done so already or have clarification questions or queries that need addressing before completing the consultation. Providers will be able to do so throughout the consultation period via the cost of care mailbox: costofcare@norfolk.gov.uk
- 1.11.5 When the consultation closes the Council will carefully consider all responses and complete its final analysis to enable it to determine the final proposed usual prices for the 2015/16 financial year and the planned prices for the financial years 2016/17 to 2018/19 inclusive. In doing so the Council will have due regard to the proposals, the reasoning for it and the responses from the consultation.
- 1.11.6 The intention is to report that to the Council's Adult Social Care Committee to enable it to decide on the Council's usual prices.
- 1.12 **Payment of usual prices**
 - 1.12.1 The Council wishes to simplify the banding system that has been in operation during the 2015/16 financial year by moving from five price bands to four price bands as shown in the table below. The numbers of people being supported in residential care settings at the band 1 level of need has reduced considerably and this reflects the Council's commissioning intentions in the market. In view of this development the Council now proposes to delete band 1 altogether and incorporate it within the new residential standard band as shown below.
 - 1.12.2 The new bands proposed are:
 - Residential Standard
 - Residential Enhanced
 - Nursing Standard
 - Nursing Enhanced

	Existing Care Home Banding	Current category of need	New category of need
Care Home	Band 1	Older people and other (including physically disabled pension age)	Residential standard
	Band 2	Very dependent or blind older people	
	Band 3	Very highly dependent older people with mental health problems	Residential enhanced
Care Home with Nursing	Band 9	Older people and other (including physically disabled pension age)	Nursing standard
	Band 10	Very highly dependent older people with mental health problems	Nursing enhanced

- 1.12.3 The effect of this is to bring bands 1 and 2 together to form the new Residential Standard band. The other new bands relate directly to the current bands as shown. The description of the need level related to each of the current bandings set out in the current contract will be retained for the new equivalent bands for 2015/16.
- 1.12.4 For the 2015/16 financial year the Council intends to identify any cases where the final new usual prices are greater than the prices that have been paid to providers since 6 April 2015 in the relevant price bands. In these cases the Council intends to calculate the difference and pay providers that difference for the whole period during which care has been provided backdated to 6 April 2015 or such later date as the care may have commenced.

2 Legal framework

- 2.1 **National Assistance Act 1948 (Choice of Accommodation) Directions 1992 ('The Guidance')**
- 2.1.1 Where the Council has assessed an adult person as being in need of care, it may lead to a decision to make a placement in a residential care home or a nursing care home. Where the person expresses a preference for particular accommodation, the Council should arrange for care in that accommodation, provided that a number of factors are determined, including whether the setting would not cost the Council more than it would usually expect to pay for accommodation for someone with the person's assessed needs. This cost is known as the "usual cost".
- 2.1.2 The Council is required to determine the usual prices that it would expect to pay for residential and nursing care in accordance with the statutory guidance.
- 2.1.3 The guidance states that usual costs should be sufficient to meet the assessed care needs of supported residents in residential accommodation and that in setting and reviewing their usual costs, councils should have regard to the actual costs of providing care and other local factors. Councils should also have due regard to Best Value requirements under the Local Government Act 1999.
- 2.1.4 This means that when setting the usual prices a council should be able to demonstrate that these prices are sufficient to allow providers to meet the assessed care needs and to provide residents with the level of care services that they would reasonably expect to

receive if the possibility of resident and third party contributions did not exist.

2.2 **Best value**

- 2.2.1 When the Guidance refers to the Council's Best Value obligations under the Local Government Act 1999, it means that it has a duty to make arrangements to secure continuous improvement in the way in which its functions, in this case placing service users and establishing its usual prices, are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 2.2.2 It then went on to publish its Best Value statutory guidance noting that the Council should consider overall value, including economic, environment and social value when reviewing service provision.

2.3 **Market development duty in the Care Act**

- 2.3.1 The promotion of the effective and efficient operation of the care market as a whole (including residential and nursing care) became a new legal duty under the Care Act in April 2014. In practical terms this means that the Council needs to ensure that the actions it takes, including its commissioning and payment for services, support sustainable and quality care services.

3 **Actual Cost of Care**

- 3.1 Residential and nursing care for older people in Norfolk is provided in the main by hundreds of separate independent businesses. Each business is unique and operates with a whole range of diverse business models and financial structures. Some businesses are highly geared whilst others have little or no debt financing. This has a marked effect of the return on capital required by individual providers which can be a significant sum or a modest sum and will vary over time.
- 3.2 Whilst the majority of care homes in Norfolk have between 30 and 35 beds some are much smaller and some much bigger. Some will provide generous amounts of space for each resident and provide private bathroom and toilet facilities whilst others will be less generous and may not offer private facilities. In addition the amount of direct care provision will vary from individual resident to individual resident because needs vary and change over time.
- 3.3 It is therefore self-evident that there is no one single actual cost of care but rather a range of actual costs reflecting the diversity of providers in the market including the quality and value of their care homes, the level of need of their residents and provider expectations in relation to profits and return on capital employed.
- 3.4 It is also the case that there is no one method of calculating usual prices based on actual costs of care. It is rather a matter of judgement in the context of local factors and the legal duties placed on the Council as described above.
- 3.5 **Costs Model**
- 3.5.1 In developing the cost model a range of information and evidence has been used to populate the model that as far as possible reflects the local market conditions of the Norfolk area. The model supports the four new simplified cost bandings

These are:

- Residential Standard
- Residential Enhanced

- Nursing Standard
- Nursing Enhanced

3.5.2 The costs model structures costs in the following categories:

- **Direct Care Costs** covering staff costs that relate to the direct provision of care
- **Indirect Care Costs** covering staff costs that do not relate to the direct provision of care and includes registered manager, deputy manager, administration and reception staff
- **Accommodation costs** covering non staffing operating costs that Norfolk County Council would expect a care home to incur in the delivery of an effective and efficient service
- **Overheads** covering costs such as Central / Regional Management, Support Services (finance / HR / Payroll / legal etc.)
- **Returns** covering a reasonable allowance for return on capital employed and operating profit of 5%

The full indicative costs models for each of the four bandings are set out in appendix 1 to this report.

3.6 Actual cost data

3.6.1 Independent providers operating in Norfolk

The cost of care process included a data collection phase in order to obtain actual cost data from independent providers operating in Norfolk. The Council e-mailed a letter dated 23 July to providers asking them to set out their actual costs in specified cost categories in a template attached to the e mail. These specified cost categories match the cost categories in the Council's indicative actual costs of care model with the exception of return on capital and margin.

In all 51 templates were completed with 41 covering residential care and 10 covering nursing care. The Council was able to fully use 42 templates which had been completed correctly but was unable to use all the data in the remaining 9 templates because of data quality issues. In addition 11 providers supplied cost information in other formats to which the Council had full regard in helping determine indicative actual costs. The templates and other information supplied by Norfolk providers covered about 25% of the publicly funded residential and nursing care market in Norfolk.

The Council analysed the templates and the cost information supplied in other formats by the independent providers and derived indicative values for each of the cost categories. The Council then went about validating the indicative costs values against a variety of information sources as described below and detailed in appendix 1.

Where the validation process indicated that the indicative costs values derived from independent providers were reasonable those values have been used unaltered.

Where the validation process indicated that the indicative costs values derived from the independent providers were out of line with the validation sources the Council has used a value that it considers to be reasonable.

In the case of direct labour costs the value could only be determined through calculation. In this case the independent provider indicative direct labour costs were used without any alterations.

In the case of overheads the values supplied by providers varied so widely that the

Council decided to use an assumed percentage of 5% of operating costs to determine a value that it considers to be reasonable.

In the case of profit margin the Council has determined a value that it considers to be reasonable by applying a 5% uplift to operating costs including overheads.

In the case of return on capital the Council developed a methodology to determine an assumed value of capital employed based on a mix of land values, building costs and sale values. The Council then applied a rate of return of 7% to arrive at the value used in its indicative actual costs model.

3.6.2 **Validation sources**

The validation sources referred to above are described below together with an explanation as to how each has been used.

3.6.3 **NorseCare Ltd**

The Council also e-mailed the letter dated 23 July to its own company NorseCare Ltd so that the Council could obtain actual costs data and related information from the company.

In doing so the Council recognised that the NorseCare data would be significantly different to the data supplied by independent providers because of the different contractual arrangements in place. The data has not therefore been used to directly populate any part of the indicative actual costs model. The Council has used the data to help to test some of the Council's assumptions.

3.6.4 **Laing & Buisson Fair Price for Care model 2014**

The Laing & Buisson Fair Price for Care model (the L&B model) is a nationally published reference model built up from data provided by care home operators throughout England using a range of assumptions. It is not designed to identify actual costs as such but does derive "fair prices" from cost data and assumptions. It uses the same four categories of need that the Council is using for this exercise. The "fair prices" are indicative and are based on a hypothetical 50 bed care home. The model is not based on Norfolk specific data and uses instead indicative values for England and indicative values derived from 43 care homes in the East of England region for some cost categories considered to vary according to region. The Council has used the Laing & Buisson model to validate the independent provider data set and test the Council's assumptions. The model has not been used to directly populate the Council's indicative actual costs model.

3.6.5 **Valuing Care FM model**

The Valuing Care database has been built up over a number of years from actual cost information supplied by providers of residential and nursing care throughout England. The Council commissioned work to enable these cost data to be used to generate indicative costs for Norfolk in relation to the four categories of need set out above. The Council has used the Valuing Care FM model to validate the independent provider data set and test the Council's assumptions. The model has not been used to directly populate the Council's indicative actual costs model.

3.6.6 **BUPA data set**

The Council has also been able to consider information provided by BUPA which that company compiled from its own operating cost data to make its own case to

Government about the costs of looking after people in residential and nursing care. The Council has used the BUPA data set to test the independent provider data set and test its assumptions. The BUPA data set has not been used to directly populate the Council's indicative actual costs model.

3.6.7 **Hertfordshire County Council cost of care model**

The Council considered the structure of the Hertfordshire County Council indicative cost model in helping to formulate the structure of the Council's own indicative actual costs model. The Hertfordshire model has not been used to derive actual cost values or to directly populate the Council's indicative actual care model.

3.6.8 **The National Minimum Data Set for Social Care (NMDS-SC)**

This dataset was created by Skills for Care in 2005 and currently holds information on around 24,000 care providing organisations and 700,000 workers in the adult social care sector. The information includes rates of pay and is supplied by providers themselves on at least an annual basis. This data set provides Norfolk specific data including rates of pay and has been used to help determine labour costs used to help populate the Council's indicative actual costs model.

4 Assumptions

4.1 **Occupancy and size of care home**

4.1.1 The Council recognises that care homes cannot operate at 100% occupancy throughout the year and the Council has therefore assumed a current average occupancy rate of 90%. This is consistent with the average occupancy rate for residential care in England as a whole as determined by Laing & Buisson for 2014 and was agreed as reasonable by provider representatives in Norfolk with whom the Council has been working early on in the process and prior to the legal challenge. This is in fact lower than the occupancy rates applying in many other councils who assume rates of 95% or more. The Council thinks that it is reasonable and consistent with the duty of Best Value under the Local Government Act 1999 and the market shaping duties in the Care Act 2014 to move towards an assumed occupancy rate of 93% by 2018/19. This is reflected in the Council's calculations.

4.1.2 The Council has assumed that the average care home in Norfolk has 35 beds. This is derived from published CQC data.

4.2 **Direct care costs older people (Residential Standard)**

4.2.1 To calculate direct care costs the Council has identified the cost of staff that directly deliver care which includes care assistants and senior care assistants.

4.2.2 The Council has analysed its data sets and had regard to its cost models and as a result judges that the number of care hours required for each resident in the residential standard band of need is 18.9 hours per week.

4.2.3 To calculate the cost of direct care provision the Council has used Norfolk only data from the NMDS data set. For care workers in care homes without nursing median pay data was available for 3466 workers. Direct care is provided by both care workers and senior care workers whose rates of pay differ. The Council derived a blended hourly care rate based on the relative skill mix of standard carer to senior carer as described in the Laing & Buisson Fair Price for Care Model 2014. The Council judges this to be a

good indicator of the care worker mix.

- 4.2.4 The Council has taken account of the uplift required to reflect labour related on costs in all models and have judged an uplift of 20% to be reasonable. This results in a labour rate for direct residential care for older people of £8.88 per hour. The Council has used this rate in populating its costs model.

4.3 **Direct care costs older people with dementia (Residential Enhanced)**

- 4.3.1 The Council has analysed its data sets and had regard to its cost models and as a result judges that in addition to the 18.9 hours per resident per week required for the residential standard category an additional 2.35 hours per resident per week of direct care is required to reflect the greater level of need in the residential enhanced category. The Council has accordingly used the enhanced figure of 21.25 hours at £8.88 per hour to determine direct care costs in this category of need.

4.4 **Direct care costs older people nursing (Nursing Standard)**

- 4.4.1 Nursing care requires nursing supervision and the Council has therefore included an additional allowance for nursing costs in the nursing standard category. The Council has analysed its data sets and had regard to its cost models and as a result judge that 7.7 hours of nursing supervision per resident per week is required. The Council has used the Norfolk NMDS data set to determine nurse pay. The Council has taken account of the uplift required to reflect on costs in its models and judge that on costs of 20% should be applied to the pay rate. This results in a labour rate of £15.60 per hour or £120 per week for nursing staff. The 2015/16 Funded Nursing Care (FNC) rate is £112 and the Council has therefore adjusted the indicative cost to align with the FNC rate of £112. The Council has populated its cost model accordingly.
- 4.4.2 In addition to the specific nursing provision, the Council recognises that individuals with a nursing requirement are likely to have additional non clinical care needs. The Council has analysed its data sets and had regard to its cost models and as a result judge that an additional one hour per resident per week of care assistant time at the blended care rate in addition to the nursing cost in line is required. This results in an additional cost of £8.88 per resident per week. The Council has populated its costs model accordingly.

4.5 **Direct care costs older people dementia nursing (Nursing Enhanced)**

- 4.5.1 The Council has analysed its indicative actual costs data set and had regard to its validation source and as a result judges that in the nursing enhanced category there is no requirement for nursing supervision beyond the level in the nursing standard category. The Council judges the direct care provision to be the same as the level in the residential enhanced category together with the additional 1 hour per resident per week in the nursing standard category. The Council has populated its costs model accordingly.

4.6 **Indirect care costs**

- 4.6.1 These costs arise from non-direct care staffing and the Council has analysed the indirect care costs in its data sets and had regard to its cost models and as a result has reached a judgement on the indicative indirect care costs and has populated its cost model accordingly.

4.7 **Accommodation costs**

- 4.7.1 These costs include utilities, buildings upkeep, gardening, food and so forth. To calculate accommodation costs the Council has had regard to all the data sets and models and derived an indicative cost that the Council judges to be reasonable. The Council has populated its costs model accordingly.
- 4.7.2 To reflect the additional non labour related costs of providing care in a nursing setting as opposed to a residential setting the Council has allowed an additional £5 per resident per week to cover additional medical supplies

4.8 **Overheads**

- 4.8.1 The Council has regard to all the data sets and models and judge that an allowance of 5% of operating costs to cover overheads is reasonable as described in the Laing & Buisson model. The Council has, therefore, applied a 5% uplift to the direct and indirect labour costs and the accommodation costs to generate the indicative cost of overheads.

4.9 **Operating profit**

- 4.9.1 Strictly speaking profit is not a cost but reflects provider expectations as to return on operations. These expectations will vary between providers. The Council considers that a profit of up to 5% of operational costs including overhead costs is reasonable having regard to the care economy in Norfolk and affordability. The Council has populated the costs model accordingly treating profit as if it were a cost.

4.10 **Return on Capital**

- 4.10.1 There is no one accepted method of determining what providers might expect or require as a return on the capital that they may have employed in developing and running their businesses. Requirements will vary for a variety of reasons including the financial structure of the business, the maturity of the business and various business models.
- 4.10.2 The Council judges that the main capital investment, however, relates to the value of the land and buildings required for the enterprise in question whether owned or rented and the Council has therefore based its judgement on these values.
- 4.10.3 The Council has reflected the fact that the majority of the care estate in Norfolk was built many years ago with a minority of the estate comprising new or more recently built care homes.
- 4.10.4 In the case of the older care estate the Council judges that a reasonable proxy for capital employed is likely to be the current sale value of the business. The Council has gathered information about sale values of care homes in Norfolk to help it understand the value of capital employed in the older care estate.
- 4.10.5 In the case of newer build the Council judges that the current land value and turnkey build costs provide a reasonable proxy for capital employed. The Council has adopted the method used in the Laing & Buisson model but using Norfolk land values rather than East of England land values. This has enabled to Council to understand the value of capital employed in the new or recently built care estate.
- 4.10.6 This mix of buildings in the care estate is reflected in the Council judgements of an indicative value of capital employed. The Council judges that a return of 7% on the capital employed is reasonable in the current financial climate. The Council has

populated the costs model accordingly.

5 Indicative actual costs of care

- 5.1 Based on the methodology set out in section 4 above the Council judges that the indicative actual costs of care for each of the four categories of need per week in the financial year 2015/16 are as set out in the table below:

Table 1: Indicative Actual Cost of Care @ 90% Occupancy

	Residential		Nursing	
	Standard	Enhanced	Standard	Enhanced
Direct Care Costs	£167.82	£188.69	£296.82	£317.69
Less: Nursing care above FNC			-£8.12	-£8.12
Non Direct Staff Costs	£87.54	£87.54	£87.54	£87.54
Accommodation Costs	£96.13	£96.13	£101.13	£101.13
Overheads	£17.57	£18.62	£24.27	£25.32
Total Operating Costs	£369.06	£390.97	£501.63	£523.54
Returns	£85.15	£86.25	£92.19	£93.28
Operating Costs incl returns	£454.21	£477.21	£593.82	£616.83

6 Economic Issues

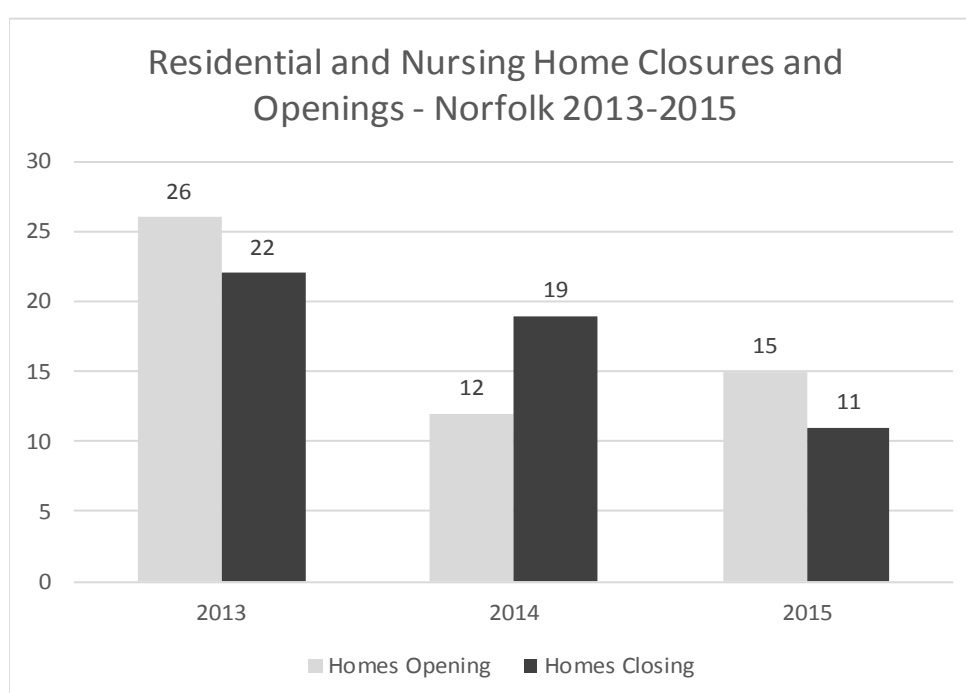
6.1 The care economy

- 6.1.1 Care Quality Commission data as at August 2015 indicates that in Norfolk there are 9848 registered beds in care homes. There are 301 residential care homes which account for 6629 of the beds and 72 care homes with nursing which account for 3219 beds. Of these the Council estimates that about 8500 are intended to support older people with the remainder supporting working age adults.
- 6.1.2 The Council only provides public funding for people who are eligible for services following assessment against national criteria and either provides all the funding required by a provider or a contribution towards it depending upon the financial circumstances of the individual concerned.
- 6.1.3 The Council currently funds care for older people in about 3300 beds. Almost 81% of the beds that the Council commissions are in independent care homes with 19% of the beds being in care homes operated by the Council's own company, NorseCare. The total proportion of beds which the Council commissions for older people account for about 39% of all beds intended for older people.
- 6.1.4 The Council estimates that there are about the same number of older people who fully fund their own care accounting for about 39% of the older people market. Even allowing for placements from other local authorities and from the health system there appears to be a degree of overcapacity in the market as a whole. This market position is supported by census data from 2011 which indicated that about 7000 people spent the night in residential care in Norfolk on census day.

- 6.1.5 These figures mask the fact that some providers will be operating very efficiently with high occupancy levels whilst others are able to keep operating at significantly lower occupancy levels.
- 6.1.6 The market in Norfolk is dominated by a large number of small independent providers with relatively small exposure to the major national operators. The Council recognises the emerging and well publicised risks to profitability of some national providers but at the same time note that others are investing in new care homes in Norfolk focussing in the main on clients who fully fund their own care.
- 6.1.7 Data published by the Care Quality Commission show that over the past three years 52 care homes have closed, however, 53 new providers have entered the market over the same period as shown in the diagram below. In terms of registered beds there has been a very slight decline over the past year. The general picture is of a stable market. This suggests that current incomes have on the whole been sufficient to sustain continued provision.

1. Combined Residential and Nursing Home Closures and Openings - Norfolk 2013-2015

	2013	2014	2015	Total
Homes Opening	26	12	15	53
Homes Closing	22	19	11	52



6.1.8 Quality of Care

Over the same four year period there is no evidence to suggest that the quality of care provided in residential and nursing homes in Norfolk has declined. Data published by the Care Quality Commission shows that the ratings for Norfolk homes is not materially better or worse than other counties in the region.

- 6.1.9 The Council also recognises the emerging picture at national level which points towards unsustainable reliance on cross subsidy from self-funding clients due to public rates being too low. There is no empirical evidence of this being a serious problem in the Norfolk market at this time, however, the Council accepts that public funding rates

need to enable providers to operate effectively and efficiently in the market.

- 6.1.10 The Council believes that there is a degree of price elasticity in the market as evidenced by the very low attrition rate and overcapacity. In addition the Council recognises that on average providers of residential care to older people rely on public funding for about 50% of turnover and are not therefore overly exposed to public funding rates as is the case in some other parts of England.
- 6.1.11 In the light of this assessment of the residential care market in Norfolk the Council judges that the market could continue to operate effectively and sustainably on a range of prices paid by the Council. The Council has had regard to the market characteristics described above in arriving at its proposed usual prices.

7 Resources

- 7.1 At a national level there has been a significant amount of coverage on the funding gap for Adult Social Care. Based on a recent County Council Network submission in response to the comprehensive spending review the level of funding per head of population has fallen by 11% between 2011/12 and 2015/16 for County Councils with responsibility for social care with a range of reductions for other types of councils.
- 7.2 Further analysis at a national level suggests that the current funding gap for adult social services is currently £5.0bn which is likely to increase by a further £2.9bn to 2019/20. The following tables from the joint submission by the Local Government Association and Association of Directors of Adult Social Services in response to the comprehensive spending review provide more detail on the funding gap. This analysis clearly demonstrates the difficulties that local authorities are facing in funding adult social care.

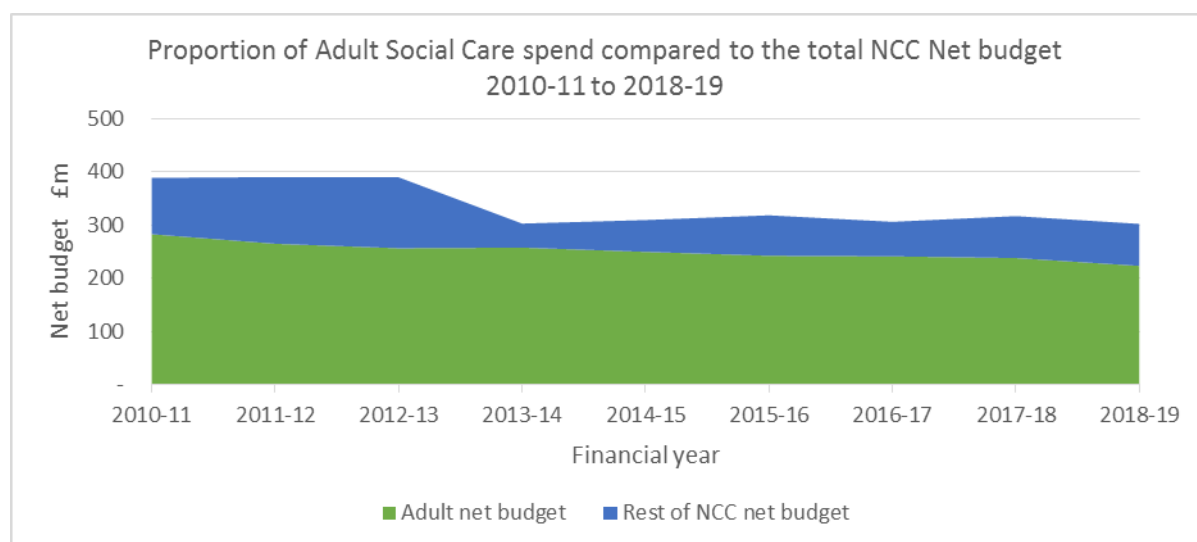
Table 1. Adult social care funding gap, 2010-2015

	£bn 2010/11	£bn 2011/12	£bn 2012/13	£bn 2013/14	£bn 2014/15 budget	£bn 2015/16 budget (provisional)
Cost pressures (gross of NHS transfer and Better Care Fund)	14.4	15.3	16.3	17.2	17.8	18.4
Less: Core funding	14.4	13.6	13.1	12.8	12.3	11.6
Less: Joint initiatives with the NHS (NHS transfer, BCF including Care Act)	0.0	0.6	0.6	0.9	1.1	1.9
Funding gap	0.0	1.1	2.6	3.5	4.4	5.0
Met through:						
Savings	0.0	-0.1	1.2	1.8	2.3	2.5
Money diverted from other council budgets	0.0	1.2	1.4	1.7	2.1	2.5
Total	0.0	1.1	2.6	3.5	4.4	5.0

Table 2. Adult social care funding gap, 2016-2020

	£bn 2016/17	£bn 2017/18	£bn 2018/19	£bn 2019/20
Cost pressures:				
Core demand/inflation pressures	0.2	0.5	0.7	1.0
National Living Wage pressures	0.3	0.5	0.7	0.8
Home care contract pressures in relation to current minimum wage	0.3	0.3	0.3	0.3
Total cost pressures	0.8	1.2	1.7	2.1
Add: Reduction in core funding	0.1	0.5	0.8	0.8
Total expected additional gap	0.9	1.7	2.5	2.9

- 7.3 Over the last five years, 2010/11 to 2015/16, the level of funding of adult social care has been protected with respect to the overall net budget of the council, in this period the net revenue budget available for adult social care has reduced by 14.4% or £40m in real terms where overall council funding reduced at a greater rate of 18.1% for the same period. In future years it is anticipated that that funding of Adult Social Care and the Council as a whole will reduce at broadly the same rate to 2018. The graph below clearly illustrates that over eight years funding of adult social care could fall as much as



21.1% or £60m less funding will be available.

- 7.4 In the current financial year Adult Social Services are reporting an overspend of £5.6m. In terms of the impact the projected overspend from 2015/16 will have on next financial year, 2016/17, it is likely that the underlying expenditure will be recurring and create an extremely challenging financial position before any further budget reductions.
- 7.5 The results of the current spending review were announced on the 25th November. Although the spending review contained an announcement that councils with adult social care responsibility would be able to increase council tax by up to 2% to fund specifically adult social care, it was also announced that block grant funding would be removed completely over the next 5 years, creating a net funding position that is likely to be even worse. The details of local government funding will not be announced until mid-December and at that point the implications of the various funding changes will become clearer. It is expected that there will be further reductions in local government funding and the Council has already begun a public consultation on additional expenditure reductions in adult social care of over £50m in the next three years.

8 Norsecare

- 8.1 The Council are aware of the concerns expressed by care providers in the Independent sector about the position of NorseCare in the Norfolk Care market. NorseCare was set up in 2011 in order to redevelop the Councils own stock of residential homes, many of which required significant modernisation and updating. NorseCare is a wholly owned company of Norfolk County Council and part of the Norse group. The company was set up with the TUPE transfer of 1600 County Council staff along with 26 residential care homes and the care provision in 13 Housing with Care schemes in Norfolk. The Building a Better Future Strategy which shapes the redevelopment will result in the creation of specialist dementia places and increased Housing with Care provision.
- 8.2 The NorseCare arrangements with the Council are governed through a legally binding contract, which includes the block purchase of residential placements and a guaranteed annual rebate to the Adult Social Services department. The rebate is used to mitigate some of the impact of the spending cuts on the budget used for purchasing care. NorseCare has been able to secure the finances for the redevelopment at Lydia Eva Court in Gorleston and the new scheme under development in Bowthorpe.
- 8.3 NorseCare continues to bear some of the legacy costs resulting from the transfer of the local authority staff and of course needs to service its borrowing requirements. However the Council and NorseCare are agreed to significantly reduce the cost of the Council's purchased places in the NorseCare homes over the coming years. As part of the transformation programme the Council and NorseCare will review the arrangements for all of the NorseCare homes with a view to potential closure of uneconomic homes.
- 8.4 NorseCare will not benefit from any increases that might arise as a result of the cost of care process.

9 Equality Impact Assessment (EqIA)

- 9.1 The EqIA identified that the Social Care Workforce in Norfolk is predominately female (81%) with 45% of the workforce being part time.
- 9.2 Whilst considering the staffing element of actual costs the Council paid regard to all data sets referenced in this report with a particular focus on the NMDS to support the Council's understanding of the local workforce. The Council are confident that staffing costs used in actual cost calculations are a fair and true reflection of staffing costs and do not disadvantage the workforce which is predominately female and part time.
- 9.3 Whilst considering the usual price the Council considered the impact that this may have on the workforce and again concluded that the proposed usual prices would not have a negative impact on the workforce, in fact the proposals increase funding for the sector which the Council considers has the potential of positively impacting on the workforce which is predominately female and part time.
- 9.4 The EqIA then identified that this cost of care exercise would impact on service users requiring residential and/or nursing care. The service user groups affected are:
- older people including those with physical disabilities and/or dementia and
 - working age adults with learning disabilities, mental health needs and/or physical disabilities
- 9.5 For older people including those with physical disabilities and/or dementia requiring residential and/or nursing care, the cost of care exercise has at all stages; information

gathering, data analysis, actual cost calculations and proposed usual price proposals, been designed to take account of their specific needs. The model that the Council has used deals with varying levels of care need by grouping people in one of four categories of need.

These are:

- Older people (residential standard)
- Older people with dementia (residential enhanced)
- Older people who require nursing care (nursing standard)
- Older people with dementia who require nursing care (nursing enhanced)

9.6 The Council has made adjustments to staffing and operational costs depending on the levels of need, this is described in more detail in sections 4 and 5 of this report and is reflected in the Council's usual price proposals.

9.7 The Council concludes therefore that the analysis it has undertaken and the evidence provided in this report confirms that these proposals will not have a negative impact on older people with physical disabilities/dementia requiring residential and/or nursing care.

10 Proposals

10.1 Actual Costs of Care

10.1.1 The process described in this report has enabled the Council to quantify indicative actual costs of providing residential and nursing care for older people in Norfolk as set out in the tables in section 5 of this report. Given that there is no single actual cost of care that is accurate for all providers, the Council has had regard to the actual cost of care by using the indicative actual costs of care and used these to populate its costs model to help in the formulation of its proposed usual prices.

10.1.2 In doing so, the Council recognises the need to ensure that the prices it would usually expect to pay for residential and nursing care in Norfolk are sufficient to enable the average provider operating their business reasonably efficiently, taken together with private income, to cover their operational costs as set out in the tables in section 5 of this report and provide a reasonable element of profit and return on capital.

10.1.3 The Council recognises that providers operate in a competitive market and will set their prices accordingly. The Council takes the view that to be reasonable its proposed usual prices should sit between the operational costs figure and the operational costs with returns figure set out in the indicative actual costs table in section 5 of this report.

10.1.4 The Council judges that any price lower than the operational cost in the table risks the need for excessive cross subsidisation by private funders to make the business sustainable. In addition it would be unreasonable for the Council's proposed usual prices to make no contribution to return on capital which is a cost.

10.1.5 The Council judges that usual prices set at a level above that of operational costs plus returns in the table in section 5 of this report (that is to say operational costs together with full allowance for the indicative cost of capital and a 5% profit margin) would exceed the price that it would usually expect to pay having regard to the statutory guidance and the matters set out below.

10.1.6 It is important to note, however, that both the proposed usual prices for 2015/16 and the planned prices derived from them for 2016/17 to 2018/19 inclusive set out in this

report are themselves subject to further review and should therefore be considered as provisional and providing the basis for further consideration following the consultation process at this stage.

10.2 **Best Value and Market Development duty in the Care Act**

- 10.2.1 The Council believes that increasing efficiency in the residential and nursing care market as a whole is an essential element in discharging its legal duties of Best Value in the Local Government Act 1999 and the market development duties under the Care Act 2014. Accordingly the Council considers that its usual prices should incentivise improved efficiency and value for money. To do so the Council proposes to assume an occupancy rate of 91% in 2016/17, 92% in 2017/18 and finally 93% in 2018/19. The Council has factored this thinking into its proposals on usual prices, however, the Council proposes to keep assumed occupancy rates under review as part of the proposed dialogue with provider representatives described earlier in this report.

10.3 **Local Factors**

- 10.3.1 The local residential and nursing care economy relies to varying degrees on the payments made by the Council. On average, the Council estimates that independent providers of residential and nursing care to older people in Norfolk rely on Council payments for about 50% of their turnover. There will continue to be considerable scope for generating income from private funding at rates that the market will stand whilst avoiding excessive cross subsidisation.
- 10.3.2 There is no evidence of significant numbers of providers leaving the Norfolk market due to financial difficulties or business failure, indeed, bed numbers have remained remarkably stable over the past three years and there has been a small net gain in providers over the same period. In addition there is evidence that there is a degree of overcapacity in the market. The Council has factored these local factors into its proposals on usual prices.

10.4 **Affordability**

- 10.4.1 The Council is faced with the reality of the funding position set out earlier in this report in section 7 but nevertheless aspires to ensuring that its proposed usual prices will enable sufficient provision of the right quality to continue to be provided in Norfolk not only in the current year but throughout the Council's proposed pathway for updating rates in the years to come.

10.5 **Usual prices**

- 10.5.1 In the light of all the considerations set out above in this report the proposed usual prices for 2015/16 and the proposed planned prices for the following three year period set out in the table below are subject to further adjustment in the light of the consultation. In addition the proposed planned prices for 2016/17 to 2018/19 are also subject to adjustment following the application of the cost adjustment mechanism and in the light of changes in the market as described in section 1 of this report.

Single Room Only		2014/15 Price Bands	2015/16 Current Price Bands	Proposed usual Weekly Price Bandings adjusted for occupancy			
				2015/16	2016/17	2017/18	2018/19
New Band	Existing Band			90%	91%	92%	93%
Residential - Standard	Band 1	£328.17	£333.09	£420.09	£430.02	£439.03	£447.15
		%age uplift from 14/15 rates	1.50%	28.01%	31.04%	33.78%	36.26%
	Band 2	£391.48	£397.35	£420.09	£430.02	£439.03	£447.15
		%age uplift from 14/15 rates	1.50%	7.31%	9.84%	12.15%	14.22%
Residential - Enhanced	Band 3	£453.90	£460.71	£467.31	£469.16	£470.10	£470.15
		%age uplift from 14/15 rates	1.50%	2.95%	3.36%	3.57%	3.58%
Nursing - Standard	Band 9	£410.51 + FNC of £110.89 = £521.40	£416.67 + FNC of £112 = £528.67	£442.57 + FNC of £112 = £554.57	£454.07 + FNC of £112 = £566.07	£464.66 + FNC of £112 = £576.66	£474.36 + FNC of £112 = £586.36
		%age uplift from 14/15 rates	1.50%	7.81%	10.61%	13.19%	15.55%
Nursing - Enhanced	Band 10	£472.93 + FNC of £110.89 = £583.82	£480.08 + FNC of £112 = £592.02	£489.78 + FNC of £112 = £601.78	£493.21 + FNC of £112 = £605.21	£493.73 + FNC of £112 = £607.73	£497.36 + FNC of £112 = £609.36
		%age uplift from 14/15 rates	1.50%	3.56%	4.29%	4.82%	5.17%

*FNC means funded nursing care. These rates are set independently of the Council.

10.5.2 2015/16 Financial Year

The proposed usual prices for 2015/16 are well above the indicative operating costs set out in the table in section 5 and signify increases across all categories of need ranging from 2.95% to 28.01% when compared to the 2014/15 usual prices.

10.5.3 Financial years 2016/17 to 2018/19 inclusive

The proposed planned prices for 2016/17 to 2018/19 rise in each year so that by 2018/19 they match the Council's current assessment of the usual prices it would expect to pay having regard to operating costs, cost of capital and to support a 5% profit margin set out in the table in section 5 of this report.

The planned prices also reflect an assumed 1% annual increase in occupancy raising levels from 90% in 2015/16 to 93% by 2018/19 whilst still signifying further increases each year.

By 2018/19 planned prices are estimated to increase by between 14.2% and 36.3% from the 2014/15 base for Residential – standard and 3.6% for Residential – Enhanced. At the same time the Nursing – Standard increases by 15.5% with an increase of 5.2% for Nursing - Enhanced.

These planned prices reflect the Council's current aspirations and intentions and are set out to support business planning and market shaping. They are subject to further amendment and consultation as described in the pathway to updating rates proposed in this report.

11 Conclusion

- 11.1 In this report the Council has set out in some detail the process that it has developed and implemented to enable it to take a new decision about its usual prices for the 2015/16 financial year. It sets out the proposed usual prices for older people for the current year as well as the next planning period (being the following three years), together with a full explanation of how further adjustments to prices will be carried out in the future. The proposals as set out would result in significant increases in the Council's usual prices for the 2015/16 year and further increases (adjusted for improved efficiency) in each of the following three years in the standard bandings.
- 11.2 The Council now wishes to consult providers on its proposed usual prices and the proposed arrangements for dealing with usual prices in the future.

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**Norfolk County Council
Cost of Care for Working Age Adults
Interim Report**

Steve Holland
Head of Quality Assurance & Market Development
December 2015

1 Purpose of report

- 1.1 The cost of care process as it applies to providers of residential and nursing care in the working age adult market in Norfolk has not yet been completed. The purpose of this interim report is to provide an update on progress to date and describe the next steps so that the process can be concluded as soon as possible.

2 Background

- 2.1 Norfolk County Council (the Council) made a decision on 9 March 2015 to increase its 2014/15 usual prices for residential and nursing care in Norfolk by 1% for providers of such care to working age adults with the new prices taking effect from 6 April 2015. The intention was that these should be the prices that the Council would usually expect to pay for such care (the usual prices) throughout the remainder of the 2015/16 financial year.
- 2.2 At the same time the Council undertook to carry out a cost of care exercise to enable it to establish its usual prices for the 2016/17 financial year and the Council's next planning period. Before this work could be completed, however, the Council was challenged on the lawfulness of its approach to making the original decision in March 2015. As a result of the legal challenge the Council decided that a new decision should be made.
- 2.3 Until that decision is made by the Council, the usual prices that were implemented following the 9 March 2015 decision have been left in place.
- 2.4 In order to review and decide on what the Council would propose as its usual prices for the 2015/16 financial year a cost of care exercise was begun. This has sought to understand what the actual cost of providing residential and nursing care in Norfolk is and any other relevant matters including local factors.

3 The working age adult market

- 3.1 The Council has recognised that there are significant differences between the older people market and the working age adult market and, whilst the data supplied by providers of residential and nursing care to working age adults has added to the Council's understanding of the actual costs of care in this market, the Council judges that it is insufficient to enable it to be fully confident about the actual costs of care that providers face.
- 3.2 The Council believes that the majority of the work carried out so far can be used to support its consideration of usual prices in the working age adult market, however, the Council proposes to carry out further work to gain a better understanding of the actual costs of care in this market.

4 Next steps and timescales

- 4.1 The Council has kept in regular contact with provider representatives of the working age adult market and arrangements are currently underway to establish a working group whose task will be to support the completion of the outstanding work.
- 4.2 This will include but is not limited to:
- Supporting a review of the current bandings system
 - Supporting data collection using a revised template agreed for the purpose

- Supporting determination of costs that are materially different to the older people market
- Supporting the development of the cost model for the working age adult market
- Supporting the development of a costing tool for high value care packages
- Supporting the development of a cost adjustment tool for the working age adult cost model

- 4.3 Once sufficient progress has been made to enable the Council to judge what the indicative actual costs of care are in the working age adult market, the Council will set out its proposals for the usual prices it would expect to pay for the 2015/16 financial year having regard to those costs, relevant local factors, its statutory duties and affordability in a full report and consult providers on those proposals.
- 4.4 Whilst wishing to expedite the completion of the cost of care process in the working age adult market the Council recognises the importance of getting it right and will continue to work through the process in a thorough and proper manner. This will include ongoing reviewing and updating of the Equality Impact Assessment.

5 Cost of Care process for financial years 2016/17, 2017/18 and 2018/19

- 5.1 The Council had begun a separate cost of care exercise for the 2016/17 financial year and for a new planning period. This exercise began as a separate process and was put on hold as a result of the legal challenge to the Council's original 9 March 2015 decision. This was communicated to providers in a letter dated 10 November 2015.
- 5.2 Having considered the process thus far for the 2015/16 financial year the Council believes that when completed the data collected and the analyses undertaken can be used to establish the 2015/16 usual prices as a baseline for planning future pricing in the market for a further period without the need for renewed data collection.
- 5.3 As a consequence, therefore, rather than carrying out full data collection processes every year for an annual planning period which would be burdensome and resource intensive for all concerned the Council is now proposing a new pathway in a four year planning cycle.
- 5.4 The cycle would consist of establishing a new baseline every fourth year involving a data collection and cost of care process followed by a three year period in which proposed updated prices derived from the baseline year were set out. The first new three year planning period would cover 2016/17 to 2018/19 financial years inclusive. The next baseline year would be 2019/20 followed by a three year planning period and so forth.
- 5.5 The Council has set out the detailed proposals in its consultation report "*Proposed revised usual prices for Residential and Nursing Care for Older People in Norfolk for the year 2015/16 and pathway for updating rates for the three year planning period 2016/17 to 2018/19 inclusive*". This report is available on the Council's website.
- 5.6 The Council will consult providers in the working age adult market on its pathway for updating rates as part of the consultation with providers in this market regarding usual prices for the 2015/16 financial year referred to previously.

6 Consultation

- 6.1 The consultation will include the proposed usual prices for 2015/16 in the working age adult market and for the following three years 2016/17 to 2018/19 inclusive. Following

due consideration of the consultation feedback the Council will determine its usual prices for the 2015/16 financial year and its planned prices for the following three years and set them out in a further report for the Council's Adult Social Care Committee which will make the final decision.

- 6.2 If the decision results in new prices for the 2015/16 financial year for a given category of need that are greater than the prices that the Council is currently paying a provider for the 2015/16 financial year, the Council intends to calculate the difference and pay providers that difference for the whole period during which care has been provided backdated to 6 April 2015 or such later date as the care may have commenced.
- 6.3 The Council will continue to keep providers in the working age adult market updated on the progress of the cost of care process.

**Analysis of responses to
Norfolk County Council
Cost of Care
Consultation on the**

**Proposed usual prices for Residential and
Nursing Care for Older People in Norfolk for
the year 2015/16 and pathway for updating
rates for the three year planning period 2016/17
to 2018/19 inclusive**

April 2016

Toni Jeary

Business Lead Market Development

Norfolk County Council, Adult Social Care

1. Context

Norfolk County Council (“the Council”) is committed to promoting the continued independence of all adults in Norfolk by helping to prevent, reduce or delay the need for care and support. The Council recognises, of course, that for many people care and support provided in a residential or nursing care home may be required and in these circumstances the Council relies in the main on a market of independent care home operators to provide the high quality care needed and expected.

The Council is required to promote the effective and efficient operation of this market in care and does so in a number of ways and in particular by funding the care costs of people who are unable to fund their own care. It is important that the usual prices paid for this publicly funded care taken together with privately funded care is enough to ensure that the care provided is safe, of the right quality and is commercially sustainable.

The Council is undertaking a cost of care exercise aimed at establishing its usual prices for publicly funded residential and nursing care. In doing so the Council has had regard to its own financial position and proposed its usual prices for 2015/16 on which it consulted the market.

In addition the Council set out a proposed pathway and mechanisms for assessing prices for the next three years which will be subject to further amendment to reflect changes in provider’s costs.

The Council sought providers’ views to help it to make a final determination on the prices that it would usually expect to pay for residential and nursing care in Norfolk. This report provides an analysis of those consultation findings.

2. Background

On 24 July 2015 the Council wrote to all its residential care providers informing them of the cost of care exercise and explaining how they could engage with the process. Since then providers have been provided with regular updates. Information about the Council’s cost of care work including frequently asked questions and answers have also been made available on the Council’s dedicated web page

www.norfolk.gov.uk/costofcare .

The consultation on the “Proposed usual prices for Residential and Nursing Care for Older People in Norfolk for the year 2015/16 and pathway for updating rates for the three year planning period 2016/17 to 2018/19 inclusive.” commenced on 11 December 2015 and was open for six weeks, closing on 22 January 2016. Providers were notified via email correspondence that the consultation had commenced, provider email addresses were verified and a provider that does not use email was written to with a full copy of the report and consultation documentation.

The Council recognised that once providers had read the report they may have some questions or queries that they would like clarified prior to participating in the consultation. Providers were asked to send these to the cost of care mailbox costofcare@norfolk.gov.uk which was regularly monitored during the consultation. Individual responses were sent out in response and any frequently asked questions and answers were published on the Council’s dedicated web page described above. Providers were encouraged to give early consideration to the consultation. The Council has been keen to encourage as many views and feedback on its proposals as possible. Providers were asked to note that they could comment on any aspect of

the process or proposals and where possible provider evidence that supported their views.

Providers were asked to use an online survey to give their feedback as that would assist in keeping views and opinions anonymous. However, they were also given alternative options to:

- respond by email at costofcare@norfolk.gov.uk
- send views in writing to - Freepost Plus RTCL-XSTT-JZSK, Norfolk County Council, County Hall, Martineau Lane, NORWICH, NR1 2DH. The Council explained that there would be no acknowledgement of receipt where comments were submitted as postal responses.

The Council sent a reminder email on 11 January 2016 to all providers to ensure they were aware of the consultation closing date and remind them to participate.

3. Questions

During the consultation period the Council responded to questions and queries from individuals representing their own organisations or provider networks. The following questions and responses were published on the Council's dedicated web page

Q1) I cannot see any price for Residential care EMI rate can you please clarify this, has this been forgotten or omitted?

A1) There is more detail provided in the consultation report in relation to the price bandings. I have extracted the table from page 9, which should clarify the situation for you.

	Existing Care Home Banding	Current category of need	New category of need
Care Home	Band 1	Older people and other (including physically disabled pension age)	Residential standard
	Band 2	Very dependent or blind older people	
	Band 3	Very highly dependent older people with mental health problems	Residential enhanced
Care Home with Nursing	Band 9	Older people and other (including physically disabled pension age)	Nursing standard
	Band 10	Very highly dependent older people with mental health problems	Nursing enhanced

Q2) I have one question with reference to the increased pricing for 2015/16. Will these payments be back dated?

A2) I have extracted and pasted below a section from the cost of care consultation report which should address your query. Please note the report contains proposed usual prices for 2015/16 which are subject to further adjustment in the light of the consultation.

- 1.12.4 For the 2015/16 financial year the Council intends to identify any cases where the final new usual prices are greater than the prices that have been paid to providers since 6

April 2015 in the relevant price bands. In these cases the Council intends to calculate the difference and pay providers that difference for the whole period during which care has been provided backdated to 6 April 2015 or such later date as the care may have commenced.

Q3) The number of care hours required for each resident in the residential standard band of need is 18.9 hours per week. Could you tell me how you derived this figure?

A3) If you look at appendix 1 in the report we explain how the 18.9 hours was derived. We took the direct care labour costs as given to us by providers through the templates, calculated how many hours of care could be bought at the wage rates from the NMDS and divided those hours across the residents.

Q4) Norfolk County Council proposes further work to gain an understanding of the actual cost of care in the working age adults market. What is make-up of the working group and the basis upon which members have been selected?

A4) The working group has the following participants, John Bacon representing Norfolk Independent Care (NIC are the Council's strategic partner in relation to market development issues), Bernadine Pritchett, Robena Clarke representing ARMC, Simon Blake and Sally Stubbs. Interested parties are invited to contact Norfolk Independent Care.

Q5) Why do you use a care rate of £7.12 when the living wage will be £7.20 in the year 2016/2017? Seniors will be £8.50

A5) The £7.12 rate is a blended rate derived from National Minimum Dataset data figures for the median pay rates for care workers and senior care workers. The figure is for 2015/16 i.e. before the effect of the national living wage. The intention is to reflect the impact of national living wage from April 2016 onwards through the cost adjustment mechanism.

4. Responses in Relation to the Proposed Usual Prices for 2015/16

The consultation closed on 22 January. The Council received 10 email responses, nine on line responses and no written responses.

4.1 Email Responses

Of the 10 email responses six were from individuals and four were group responses.

a) Group Responses

The responses received by groups representing the care market are as follows:

1. Fair Price for Care, Fair Price for Carers (FPCFPC) – FPCFPC Response to NCC Cost of Care Consultation formally endorsed by the group. This was in the format of a 23 page report.
2. Provider Working Group – The formal response to the consultation on behalf of the Providers Working group. The report has been formally endorsed by FPCFPC and has the support of NIC. This was in the format of a 21 page report.
3. On behalf of Norfolk Independent Care (NIC) - A report and anonymised data with respect to care and nurse staffing hours from 58 care homes in Norfolk, commissioned by NIC. This was in the format of a three page report and an excel workbook providing anonymised data from 58 care homes.
4. Provider Working Group - Additional Evidence in Relation to Care Home Footprint relevant to the Cost of Care Older People exercise. This was provided in an email.

b) Individual responses

Of the six individual responses:

One respondent highlighted some specific concerns in relation to older people with physical difficulties and how the cost of their care and their needs were addressed

within the standard and enhanced bands, they also raised some questions that need consideration as part of the Council's equality impact assessment work.

One respondent considered it to be a step in the right direction and welcomed, but felt that there had been a lack of funding over recent years so this is funding that providers should have received anyway.

One respondent expressed concerns that any increase would be absorbed by the introduction on the National Living Wage.

One respondent felt that the costs of running a private care home were not truly reflected and one respondent identified that costs associated with repairs and maintenance, domestic and cleaning supplies, trade and clinical waste and continence products should not be the same for standard and enhanced rates.

Four respondents did not consider the proposed prices to be acceptable, they did not consider the care hours to be sufficient, and one respondent also raised concerns about the low amount allowed for management costs.

Three respondents expressed concerns about NorseCare and the impact that current arrangements have on the Norfolk care market.

Two respondents raised concerns about the methodology, expressing the view that the exercise could only be trusted if completed by an independent party with one respondent formally requesting that *"this exercise is repeated using an independent and agreed party in order that in your own words all things are transparent."*

Two respondents raised concerns about the closure of care homes.

Note: It is apparent from the wording used in the responses that there has been some duplication of submissions with respondents choosing to submit their responses using both the email and on line options.

4.2 On line consultation responses

Of the nine respondents, seven identified that their organisation provided services for older people (including those with dementia and adults with physical disabilities), two respondents identified that their organisation provided services for working age adults and one chose not to answer.

Eight respondents confirmed they had received the information sent out in July that outlined the process for setting the 'usual price' and invited providers to take part in the information gathering exercise, one chose not to answer.

Five respondents confirmed that they had participated in the information gathering exercise and sent in a completed excel workbook.

a) Process and methodology

Five respondents made comments about the process or the methodology used to develop proposed prices, comments included concerns about closure, the amount allocated in the cost model for staff hours and pay, a number of queries were raised in relation to NorseCare. The information and queries from this section will be added to the information submitted in the form of email and reports to ensure a full consideration is given to all feedback

b) Other factors

Six respondents thought the Council should have taken other factors into account. These included concerns that future projections do not take account of the introduction of the National Living Wage. As well as concerns that the Council had not factored in

- The cost effectiveness of small care homes
- Basic staffing requirements to safely operate
- Care hours deemed acceptable by CQC
- Sufficient hours for staff training

- Sufficient staff hours or pay rates

The information and queries from this section will be added to the information submitted in the form of email and reports to ensure a full consideration is given to all feedback.

c) Agreement with proposed usual prices

In response to the questions about how far providers agree or disagree that the Council's proposed usual prices for 2015/16 are reasonable

Residential standard 2015/16 are reasonable? 100% (9) strongly disagree

Residential enhanced 2015/16 are reasonable? 8 strongly disagree, 1 disagrees

Nursing standard 2015/16 are reasonable? 44% (4) strongly disagree, the other 66% (2 not sure, 3 not answered)

Nursing enhanced 2015/16 are reasonable? 44% (4) strongly disagree, the other 66% (2 not sure, 3 not answered)

Respondents explained the reasons for their agreement / disagreement with the proposed usual prices, between five and nine responses were received for each category. Responses consistently highlighted the following reasons for not agreeing that the usual prices for 2015/16 are reasonable;

- Does not fully take account of impact of national living wage
- Size of homes not adequately taken account of
- Actual costs per resident currently exceed proposed usual prices
- Insufficient care hours
- Concerns over a number of assumptions used in the model
- Current fees received by Norse

d) The Council's next planning period

The Council explained the approach that is proposed for financial years 2016/17, 2017/18 and 2018/19 (the Council's next planning period). Providers were asked for any comments that would help the Council with future planning. Six responses were received and included the following suggestions of areas that should be taken into consideration;

- Increases in national living wage
- Increases in auto enrolment employer contributions
- Size of homes
- Apprentice levy
- Assessment of care being delivered and level of need

e) Equality Impact Assessment.

One respondent provided information on details that the Council could have missed when considering ways that the proposals could impact on people with protected characteristics, and commented on how this could be mitigated against. These comments will be incorporated into the Council's equality impact assessment.

f) Other Comments

Five respondents provided additional comments, these will be added to the information submitted in the form of email and reports to ensure a full consideration is given to all feedback. Comments received included reference to:

- Risk of care homes closing
- The issue of Norse receiving a much higher level of pay for delivering care at the same level of private providers being unacceptable

- No mention on how those residents paying via deferred payments above the basic council rates will be effected
- Impact of self-funders on the care market

5. Further Analysis

The Council carried out a detailed analysis and review of all the comments and feedback received during the consultation. At the request of FPCFPC and NIC a meeting was held on 11 February 2016 with their representatives. This meeting was held to review their response to the consultation and consider how the Council might use their information to revise their proposals. The Council provided FPCFPC with a formal written response and additional anonymised data that FPCFPC requested. On 23 February FPFC & NIC submitted to the Council additional anonymised data showing staffing ratios across the homes in Norfolk that had responded to NIC's survey. The Council agreed give full consideration to this as part of the consultation process.

A formal response on behalf of FPCFPC and the NIC Working Group was received by the Council on 29 February 2016.

6 Conclusion

Having given full consideration to the feedback, comments and additional data submitted as part of the consultation, the Adult Social Care Committee will be presented with a full report explaining the amendments that have been made to the usual price as a result of the consultation responses.

The Council have noted the comments and observations made about NorseCare and confirm the following:

6.1 The Council are aware of the concerns expressed by care providers in the Independent sector about the position of NorseCare in the Norfolk Care market. NorseCare was set up in 2011 in order to redevelop the Councils own stock of residential homes, many of which required significant modernisation and updating. NorseCare is a wholly owned company of Norfolk County Council and part of the Norse group. The company was set up with the TUPE transfer of 1600 County Council staff along with 26 residential care homes and the care provision in 13 Housing with Care schemes in Norfolk. The Building a Better Future Strategy which shapes the redevelopment will result in the creation of specialist dementia places and increased Housing with Care provision.

6.2 The NorseCare arrangements with the Council are governed through a legally binding contract, which includes the block purchase of residential placements and a guaranteed annual rebate to the Adult Social Services department. The rebate is used to mitigate some of the impact of the spending cuts on the budget used for purchasing care. NorseCare has been able to secure the finances for the redevelopment at Lydia Eva Court in Gorleston and the new scheme under development in Bowthorpe.

6.3 NorseCare continues to bear some of the legacy costs resulting from the transfer of the local authority staff and of course needs to service its borrowing requirements. However the Council and NorseCare are agreed to significantly reduce the cost of the Council's purchased places in the NorseCare homes over the

coming years. As part of the transformation programme the Council and NorseCare will review the arrangements for all of the NorseCare homes with a view to potential closure of uneconomic homes.

6.4 NorseCare will not benefit from any increases that might arise as a result of the cost of care process.

Adult Social Care Committee

Item No. 4.

Report title:	Review of 9 March 2015 Adult Social Care Committee Decision
Date of meeting:	29 April 2016
Responsible Chief Officer:	Tom McCabe – Executive Director of Community and Environmental Services

Executive summary

Summary:

The Committee made a decision at their 9 March 2015 meeting to award a 1.5% and 1.0% increase to fee levels for providers of residential care for older people and other providers respectively. This was subsequently challenged via Judicial Review (JR) by Fair Price for Care, Fair Pay for Carers (FPCFPC) and the Committee then agreed to revisit this decision at their meeting on 29 June 2015.

The Committee also agreed to an investigation into the circumstances giving rise to the JR. It was decided that Tom McCabe, Executive Director of Community and Environmental Services, would undertake this and report back to the next Committee meeting.

Scope of the review:

1. Preparation for the cost of care exercise including review of correspondence with providers
2. The departmental processes relating to the cost of care including reports to and minutes of the Adult Social Services Senior Management Team and the previous year's process
3. The departmental processes relating to the proposed 2015/16 fee increase including budget provision
4. Legal advice received on the process and in the preparation of the report to Committee of 9 March 2015

Findings:

1. The process followed in determining the fee increase for 2015 was lacking and did not pay due regard to the government guidance. Flowing from this, there is agreement that the process leading to the committee decision on 9 March 2015 was flawed
2. There is agreement amongst senior officers that they were aware that there was a risk of legal challenge resulting from the setting of care home fees. This was not adequately tested with legal officers in drafting the March report
3. The department believed that the risk of challenge would be mitigated by putting in place a fundamental review of the cost of care which would report later in 2015. As

such, the risk around the decision to award an increase at the March meeting was not highlighted sufficiently to Members in making their decision.

Recommendations:

- 1. It is important to assess all risks comprehensively, ensure that this assessment is clearly set out in the committee report and then flagged to Members when the report is being considered**
- 2. The County Council needs to develop improved mechanisms for meaningful consultation with the care home sector**
- 3. The County Council needs to work with NorseCare to overcome the negative perceptions that exist in the wider care sector around our relationship**

1. Background

- 1.1. All local authorities regularly review the rates at which they purchase residential and nursing home care from the independent care sector. In recent years there have been a number of challenges to local authorities on the rates paid, particularly given the reductions in public sector funding and this has resulted in a significant amount of case law. Local authorities are required to consult with the sector and to have regard for the actual cost of providing care in their area.
- 1.2. Norfolk has consulted with Norfolk Independent Care (NIC), an organisation comprising care home and home care providers in past years. In 2012 the council designed and undertook a comprehensive cost of care exercise with Norfolk Independent Care and used this as the basis for fee levels for the next two years. A further cost of care exercise was planned in 2014 and commenced in spring 2015. In the meantime, an increase in fees was proposed and agreed by committee on 9 March 2015.
- 1.3. A local campaigning organisation, Fair Price for Care, Fair Pay for Carers (FPCFPC) has challenged this decision through Judicial Review (JR). Counsel opinion sought by nplaw on behalf of the Executive Director of Adult Social Services advised that the council should not seek to contest this and on that basis and to avoid further legal costs, the Adult Social Care Committee was asked to rescind the decision made on 9 March 2015 in order for a new process to be instigated in respect of the 2015/16 fee levels.

2. Evidence

- 2.1. As part of the review, interviews were held with the following:
 - Harold Bodmer, Executive Director of Adult Social Services
 - Catherine Underwood, Director of Integrated Commissioning
 - Janice Dane, Assistant Director Early Help and Prevention
 - Steve Holland, Head of Quality Assurance and Market Development
 - Cllr Sue Whitaker, Member - Lakenham Division and Chair of Adult Social Care Committee
- 2.2. Advice was also sought from the Head of Law, specifically relating to the ongoing JR.
- 2.3. A range of background documents were studied including various papers relating to the JR; minutes of the Adult Social Care Committee; minutes of Community Health and Social Care Commissioning Health and Social Care

Consultative Forum; correspondence between the County Council and NIC; minutes of the Adult Social Services senior management team; correspondence between various senior Adult Social Services staff.

- 2.4. From the interviews undertaken, I found that officers were aware of the risk of challenge from the sector. This was incorrectly assessed as being primarily a future risk around a future decision resulting from the proposed comprehensive cost of care exercise. Officers believed that any risk around the March decision would be sufficiently addressed by instigating a comprehensive cost of care exercise, which would run through 2015. The rationale behind this was that the sector would acknowledge a comprehensive exercise was underway and that they would benefit from an interim increase pending the conclusion of this.
- 2.5. My analysis of the evidence, in particular the papers submitted by FPCFPC as part of the JR, is that they are aggrieved at what they perceive as preferential treatment to NorseCare.
- 2.6. Of two witness statements submitted by FPCFPC in application for the JR, statement one mentions concerns over NorseCare as early as paragraph 3. Over half of witness statement two is taken up with NorseCare issues. In addition there was a series of Freedom of Information requests seeking details of the County Council's agreement with NorseCare.
- 2.7. My supposition is that FPCFPC were initially hoping to challenge some aspects of the NorseCare arrangements, but were advised that they had much stronger grounds to challenge the process behind setting the 2015 fee levels.
- 2.8. I am not sufficiently informed to predict the material outcome of the JR, but meaningful engagement with the sector is required to meet the statutory guidance. I have seen evidence of meetings that took place in previous years and attempts to set up the meetings as part of the 2015 process.
- 2.9. In order to move beyond the JR and the comprehensive cost of care exercise, the County Council will need to re-establish open, robust dialogue with the sector. Central to this is the need to reach an agreed understanding of the relationship between NCC and NorseCare. This will probably need to un-link the actual price paid to NorseCare for a bed (and how this compares to the rest of the sector) and the cost of the upgrading NorseCare facilities as envisaged under the contract.

3. Recommendations

- 3.1
 - 1) **It is important to assess all risks comprehensively, ensure that this assessment is clearly set out in the committee report and then flagged to Members when the report is being considered**
 - 2) **The County Council needs to develop improved mechanisms for meaningful consultation with the care home sector**
 - 3) **The County Council needs to work with NorseCare to overcome the negative perceptions that exists in the wider care sector around our relationship**

Officer Contact

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

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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.