

Report to: Cabinet

Report: 8 November 2012

Subject: Review of Nursing and Residential Care Commissioning

Report of: Director of Older People

Wards Affected: All

Is this a Key Decision? Yes

Is it included in the Forward Plan? Yes

Exempt/Confidential No

Purpose/Summary

The purpose of this report is to update Cabinet on the progress of the Review of Nursing and Residential Care Commissioning. At the 16th February 2012 meeting, Cabinet agreed the Review and key milestones for that Review, including reporting back to Cabinet on progress.

Recommendation(s)

Cabinet is recommended to:

1. Note progress on the Review of Nursing and Residential Care Commissioning;
2. Authorise officers, through dialogue and consultation with care providers, partners and other stakeholders to pursue the actions identified within Section 3 of this report, including the development of a revised Market Facilitation Strategy; and
3. Delegate approval of the Market Facilitation Strategy, once developed, to the Cabinet Member Health and Social Care.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Jobs and Prosperity		√	
3	Environmental Sustainability		√	
4	Health and Well-Being		√	
5	Children and Young People		√	
6	Creating Safe Communities		√	
7	Creating Inclusive Communities		√	
8	Improving the Quality of Council Services and Strengthening Local Democracy		√	

Reasons for the Recommendation:

On 16th February 2012 Cabinet considered the report of the Chief Executive, *Transformation Programme 2011–2014*, detailing the progress made towards the establishment of the budget for 2012/13 and the reviews of services/consultation processes completed or in progress as part of the Transformation Programme. Within that report Cabinet considered a proposal for a Review of Nursing and Residential care commissioning and agreed that “*approval be given to a Review of Nursing and Residential Care commissioning and to explore alternative commissioning approaches*”. The Review is ongoing and this report updates Cabinet on progress and the current situation.

What will it cost and how will it be financed?

(A) Revenue Costs

Within the report to Cabinet on 16th February 2012 the Council stated the ambition that the alternative commissioning approaches would realise a saving of £1.5m in 2012/13, by a combination of the costs of care and operational and commissioning efficiencies and a further £1.5m in 2013/14. The report also stated that if the Review identifies that this is not achievable Members will be informed accordingly. Exploring alternative approaches to Residential and Nursing Care Commissioning involves many complex issues, significant risks and, at this stage, little certainty on the scale of savings that can be realised. For the reasons set out in the report, Members are advised that the full £1.5m saving will not be achieved in 2012/13 which will result in a shortfall in 2013/14. However, work is being undertaken to identify any areas of the Adult Social Care budget that may be utilised to assist in offsetting the unachieved saving.

(B) Capital Costs

There are no additional costs associated with this report

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal

LD 1098/2012

The Head of Corporate Legal Services has been consulted and her comments are incorporated within the report.

Finance

FD 1797/12

The Head of Corporate Finance and ICT has been consulted and her comments incorporated into the report

Human Resources

There are no Human Resource implications arising from this report.

Equality See Section 3

The Corporate Commissioning Team holds the responsibility for taking an overview on Equality Impact Assessments and assessing the impact of decisions. These will be published on the Council website.

1. No Equality Implication
2. Equality Implications identified and mitigated
3. Equality Implication identified and risk remains

X

In relation to compliance with the Equality Act 2010, Section 149, Members need to make decisions in an open minded balanced way showing due regard to the impact of the recommendations being presented. Members need to have a full understanding of any risks in terms of people with protected characteristics and any mitigation that has been put in place. Equality Impact Assessments, including consultation, provide a clear process to demonstrate that Cabinet and Council have consciously shown due regard and complied with the duty.

Impact on Service Delivery:

None directly from this report

What consultations have taken place on the proposals and when?

Since the Cabinet decision on 2nd February 2012, to defer a decision on Care Home Fees for 2011/12 and 2012/13 and the Cabinet decision on 16th February to review Nursing and Residential Care Commissioning, exploring alternative commissioning approaches, consultation with Care Home Proprietors has continued through a series of Feedback and Consultation Meetings, held on 13th February, 20th February, 1st May and 12th June 2012. During the first quarter of 2012/13 the priority action was to establish care home fees for 2011/12 and 2012/13, consequently this formed the main focus for consultation in the above meetings. The Review and how it would best be progressed was also discussed and will form the main focus of consultation in the next quarter.

Are there any other options available for consideration?

None.

Implementation Date for the Decision

Following the call-in period for the minutes of this meeting

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Background Papers:

None

1. Introduction/Background

- 1.1 At Cabinet Meetings on 2nd and 16th February 2012, following the conclusion of the initial consultation on the 2011/12 and 2012/13 fees, as well as deferring the decisions on fees, to allow a further period of consultation with providers, the Council also agreed a Review of Nursing and Residential Care Commissioning and to explore alternative commissioning approaches.
- 1.2 The Council should regularly review its commissioning arrangements to ensure they continue to provide the best means of meeting desired outcomes, particularly in the context of the Best Value Duty to secure continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 1.3 Since the Cabinet decision on 2nd February 2012, to defer a decision on Care Home Fees for 2011/12 and 2012/13 and the Cabinet decision on 16th February to review Nursing and Residential Care Commissioning, exploring alternative commissioning approaches, consultation with Care Home Proprietors has continued through a series of Feedback and Consultation Meetings, held on 13th February, 20th February, 1st May and 12th June 2012.
- 1.4 During the first quarter of 2012/13 the priority action has been to establish care home fees for 2011/12 and 2012/13. The Judicial Review Judgment that quashed the Council's earlier decision on 2011/12 fees required the Council to make a fresh decision by February, this deadline was effectively extended by tacit agreement of the Claimants in that case and on the basis that the decision would be made as soon as it possibly could be. Statutory Guidance and "reasonable expectation" also indicates that the 2012/13 fees should have been set in March/April 2012, therefore unreasonable delay in making those decisions could have resulted in further legal action.
- 1.5 The importance of the consultation process and significance of the decisions for establishing the Council's "usual costs" for 2011/12 and 2012/13 resulted in a focus of resources on those issues and restricted the Review to information gathering and initial options appraisal to date. Although the main focus of the consultation since February was the urgent issue of setting the Council's care home fees, the Review and how it would best be progressed was also discussed. Following feedback from the Feedback and Consultation Meetings referred to above it was agreed that a regular Provider Forum should be established to enable and improve ongoing dialogue and partnership between Commissioners and Providers and that an Advisory Sub-Group of that Forum should be established to act as a reference point for the Review.
- 1.6 Having concluded the consultation and determined fees for 2011/12 and 2012/13, it is now proposed to establish the Forum and Advisory Sub-Group. This report provides an update on the Review ahead of further consultation with providers.

2. Review of Residential and Nursing Care Commissioning

- 2.1 Issues central to the Review and meeting the ongoing residential and nursing care needs of residents, include the cost of care, availability of suitable provision and service user choice. Put simply the commissioning approach(es) adopted need to ensure a sufficient supply of an appropriate standard of provision, in which service users will choose to reside, at an affordable cost.

Cost of Care

- 2.2 The report to Cabinet on 21st June 2012, *Care Home Fees 2011/12 and 2012/13*, provided an extensive analysis and explanation of the relevance of the cost of care to the fees paid by the Council in respect of residents placed by the Council into Residential and Nursing care. It is not intended to repeat that analysis and explanation in this report, instead the following paragraphs seek to summarise the key issues relevant to the Review.
- 2.3 People who are assessed as needing residential or nursing care are able to choose which care home they wish to reside in. The impact of that choice on the Local Authority is limited by the expectation that it shall not cost the LOCAL AUTHORITY more than it would usually expect to pay to meet those assessed care needs, otherwise referred to as the “usual cost” of care or Local Authority “care home fees”. Local Authorities are required to set and publish their “usual costs” of care on a regular basis, normally at the start of a financial year, and to set them so as to be “*sufficient to meet the assessed care needs of the supported resident*”.
- 2.4 The Council is required when determining the fees payable to Care Homes, in respect of residents it places in those homes, to have “due regard” to the “actual costs” of providing the care necessary to meet the person’s assessed care needs. There is no definition of “actual costs” and no set formula as to how it should be determined. It is extremely difficult to establish a definitive view on the “actual costs” of care as the evidence available shows that there is a wide range of “actual costs” within care homes in Sefton.
- 2.5 When setting its “*usual cost*”, statutory guidance, also requires the Council to have “*due regard*” to “other local factors” (again not further defined) and the Best Value requirements set out in Local Government Act 1999, i.e. to secure continuous improvement in the way its functions are exercised (including the goods and services it commissions/procures) having regard to a combination of economy, efficiency and effectiveness.
- 2.6 As well as formal statutory guidance, the Department of Health in October 2001 issued an agreement between the statutory and independent social care, health care and housing sectors entitled “*Building Capacity and Partnership in Care*” (the Agreement) in which the Secretary of State for Health set out his expectations of commissioners and providers and also how the Government would assist in “*building a new, more positive partnership between the statutory and independent social and health care and housing sectors*”. Whilst the Agreement is not formal statutory guidance the Council still needs to have regard to it and to justify any departure from it. It should also be noted that the Agreement was premised upon adequate funding being provided by central government.

Choice

- 2.7 Once a person is assessed as needing residential or nursing care, the Authority is obliged to make arrangements to accommodate that person in a care home of his or her choice, provided that the following conditions are satisfied:
- (a) The preferred accommodation appears to the Authority to be suitable in relation to the person's needs as assessed by it.
 - (b) The cost of making the arrangements at the preferred accommodation would not require the Authority to pay more than it would usually expect to pay in regard to the assessed needs.
 - (c) The preferred accommodation and/or the persons in charge of the preferred accommodation will provide it subject to the Authority's usual terms and conditions for providing accommodation for such a person.
- 2.8 Where a person's preferred accommodation is more expensive than the accommodation proposed by the Authority, then he or she may nevertheless require the Authority to support him or her in that accommodation, provided a third party agrees to "top up" the difference (commonly referred to as "*Third Party Top Ups*") and that third party can reasonably be expected to pay the sum for the duration of the proposed placement. It is important that the third party is made aware that failure to keep up top up payments may result in the residents having to move to other accommodation, unless, after an assessment of need, it is shown that assessed needs can only be met in the current accommodation. In May 2012 61 care homes (59% of applicable homes) charged residents a "top-up" over and above the fee paid by Sefton Council, whilst 43 care homes (41% of applicable homes) charged no "top-up".
- 2.9 Residents are excluded from topping up their own fees except in certain specific circumstances (i.e. the resident is subject to the twelve weeks property disregard, or the resident has entered into a deferred payment scheme with the Local Authority under Section 53 of the Health and Social Care Act 2001).

3. Proposed Actions

- 3.1 The information gathering and initial options appraisal phases of the Review have identified a wide range of options to be explored further within the Council, with Care Home Providers (existing and potential future providers), partners and other stakeholders. These options fall broadly into two areas: improved and alternative contracting/procurement arrangements; and market facilitation (including the commissioning of alternatives to nursing and residential care).

Alternative Contracting/Procurement Arrangements

- 3.2 Residential and Nursing care are currently predominantly procured by Sefton from independent providers on a "*Spot-Purchase/Contract*" basis, i.e. each individual placement is procured at the point when that placement is needed. In many circumstances Spot purchasing can result in quite volatile prices for goods/services, as the price reflects supply and demand at that point in time. In the case of Residential and Nursing Care provision, the impact of this potential volatility/variability on the Council is restricted by the authority regularly setting its "*usual cost*" of care (Care Home Fees). Spot contracts can be effective in

stimulating competition and promoting choice but are not always conducive to market stability due to the lack of guarantee that is offered to providers, they also don't provide for potential economies of scale provided for by alternative contracting arrangements.

- 3.3 Alternative procurement approaches would seek to agree contract terms, including price, standards and minimum/maximum levels of provision, ahead of the point when they might be needed, typically through a “*Block*” or “*Framework*” contract. These contracts typically offer the provider greater certainty of business, improved sustainability, enable economies of scale for the commissioner and can facilitate more effective partnership working between commissioners and providers. However such arrangements can also restrict competition and choice, having a longer-term impact on price competition, and are reliant upon the contracted providers having the capacity required. Conversely, Block Contracts can also be wasteful if the full “block” is subsequently not utilised, in that the authority will have paid for capacity it is not using. This unused capacity risk is lessened with Framework Contracts.
- 3.4 Whilst affordability of provision is an important consideration, price is not the only factor to take into account and not the only issue affected by different contracting arrangements. Quality of provision, market capacity, future market strategy, local circumstances, and potential longer-term impact of procurement arrangements need to be fully understood before any alternative arrangements are recommended or implemented. It may be that a more segmented approach to procurement of residential and nursing care provision would be more appropriate, maintaining a spot-purchase approach where competition and choice are considered most important or the most effective way of ensuring cost-effective provision and where capacity is not an issue, but considering Block or Framework approaches where the costs of meeting care needs are genuinely higher or where a guarantee of capacity/additional capacity are required.
- 3.5 There are a range of measures to be explored with providers and potentially incorporated within a new contract, contracting processes and contract monitoring, which will seek to deliver improvements for the Council, in terms of costs, provider performance and outcomes for service users, as well as for providers, through reduced contracting and compliance costs, including:
- Refreshed terms and conditions;
 - Improved performance framework and measurement;
 - Implementation of electronic/paperless processes – facilitated by the implementation of the new care management and contracting/financial ICT systems within the People Directorate during the later half of 2012/13;
 - More appropriate approach to managing the quality of provision - ensuring an appropriate quality of affordable provision, disincentivising failures to maintain quality and reducing the cost of quality audits for providers; and
 - Clearer and more robust arrangements for any “third-party top-ups” relating to Sefton-funded placements – more clearly stating the responsibility of the third-party to meet the cost of the top-up for the duration of the placement, together with the Council’s policy and potential implications of “top-up” defaults.

3.6 For almost 10 years Sefton has very effectively incentivised improvements in quality within care homes, in particular the pursuit of excellent quality provision, through the application of the Quality Payment Scheme. Whilst not all homes participate in the Quality Payment Scheme, at the end of May 2012 83 (91%) of the homes that did were rated “4 Star” or above. The table below shows the descriptors for the star ratings awarded by two of the assessors, PQR and RDB:

Star Rating	PQR Descriptor	RDB Descriptor
5 Star	Exceptional/The ‘Top’ or ‘Very Best’/Market Leader/ Luxury standards/Exceptional service/Extra facilities & amenities. Fully meets the criteria for the level.	Demonstrates an excellent standard of care
4 Star	Excellent/Above average/Highly Developed/Very High Standard. Fully meets the criteria for the level	Demonstrates a very good standard of care
3 Star	Very Good / Strong Features /Good Condition/High Standard	Demonstrates a good standard of care
2 Star	Satisfactory	Demonstrates an average standard of care
1 Star	Basic/Nominal/Minimum Standard	N/A

3.7 If Sefton is to continue to protect its most vulnerable people, in light of the generally improved quality of provision; Sefton’s ageing population; increasing demand for social care services; government policy to reduce public sector funding; and the consequent reduction of many of Sefton’s services to the statutory minimum level, then it must consider whether it can continue with a scheme that seeks to specifically fund quality above that needed to meet its statutory obligation of meeting assessed care needs, as desirable as such an objective might be. The time is therefore right to reconsider the Quality Payment Scheme and the development of possible alternative arrangements for ensuring the appropriate quality of provision. This must be done carefully and in consultation with providers, having only recently established its “usual costs” for 2012/13, simple removal of the quality premium would not be an appropriate approach.

Market Facilitation

3.8 In January 2010, Sefton Council Adult Social Care Department published a Market Facilitation Strategy. That strategy defined Market Facilitation as “*the process by which commissioners ensure there is sufficient appropriate provision available at the right price to meet needs and deliver effective outcomes both now and in the future*”, based on a good understanding of need and demand. The strategy identifies 3 areas of activity:

- *Market intelligence* – The development of a common and shared perspective of supply and demand (including any gaps in provision), leading to an evidenced, published, market position statement for a given market.

- *Market structuring* – This covers the activities of commissioners, where commissioner and provider behaviour is visible and the outcomes they are trying to achieve agreed, or at least accepted.
- *Market intervention* – The interventions commissioners make in order to deliver the kind of market believed to be necessary for any given opportunity.

- 3.9 The strategy further identifies that whilst in an ideal world these activities would be sequential, with Commissioners first of all learning all they need to know about the market and the factors that can influence it; then building this into a structured approach which covers everything from regulation to long-term planning with providers; and concluding with the commissioner intervening when necessary in order to achieve the market shape that it feels is required by its assessment of need; in reality, the three functions will inevitably run together.
- 3.10 Whilst there are areas where this approach can be seen to have been applied prior to and since publication of the strategy (e.g. Quality Payment Scheme and development of Extra-Care facilities), for a variety of reasons the Council has struggled to apply sufficient resource and focus to this aspect of its commissioning role. Whilst this approach applies to the whole social care market, it is essential if the Council is to meet its savings ambitions associated with the Review of Nursing and Residential Care Commissioning. Specifically, whilst acknowledging that there will always be a threshold beyond which residential care becomes the most cost-effective means of meeting care needs, much of the savings sought will only be realised through the facilitation of alternative provision and improving the cost-effectiveness of the alternatives as well as Nursing and Residential Care. There is therefore a need for a renewed emphasis on Market Facilitation, within the People Directorate, across the Council and in conjunction with potential commissioning partners, particularly in light of the Council's ambitions as a "Commissioning Council".
- 3.11 It is proposed to refresh and update the Market Facilitation Strategy and, through dialogue and consultation with care providers (existing and potential future providers), potential commissioning partners and other stakeholders, to develop a refreshed Action Plan. Elements/actions for consideration will include:
- Developing, with providers and other partners a better shared understanding of market needs, gaps and opportunities, together with more effective long-term sustainable business planning in-line with future market needs;
 - Developing appropriate and cost-effective alternatives to long-term Residential and Nursing Care, including Extra-Care opportunities, either through new-build or where appropriate conversion of existing facilities;
 - Replacement of the current Quality Payment Scheme with more appropriate arrangements for ensuring an appropriate quality of affordable provision;
 - Increasing emphasis on the re-ablement of individuals within all services, not just specific re-ablement services, promoting independence and reducing the progression towards long-term higher-dependency services;
 - Enabling opportunities for some care homes to expand or diversify their service offerings, either for the private market or for commissioned community services (e.g. providing a community hub for local people to access existing or new facilities/services such as day opportunities, lunches, outings, bathing, hairdressing, respite, or simply socialising);

- Improving information to service users, potential service users and their families, to develop “informed consumers” more able to make informed choices about the services best suited to their needs and circumstances;
- Facilitating the development of facilities to better meet anticipated future need, either by/with existing or new care providers; through longer-term partnership with developers, housing and care providers; or through direct provision.

4. Risk Management Overview

- 4.1 The risks identified within the Cabinet report, *Care Home Fees 2011/12 and 2012/13*, on 13th June 2012, are also relevant to the Review. Any actions that destabilise the market, contribute to significant business failure or significant, unmanaged reduction in market capacity for Local Authority placements could have significant impact upon the Council and the residents it has a duty to place.
- 4.2 Exploring alternative approaches to Residential and Nursing Care Commissioning involves many complex issues, significant risks and, at this stage, little certainty on the scale of savings that can be realised. It is important to recognise that this is not a simple re-procurement/re-commissioning process where the service provider can be readily replaced with a more competitively priced one. There are more than 1,600 mostly elderly residents who are already placed in their home of choice and for whom the service provider provides both the accommodation and care, any changes might require a resident to move to an alternative home and in some circumstances this may present logistical, health and human rights implications.