CABINET
17 May 2016

RESIDENTIAL AND DOMICILIARY CARE FEES AND FUTURE PLANNING

Report of the Director for People

<table>
<thead>
<tr>
<th>Strategic Aim:</th>
<th>Meeting the health and wellbeing needs of the community</th>
</tr>
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<tr>
<td>Key Decision:</td>
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</tr>
<tr>
<td>Exempt Information:</td>
<td>No</td>
</tr>
<tr>
<td>Cabinet Member(s) Responsible:</td>
<td>Mr R Clifton, Portfolio Holder for Health and Adult Social Care</td>
</tr>
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</table>
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DECISION RECOMMENDATIONS

That Cabinet:

1. Approves the proposed fee rates for in-county Older People Residential Care Home placements for 2015/16 and 2016/17.

2. Approves the proposed fee rates for domiciliary care provision for 2016/17.

3. Approves the plans for recommissioning of domiciliary care.

4. Approves the extension of the current domiciliary care contracts as set out in Section 6.4 of this report.

1 PURPOSE OF THE REPORT

1.1 This report sets out the proposed fee rates for spot-purchased older people’s residential care home placements for 2015/16 and 2016/17, and for the domiciliary care provision for 2016/17.

1.2 It also sets out the plans for future recommissioning of domiciliary care and the consequential need to extend existing contracts for the purposes of maintaining service continuity and to enable sufficient time for the process to be completed.

2 BACKGROUND AND MAIN CONSIDERATIONS
2.1 Residential and domiciliary care provision for older people are inextricably linked. The provision and capacity of one has an impact on the other. If there is not sufficient residential provision, then people who may be more suited to residential will remain at home (or in hospital) for longer and require higher levels of domiciliary care. Where domiciliary care provision is insufficient, people may be forced to go into residential care or remain in hospital for longer, rather than being able to stay in their own homes.

2.2 The market for both within Rutland is limited, but the limitations are particularly pronounced within the domiciliary care market and have been for a number of years. Providers are largely based outside of the county and the cost of delivery against the volume of work makes provision unstable. For both residential care and domiciliary care, recruitment of a sufficiently stable and skilled workforce is also an issue.

2.3 The Council has a duty to pay a fair rate of fees to providers to support the provision of quality care for our service users.

2.4 The future planning and procurements of residential care and of domiciliary care will take these issues into consideration, and will be in line with the Adult Social Care Strategy and Better Care Together and Better Care Fund priorities, and their focus on prevention and supporting people to maintain their independence.

2.5 Current Provision of Older People’s Residential Care

2.5.1 The Council currently has a block contract with Primelife at Rutland Care Village (RCV) which has been in place since 1st June 2006, and was a result of the outsourcing of RCC’s own care home provision, Barleythorpe. In addition RCC spot-purchase from care homes within Rutland for older people’s residential care.

2.5.2 There are 8 homes in Rutland, in addition to RCV, with an average of 28 beds per home, ranging from 13 - 46. RCV has 82 beds of which 36 beds are block contracted to RCC. There is a fairly stable occupancy level within the homes of around 88%.

2.5.3 Individuals are financially assessed to determine whether they are eligible for local authority care. Of 223 total beds, 129 current service users are self-funders, and 65 are local authority funded or funded via Continuing Healthcare (CHC) from the Clinical Commissioning Groups (health):

- RCC funded: 38
- Other LA funded: 10
- Fully CHC funded: 17

2.5.4 This equates to approximately 30-33% beds funded by LAs or CCGs; and c58-60% beds occupied by self-funders. Bed usage had remained fairly stable over the last 2 to 3 years, but is now showing a reduction in beds over more recent quarters. This is contrary to the increasing ageing population.

2.6 In addition, there is some out of county provision used, where providers in-county are unable to meet service user’s specific needs or requirements.

2.7 The current spend on in-county provision for older people is c£2.5million per year,
with c£900,000 income where individuals’ are assessed as being financially able to contribute to the cost of their care.

2.8 **Current Provision of Older People's Domiciliary Care**

2.8.1 The Council tendered domiciliary care provision in 2013 and currently has a framework agreement in place with 7 domiciliary care agencies to provide care packages to older people. The framework contract is in place until May 2016, with the option to extend for a further two years to May 2018 and allows the Council to directly award care packages to providers when the need arises.

2.8.2 In addition, there are also 5 agencies, who are not on the framework, but who have been checked and interviewed and who provide packages where there is no capacity through agencies on the Framework. The issue of capacity is one which has been recurrent through the framework life.

2.8.3 The number of care packages has increased slightly over the past two years. The current forecast is c46,000 hours of care delivered in 2015/16 to 112 individuals. With weekly hours ranging from 1-2 hours per week to one service user who requires almost 60 hours per week; with an average of 17 hours per week care.

2.8.4 Individuals are financially assessed to determine whether they are eligible for local authority care, and to determine if they need to contribute to the cost of that care. Individuals do have the right to decline a financial assessment, in which case they are charged the full amount up to the current cap. The number of private self-funded care packages is not known.

3 **FEE RATE REVIEW – OLDER PEOPLE’S RESIDENTIAL CARE**

3.1 The previous cost of care model was formally signed off in March 2014. This exercise agreed rates backdated to 2012/13, for the (then) incoming year of 2014/15 and for the following year of 2015/16. The agreement set a base rate and tied it to an inflationary uplift (using Consumer Price Index Y (CPIY)) as at January of each year.

3.2 RCC received an initial request from one provider to review the rates earlier in the year, and then two further requests: one from a provider who raised the fee rate level as part of the contract implementation in September; and a national provider who wrote to the council to advising that they were changing the fee rates in December.

3.3 The review of fee rates was started following the agreement of the new contract and after the soft market testing exercise to ensure that fee rate negotiation was:

- Within the parameters of clear contractual expectations;
- Clearly separated from discussions about potential re-procurement.

3.4 Both the implementation of the new contracts and the soft market testing exercise took far longer than anticipated, due to the level of engagement from providers, and consequently the fee rate review process was agreed with the Portfolio Holder and begun in December 2015.
3.5 **Process for Fee Review**

3.5.1 Written requests to providers for evidence of actual costs and the impact of the Living Wage on actual costs were made in December and January. Three submissions representing five providers were received. The information was insufficient to draw firm conclusions on the impact on costs.

3.5.2 Providers were invited to a formal meeting in February, which the same three providers attended. Following discussion at that meeting, and at the request of providers, a revised model, based on the previous cost of care exercise, was circulated to all providers with a request to complete. One provider returned this information.

3.5.3 Given the lack of evidenced information about the increase in costs submitted by providers, it has been impractical to use the previous model of calculation or to extrapolate increased costs across providers in a fair and transparent way. Instead, a pragmatic approach was taken and proposed to providers for comment as set out below.

3.5.4 Discussions with providers indicated that an increase of between 1% and 2% for 2015/16 would be acceptable to them (though this was not based on clear, evidenced information).

3.5.5 In addition, three providers submitted information on the expected additional costs from their current baseline from 2016/17. Two providers indicated this as a ‘per week per bed’ additional cost. Averaging the per bed per week additional cost across all three providers gives an increase of £20.63 per bed per week; which is an increase of between 4.2% and 4.9% on the current bed rates, and an average increase per bed per week of 4.5%.

3.5.6 It is therefore proposed that an overall 4.5% increase would be a pragmatic resolution and in line with the actual per bed per week increased costs submitted by providers.

3.5.7 Although there is no contractual requirement to provide a backdated uplift for 2015/16, in line with providers’ requests to offer an uplift against the 2015/16 rates, it is proposed that the 4.5% is split: 1.5% for 2015/16, and a further 3% for 2016/17.

3.5.8 The fee rates proposed are therefore:

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<th>Current</th>
<th>2015/16 (1.5%)</th>
<th>2016/17 (3%)</th>
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<tbody>
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<td>£422</td>
<td>£428</td>
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</tr>
<tr>
<td>£491</td>
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3.5.9 It is proposed that the fee rates are backdated for 2015/16 to 1st April 2015; and for 2016/17 to 1st April 2016. The financial impact of this is set out in Section 9.

3.5.10 The propose fee rates have been compared to neighbouring authorities and
national evidence of cost of care levels. Comparison with neighbouring authorities shows that the proposed fees for 2016/17 are broadly in line (Appendix A shows the fee rates and comparisons).

3.5.11 Providers were asked to indicate whether this would be acceptable, with nil responses being taken as acceptance. Three providers responded, with two accepting and one noting that the 2015/16 rate was in their view too low by 0.5% and not commenting on the 2016/17 rate.

3.6 **Fees rates for 2017/18**

3.6.1 Concurrently, discussions have started with Leicestershire County Council and the three local Clinical Commissioning Groups to review how residential fees are calculated and rates agreed for residential care homes, in order to try and achieve some parity across the areas. This work is expected to be progressed during 2016/17. The initial proposal is for the rates to be entirely reviewed and structured based on the complexity of care required by a service user (and therefore time care takes), rather than the existing divisions of residential, residential with dementia, and nursing. This would better reflect the time and resources care homes need to support an individual and would be better aligned to the cost to them of providing an individual's care.

3.6.2 This work is being led by the Director of Adult Social Services at Leicestershire County Council. Updates on this work will be tabled at Cabinet and any changes proposed via this work to the model of fees or to the rates will be presented to Cabinet for approval.

4 **FEE RATE REVIEW – DOMICILIARY CARE PROVISION**

4.1 The rate agreed with providers for domiciliary care was set during the tender for the framework and is paid at an hourly rate of £15.75, with pro rata payments for part hours; and additional payments for bank holidays set at £15.75, plus the difference between this rate and the care workers' payment rate for bank holidays. In addition to the hourly rate, the Council may agree additional payments to be made to the Provider in circumstances where a proposed package of care is proven by the Provider to be uneconomic and they submit a business case as such.

4.2 The contract in place with providers does not allow for any uplift in fees during the life of the framework; including no inflationary uplifts. It does allow for providers to request an uplift of fees based on evidence of increased costs.

4.3 RCC received a single request from a domiciliary care provider for a review of the fee rates for 2016/17 to take into account the impact of the Living Wage.

4.4 Given the process for residential care homes, it was agreed that a similar request for information and evidence of costs would be made to domiciliary care providers.

4.5 Three providers responded with varying levels of information, but only one submitted sufficiently detailed evidence of the impact of costs. The information that was submitted from two providers who stated the actual cost of delivery of the service, indicated the need for a significant increase of over 20%. An increase at this level would be unsustainable for the Council this year or going forward, and would have a significant impact on the provision of other services.
4.6 As with the residential fee review, given the paucity of information, officers proposed to take a pragmatic approach.

4.7 Leicestershire County Council recently changed their rates as part of their procurement for domiciliary care provision, and there is a risk that if we are not, at least, in line with their rates, that providers will not provide care packages in Rutland. The Leicestershire rate for 2016/17 increased to £16.27.

4.8 The proposed rate for 2016/17 is £16.46, an uplift of 4.5% to bring in line with the residential care uplift and slightly above the Leicestershire rate.

4.9 It is proposed that this is backdated to 1\textsuperscript{st} April 2016.

4.10 Consultation with providers has indicated that it will be acceptable to all, but one provider. This provider will submit a separate business case to request an additional rate for those care packages which cannot be met at this rate, in line with the contract. This business case will be considered separately against those specific care packages by the Head of Service for Adult Social Care in consultation with the Deputy Director for People and the Portfolio Holder for Health & Adult Social Care.

5 SERVICE USER IMPACT

5.1 For both the residential care fees and the domiciliary care fees, the changes implemented by the Council will have some impact on service users.

5.2 Service users affected will be where:

a) a service user is means tested and required to contribute towards their care. Currently their contribution is capped at £13.00 per hour, however the Council are consulting on the current charging policy in light of the Care Act 2014, the finding of the consultation will be presented to members at Cabinet on 21\textsuperscript{st} June 2016;

b) a service user is on a Deferred Payment Agreement where the costs of their care is recouped from their property value at a later date. The increase in fees may mean that the amount recouped will be greater, depending on the proportion of the cost of care paid.

5.3 The numbers of service users affected based on current numbers receiving care are as follows:

- For residential care: 1 service user will be negatively impacted by £1092 per year.
- For domiciliary care: no service users will be affected as their current contribution is capped at £13 per hour.

5.3.1 This may change following the outcome of the charging policy consultation as noted in 5.2 above, and once the outcome is known revised figures for both residential care and domiciliary care will be calculated.
5.4 Following approval of fee rates, it is proposed to give service users 8 weeks’ notice of the changes to the fees and the impact on them individually. This period of notice is informal, but will enable service users to have time to understand the change in rates and plan for them.

5.5 The notice period will mean that the difference will need to be met by the Council from 1st April to the date the fee changes are implemented with service users. This will mean an additional (projected) cost to the Council of £364 for residential care.

6 FUTURE COMMISSIONING OF OLDER PEOPLE’S DOMICILIARY CARE

6.1 It is recognised that in line with the end of the Framework for domiciliary care in May 2018, there is a need to review and re-design the way in which domiciliary care services are commissioned to ensure:

- greater flexibility in the support offered to service users, including those who self-fund;
- care packages commissioned by health colleagues are commensurate in both payment and levels of intervention;
- the sustainability of providers is supported by the mechanism of commissioning in order to maintain sufficient levels of provision locally and address capacity issues.

6.2 Concurrently work will be undertaken to engage with providers to support and develop the market locally. This is essential to ensure that when a procurement is undertaken, there are sufficient providers who are of appropriate quality, able to meet requirements, and who are viable for the contract length. It is envisaged that this work will take a number of months.

6.3 Work will commence in Autumn 2016 to review the current arrangements and explore alternative models of provision in order to ensure that the procurement has sufficient time to be undertaken prior to the current contract end, and allow for TUPE and new service implementation where applicable. An indicative timescale of the work is included in Appendix B.

6.4 In order to maintain provision for service users and undertake this recommissioning work, the following contracts will be required to be extended from May 2016 to 31st May 2018:

- 1st Choice;
- Bluebird Care;
- Country Court Care;
- Evolving Care;
- Hales Group
- Help at Home;
- Velvet Glove.

6.5 The value of these extensions is projected to be in the region of £1.3-1.4m over

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1 This assumes that the individuals remain on the same packages of care for this period.
the two year period.

7 CONSULTATION

7.1 Consultation was undertaken with providers in relation to the fee rates as set out in sections 3 and 4.

7.2 Consultation for the future development and provision of domiciliary care will be undertaken in line with the indicative timescale in Appendix B.

8 ALTERNATIVE OPTIONS

Fee Rates

8.1 The fee rates could be set at an alternative level to that set out in this paper – either retained at the same level or increased by a different amount.

8.2 Were fee rates to be set at a lower level than proposed, there is a risk that providers will not offer placements or care packages for RCC funded service users and we will be unable to meet the needs of service users. There will potentially also be an over reliance on particular providers who do take RCC rates.

8.3 Were fees to be set at a higher rate than proposed, there is a risk that the Council would be unable to sustain this level of funding within the available budgets.

Domiciliary Care Recommissioning

8.4 Given the increasing need for domiciliary care within Rutland and the current instability of that market, the option of not exploring alternative models of commissioning and delivery is considered too risky for service users.

8.5 Where the contract extensions not made, then the Council would need to seek individual contracts for individual service users for each package of care which would be both time-consuming and more difficult to monitor. It would also require individual negotiations of rates each time, likely leading to significantly increased costs.

9 FINANCIAL IMPLICATIONS

Fee Rates

9.1 The proposed increases to fee rates are within provisions made in the Medium Term Financial Plan (MTFP).

9.2 For 2015/16, the full year marginal cost for residential care is £28k and the outturn (year-end position) shows that Residential Care is below budget. For 2016/17, the additional gross cost will be in the region of c£57k (before any recharges to clients) for the full year with the rate increase consistent with the inflation assumptions in the MTFP.

9.3 The proposed increases to fee rates for domiciliary care for 2016/17 will be c£35k for the full year (projected costs on the assumption that care package levels remain at a similar level).

9.4 Members should note that fee increases in themselves will not cause a budget
pressure as they are in line with inflation assumptions, but the actual costs incurred will depend on the number of placements, complexity of care packages and length of stay.

9.5 It is too early to say whether in either residential care or domiciliary care there is certain to be budget pressures in 2016/17 but latest information on caseload indicates there may be pressure in domiciliary care (c£45k). In any event, the Council has a floating £200k adult social care budget (unallocated) which is set aside to meet additional costs arising from demand pressures.

9.6 Members should also note that the delay in agreeing the fee rates for residential care prior to the start of the financial year has meant that the Council has lost potential income (in total less than £1,000) from service users.

**Domiciliary Care Recommissioning**

9.7 The recommissioning of domiciliary care will be undertaken within the available budget set in the MTFP, and will include review of future fee rates. The parameters of the procurement, including fee rates under any new contract will be subject to a Cabinet approval prior to commencement.

10 **LEGAL AND GOVERNANCE CONSIDERATIONS**

10.1 Local authorities have a duty under the Care Act 2014 to pay a fair cost for care provision and this has therefore been taken into consideration in setting the fee rates.

10.2 Legal advice was sought on the process undertaken and risks to the Council following the pragmatic route undertaken to set future fees and noted that:

- When deciding on the “usual cost” the local authority must ensure that the “usual cost” is sufficient to meet the assessed care needs of a person in residential care and have “due regard to 3 specified matters, namely the actual costs of providing care, other local factors and Best Value requirements”.

- Whilst the local authority is under a duty to make a sufficient inquiry into the actual cost of care, it is a matter for the local authority to decide on the manner and intensity of the inquiry. The obligation to have due regard to actual costs means no more than when determining usual costs a local authority should bear in mind amongst other matters, the providers’ need to recover their costs. There is no obligation to calculate or ascertain the actual cost of care. The local authority can exercise its judgement and experience in the light of how the market is functioning.

- There must be sufficient consultation in relation to the proposals for what the usual cost should be.

- In the decision making, the LA must only take into account relevant considerations and ignore irrelevant considerations.

10.3 The process to review the fee rates requested information from providers on three separate occasions and asked for evidence of costs.
10.4 Further legal advice will be sought as part of the recommissioning plans for domiciliary care.

10.5 The framework was procured in line with the Council’s Contract Procedure Rules and permits the Council to award contract(s) to providers on the Framework, furthermore the contracts contain an option for the Council to further extend the contracts for the period referred to in this report.

11 EQUALITY IMPACT ASSESSMENT

11.1 The provision of care both residential and domiciliary is essential in meeting individuals’ needs, and by ensuring that providers are paid at a rate which means they are financial viable, they can continue to offer provision to individuals and thereby people are enabled to make personal choice in selecting their care.

11.2 The provision of the domiciliary and residential care services set out in this paper supports older people in Rutland.

11.3 Notice will be given to service users where the changes in fee rates impact on individuals to enable them to plan for the changes. All service users are entitled to a review of their financial assessment, and will be explicitly told as part of the notice that they may request this should they feel the changes will negatively impact on their ability to contribute to their care.

11.4 Any changes to the model of domiciliary care provision will be subject to an Equality Impact Assessment at the time the model is developed.

12 COMMUNITY SAFETY IMPLICATIONS

12.1 The council is required by Section 17 of the Crime & Disorder Act 1998 to take into account community safety implications. The procurement of quality domiciliary and residential care should contribute to the safety and reduction of risk of vulnerable people.

13 HEALTH AND WELLBEING IMPLICATIONS

13.1 The increase in fee rates to reflect the cost of care and the procurement against quality standards will result in quality services which support the good health and well-being of Rutland residents.

14 SOCIAL VALUE IMPLICATIONS

14.1 Under the provisions of the Public Services (Social Value) Act 2012 local authorities are required to consider how economic, social, and environmental well-being may be improved by services that are to be procured, and how procurement may secure those improvements. The future planning of domiciliary care will take this into consideration within the development of provision and the tender award criteria.

15 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

15.1 The uplifts to fee rates set out in this paper are recommended to support the ongoing provision, quality and financial sustainability of services in Rutland. They
have been calculated in as fair a process as possible, using information from providers, to give rates which both balance the cost to providers’ of delivering the services and the financial resources available to the Council.

15.2 In order for the recommissioning of domiciliary care to take place, it is recommended that the current contracts are extended as allowed for within those contracts. This will enable the development of the market, the development of a suitable model for Rutland and sufficient time for consultation with key stakeholders, including providers and (potential) service users, and procurement to take place.

16 BACKGROUND PAPERS

16.1 There are no additional background papers to the report.

17 APPENDICES

17.1 Appendix A – Fee Rate Comparisons for Residential Care Homes

17.2 Appendix B – Indicative Timetable for Recommissioning of Domiciliary Care

A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.
Appendix A. Comparator Fee Rates for Residential Care Homes

The following table shows the proposed rates for 2016/17 for Rutland against neighbouring counties for the same year:

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<tr>
<th>Rutland</th>
<th>Leics</th>
<th>Lincs</th>
<th>Northants</th>
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<td>£362</td>
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<td>£482</td>
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Although the counties do not operate the same banding, the rates are broadly comparable across all four.
Appendix B. Indicative Timetable for Recommissioning of Domiciliary Care Provision

The following is designed to be an indicative timetable only. A detailed project plan will be drawn up at the start of the recommissioning setting out actions, milestones, and responsible officers.

<table>
<thead>
<tr>
<th>Action</th>
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<tbody>
<tr>
<td>Engagement with Providers to ascertain strengths and weaknesses in current model</td>
<td>Sept – Dec 16</td>
</tr>
<tr>
<td>Data analysis of current provision and levels of need</td>
<td>Sept – Dec 16</td>
</tr>
<tr>
<td>Consultation with service users</td>
<td>Jan – Mar 17</td>
</tr>
<tr>
<td>Consultation with stakeholders</td>
<td>Jan – Mar 17</td>
</tr>
<tr>
<td>Development of model and soft market testing</td>
<td>Apr – Jun 17</td>
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<tr>
<td>Procurement</td>
<td>Jul – Dec 17</td>
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<td>Contract award</td>
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<tr>
<td>Implementation of new service model inc. any TUPE or structural changes</td>
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<tr>
<td>Contract start date</td>
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