

<b>Report to:</b>	Cabinet	<b>Date of Meeting:</b>	Thursday 5 September 2019
<b>Subject:</b>	Adult Social Care - Residential & Nursing Care Sector		
<b>Report of:</b>	Director of Adult Social Care	<b>Wards Affected:</b>	All Wards
<b>Portfolio:</b>	Cabinet Member - Adult Social Care		
<b>Is this a Key Decision:</b>	Yes	<b>Included in Forward Plan:</b>	Yes
<b>Exempt / Confidential Report:</b>	No		

### Summary:

To seek approval for the commencement of a project and consultation relating to the way in which the Council makes payments to the care home sector and to provide an update on work taking place within the sector.

### Recommendation(s):

Cabinet is recommended to note the contents of the report and;

- (1) Note the ongoing work taking place within the Residential and Nursing care home sector;
- (2) Approve the commencement of a project to review the way in which the Council makes payments to the care home sector; and
- (3) Note that following the completion of Stage 1 of the above project (as detailed in Section 3.9 of this report) a further report will be submitted to Cabinet in January 2020.

### Reasons for the Recommendation(s):

To update Cabinet on work taking place relating to the sector and to seek approval for the commencement of a project concerning the way in which the Council makes payments to care homes.

### Alternative Options Considered and Rejected: (including any Risk Implications)

1. **Maintaining the Status Quo** – this option was considered and rejected as there is a need to review current mechanisms for payments to the care home sector and to conduct activities to better engage with, and support the sector to ensure that services remain viable and able to meet Sefton's needs.

## **What will it cost and how will it be financed?**

### **(A) Revenue Costs**

There are no revenue costs associated with the recommendations at this stage as Stage 1 of the project will be delivered by existing staffing resources.

As detailed in the report, Stage 1 activities will encompass a quantification of the financial costs of implementing gross fees and these will be submitted as part of the report scheduled to be submitted to Cabinet in January 2020, together with a full financial and risk analysis. At this stage it is anticipated that any proposals would be within the services currently approved budget provision, however as part of the evaluation all financial risks will be appraised and proposals made for mitigation where required in addition to a full review of financial business processes and systems.

### **(B) Capital Costs**

There are no capital costs associated with the commencement of the first stage of the project on care home payments, however should the second stage of the project be implemented then future costs may be incurred if changes to I.T. systems are required to reflect revised payment processes. Such costs will be reflected in the subsequent report to be submitted to Cabinet in January 2020.

Costs associated with the capital improvement workstream (please see section 2.3 for further details) will be met via resources within the wider Social Care Capital programme which has been approved by the Sefton Capital Investment Group (SCIG).

## **Implications of the Proposals:**

### **Resource Implications (Financial, IT, Staffing and Assets):**

None at this stage as if approved, then Stage 1 of the project will be conducted by existing staff.

### **Legal Implications:**

Care Act 2014  
Care and Support Statutory Guidance  
The Care and Support and After-care (Choice of Accommodation Regulations) 2014

### **Equality Implications:**

The equality Implications have been identified and mitigated.

## Contribution to the Council's Core Purpose:

<p>Protect the most vulnerable:</p> <p>Residential and Nursing care homes provide valuable care and support services to vulnerable members of the population.</p>
<p>Facilitate confident and resilient communities:</p>
<p>Commission, broker and provide core services:</p> <p>The proposed project encompasses a review of existing commissioning arrangements in order to provide continued support an oversight of this strategically important care sector.</p>
<p>Place – leadership and influencer:</p>
<p>Drivers of change and reform:</p> <p>The proposed project aims to deliver greater oversight of the sector as well as implementing changes to ensure continuous improvement on the quality of services provided.</p>
<p>Facilitate sustainable economic prosperity:</p> <p>The proposed project will seek to ensure that there is greater engagement with the market and more detailed oversight of services to ensure that services remain viable.</p>
<p>Greater income for social investment:</p>
<p>Cleaner Greener</p>

## What consultations have taken place on the proposals and when?

### (A) Internal Consultations

The Head of Corporate Resources (FD5738/19) and the Chief Legal and Democratic Officer (LD4862/19) have been consulted and any comments have been incorporated into the report.

### (B) External Consultations

Consultation has taken place with care home providers as part of wider work such as consultation with respect to fee proposals. If the recommendations are approved then further consultation will take place with providers and other stakeholders.

## Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting.

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## Appendices:

There are no appendices to this report.

## Background Papers:

There are no background papers available for inspection.

### 1. Introduction/Background

- 1.1 Sefton’s current annual expenditure on care home placements within the independent and voluntary sector is in the region of £52m. The sector continues to be strategically important as it provides key services for some of the most vulnerable people in Sefton, as well as being a key employer within the borough.
- 1.2 There are currently 108 registered care homes in Sefton, of which 14 provide specialist services, for example small registered homes for people with complex Learning Disabilities. Of the remaining 94 homes, 71 provide services predominantly for Older People and 23 cater for Older People with Dementia.
- 1.3 Within the 108 care homes, there are in the region of 3,500 bed spaces. Typically, the market operates with a 10% vacancy rate with around 50% of occupied beds being Sefton Council placements. The remaining placements are utilised by a mixture of private clients and placements made by Health and other Local Authorities.
- 1.4 The *Cabinet Member – Adult Social Care* ratified fee rates to be paid to Sefton care homes for the 2019/20 financial year in May 2019, and within this report reference was made to a report being submitted to Cabinet on future work areas relating to the sector, which included;
  - Sefton reviewing current payment and funding arrangements to care homes;
  - Identifying and outlining to Providers the Council’s commissioning intentions;
  - Supporting the market to improve the physical quality of care homes;
  - Quality, Performance and Safeguarding monitoring arrangements;
  - Joint commissioning with Health; and
  - Engagement and joint working with care home providers.

- 1.5 Also included in the fee report was feedback received from care home providers on the proposed fee rates gathered through a consultation exercise and this feedback, together with historical feedback from care home providers has highlighted that improved engagement with the market is required and that the current mechanisms for Sefton making payments to care homes (as detailed in section 3 of this report) should be reviewed. The need to review current mechanisms has also been identified by other Local Authorities within the Liverpool City Region.

## **2. Update on Work Taking Place Relating to the Care Home Sector**

- 2.1 In line with the above, work has taken place to commence the proposals around the sector.

- 2.2 With respect to improving engagement and joint working with the sector, Council officers have commenced discussions with the Chair of a newly established Care Home Forum operated by providers. The forum aims to provide a single voice for the sector and improve standards within it. It is proposed that the Council will support and link into this forum in order to ensure that it is used as a mechanism for;

- Improved engagement with the care home market – for example to afford the Council the opportunity to outline its strategic priorities and future demands; and
- Supporting the market via providing training opportunities and the sharing of good practice in order to drive service quality improvements.

- 2.3 In relation to supporting the market to improve the physical environment of care homes, capital funding has been secured to support this initiative and the next stage being developed is to develop and implement a process for care homes to 'bid' for such funding. This funding would be made available for care homes to make improvements which will improve the experiences of service users, for example by making homes more dementia friendly.

- 2.4 Work is also taking place to review current policies and processes relating to how the Council and its partners (principally Health) monitors care homes with respect to quality, performance and safeguarding issues. This includes the potential to implement a new I.T. system which will be used to quality assess care homes and provide improved real-time data on the care home market.

## **3. The Proposed Project Relating to Care Home Payments**

- 3.1 When a service user is assessed as requiring either a residential or nursing care home placement and the service user has capital and savings below the statutory threshold of £23,250, then the Council is required to pay towards the cost of the care. The amount paid is based on the Council's contracted rates for placements.

- 3.2 Currently, Sefton's current contractual arrangement is to pay providers the local authority contribution only; net of the client's personal financial contribution toward

their assessed care needs and any agreed third-party top-up for additional services. For example;

- The Council's contracted fee rate is £500 per week
- The service user is financially assessed as being able to pay £150 per week towards the cost of their care
- The care home provider states there is a £50 third-party top-up applicable

Then based on the above;

- The Council would pay the care home provider £350 per week
- The service user would pay the provider directly their £150 per week financial contribution
- The third-party would pay the care home provider the £50 per week

Feedback received as part of consultation on fee rates has highlighted that providers consider that the above arrangements are an administrative burden, with costs associated with having to employ staff to manage payment issues and difficult to administer due to factors such as changes to service users client contributions that can occur.

3.3 The Care Act 2014 and subsequent Regulations as well as recent input from the Local Government Ombudsmen (LGO) and other external advice has clarified the legislative requirements on the Local Authority as the commissioner of the care home placement and best practise regarding contractual payment arrangements to care homes.

3.4 Due to the above, many Local Authorities now pay or are considering evaluating paying the full gross cost of the care home placement to the care home provider and then arrange for the service user's contribution to be collected by the Local Authority directly. This ensures the care home provider is not left at risk of "bad debt" accumulating as a result of clients failing to pay their assessed contributions in a timely fashion. An analysis of the regional market has taken place and it has been found that other local authorities have either changed to paying gross or are in the process of doing so.

3.5 It is also viewed that by implementing revised payments arrangements the following benefits could be achieved;

- Greater compliance with the Care Act 2014 guidance and good practice
- Improved relationships with care home providers
- Greater transparency of care home fee levels (principally third-party top-ups) and how they are calculated
- Improved market oversight – regarding fees and charges and what they are for
- Scope to reduce ongoing annual fee increases – to take into account the reduced administration costs providers would incur as they would no longer be required to collect client contributions and third-party top-ups
- Care homes not having visibility of service users finances – thus reducing risk of financial abuse and therefore potential safeguardings

- Self-funders can access Council's purchasing power (as referenced in recent Ombudsman judgements in Blackpool and Plymouth)
- Sefton mirroring arrangements put in place by other local authorities (for example Liverpool and Lancashire)
- Reduced risk of Judicial Review (for example in Devon where cost of challenge was £200k plus)

- 3.6 However, it is important to highlight that any implementation of revised payment arrangements would place additional risks and financial pressures on the Council. By paying gross the Council would face a significant increase in the number of service users being charged directly by the Council for their personal contribution to their care home placement. In turn, levels of Council debt would increase and additional staffing resources would be required to collect income, deal with service user financial enquiries and manage and pursue debts. The Council could also experience cash-flow issues given that gross payments would be made to providers in advance of service user financial contributions being collected. As a result, there will be a need to review existing debt systems and processes to ensure that they are robust and have effective control measures in place to manage and reduce risks.
- 3.7 Care home providers themselves may also face issues with the move to gross payments as self-funding service users who previously arranged their care and funding of such care directly with care home providers may wish for the Council to conduct such arrangements for them in the future, thereby accessing the Council's 'buying power'. This could impact on providers who have historically levied fees on such service users which are higher than Council contracted rates. The project will also explore potential reductions in capital threshold referrals to the Council against any potentially increases to levels of Council debt. For example, if service users access the Council's 'buying power' then they may pay lower care home fees, thus resulting in their savings lasting longer, therefore delaying the period when their savings fall below the statutory threshold of £23,250. Should Stage 2 of the project be approved, then a key element of the work conducted will be to explore these issues further.
- 3.8 In addition, for nursing care home placements made in Sefton, the Council also pays providers the Funded Nursing Care (FNC) element on behalf of the applicable local Clinical Commissioning Group (CCG). In recent years this has placed an administrative burden on the Council, primarily with respect to the Council obtaining the correct and full financial re-imburement from the CCG's for such payments. At this present time, the Council still has queries outstanding regarding payments for previous financial years.
- 3.9 As a result of all of the above factors it is proposed that a project is commenced to review the way in which the Council makes payments to care homes. A project plan has been devised which encompasses the project being split into the following two stages;

## **Stage 1 – September to December 2019**

Initial phase to establish a project team which will;

- Further quantification of the potential financial impacts on the Council
- Formulate proposals around how the Council would consult and engage with care home providers regarding any proposed changes
- Research activities – for example how other local authorities have implemented the proposed changes, changed debt management processes and managed risks
- Establish a preliminary project team

## **Stage 2 – January 2020 to March 2021**

- Submission of report to Cabinet detailing outcomes of Stage 1 activities and to potentially seek a decision on the implementation of revised payment arrangements
- If Cabinet approval is given to implement revised arrangements then the following will then take place;
  - Establishment of dedicated project team – including ringfenced project team staff
  - Commencement of consultation / engagement with care home Providers
  - Testing and implementation of required I.T. changes
  - Formulation of revised policies and procedures
  - Review of existing contractual arrangements in place with providers
  - Joint working with Health regarding changes to FNC payments

## **4. Conclusion / Recommendations**

- 4.1 Residential and nursing care remains a strategically important sector delivering valuable services to vulnerable people. Work is taking place on the sector in order to better engage with the provider market and to ensure that the Council has greater oversight of the market, particularly with respect to the quality of services being provided.
- 4.2 Cabinet is asked to note the ongoing work taking place around the sector and to approve the recommendations on further proposed work.