

**From:** Andrew Ireland – Corporate Director Social Care, Health and Wellbeing

**To:** Graham Gibbens, Cabinet Member for Adult Social Care and Public Health

**Decision No:** 15/00089

**Subject:** **PROVISIONAL GUIDE PRICES FOR OLDER PERSONS' RESIDENTIAL AND NURSING CARE HOMES**

**Classification:** Unrestricted

**Past Pathway of Paper:** Social Care Health and Wellbeing DMT - 21 October 2015

**Future Pathway of Paper:** Cabinet Member decision

**Electoral Division:** All

**Summary:** To seek approval on the level of the provisional Guide Prices for the Older Persons' residential and nursing care home contracts. These provisional Guide Prices have been set following analysis of the cost models used to inform the 2014 Guide Prices and analysis of the market and placement activity through the placement process introduced with the Dynamic Purchasing System.

The provisional Guide Prices do not reflect the impact of the National Living Wage due to be implemented from 1 April 2016 and further work will need to take place to establish the impact and the revised Guide Prices. The tender for the new contract will need to accept provisional prices on that basis.

A key decision is required which will inform the tender process. The decision is provisional pending approval of the County Council's budget in February 2016. A further decision will be required in February 2016 for contract award.

**Recommendation(s):**

The Cabinet Member for Adult Social Care and Public Health is asked to:

- a) **APPROVE** the provisional Guide Prices as set out in Appendix One and to note that a further key decision is required in February 2016 for the final Guide Prices following County Council confirmation of the 2016/17 budget and subsequent contract award.
- b) **AGREE** the Corporate Director for Social Care, Health and Wellbeing or other nominated officer undertake the necessary actions to implement the decision.

**1. Introduction**

- 1.1 Through 2014, the 12 year old residential and nursing care home contracts were re-let using a three stage procurement mechanism which reviewed care home costs

through the establishment of a Kent cost model. This enabled the Council to re-set the Guide Prices for residential, residential high and nursing care based on the data received from the market. The contracts commenced on 13 October 2014 and will expire at the end of March 2016. The reason for the short term contract was to make sure there was sufficient understanding of the market, learn any lessons from a new contracting model and to prepare for the impact of the changes brought in by the Care Act 2014.

- 1.2 The contract covers approximately £100m of spend on older person's care home provision. The resource required to establish a contract with a suitable contractual term is substantial and will include representation from all areas of KCC, led by Strategic Commissioning in Social Care Health and Wellbeing.
- 1.3 The implications relating to price impacted by the Care Act 2014 phase two were due to be known officially in October 2015. However, The Minister for Care and Support announced on 17 July 2015 that this part of the Act will be deferred until 2020. This has changed the nature of the level of work planned for the contract however, there is still significant work to do to shape a contract that will have a longer term.

## 2. Background

- 2.1 Kent County Council's formal procurement activity for older person's residential and nursing care homes includes a tender in 2002 and a tender in 2014. The 2002 tender used a set of Guide Prices that were established looking at the cost of care, supply and need. In 2014, The Guide Prices were fundamentally reviewed using a cost model which used both the data supplied by providers and some professional judgements.
- 2.2 In order to comply with Local Authority Circular (2004) 20 (now replaced by the Care Act 2014) and the contractual terms and conditions, the Council had to consider annually how the cost of providing older person's residential and nursing care fluctuated and conducted an appropriate fee review each financial year. The table below shows the Guide Prices payable each year since 2004/05 in respect of the various categories of care:

OLDER PERSONS' RESIDENTIAL					
Year	Fee Increase for Existing Clients	Guide/Usual Price			
		Residential (Area 1)	Residential (Area 2)	EMI (Area 1)	EMI (Area 2)
2013/14	1%	£336.93	£351.29	£404.44	£440.30
2012/13	1%	£333.00	£348.01	£400.44	£436.00
2011/12	0.5%	£330.29	£344.56	£396.48	£431.62
2010/11	0%	£328.65	£342.85	£396.48	£431.62
2009/10	2.5%	£328.65	£342.85	£396.48	£431.62
2008/09	2.5%	£320.63	£334.49	£386.61	£421.09
2007/08	£9.56	£312.81	£326.33	£377.38	£410.82
2006/07	2.5%	£303.25	£316.77	£367.82	£401.26
2005/06	3%	£295.85	£309.04	£358.85	£391.47
2004/05	2.5%	£287.23	£300.04	£348.40	£380.07

<b>OLDER PERSONS' NURSING</b>			
<b>Year</b>	<b>Fee Increase for Existing Clients</b>	<b>Guide/Usual Price</b>	
		<b>Nursing Area 1</b>	<b>Nursing Area2</b>
2013/14	1%	429.26	480.22
2012/13	1%	425.01	475.47
2011/12	0%	420.80	470.76
2010/11	0%	420.80	470.76
2009/10	2.5%	420.80	470.76
2008/09	3.53%	410.54	459.28
2007/08	2.47%	396.54	445.28
2006/07	2.5%	386.98	435.72
2005/06	3%	377.54	410.16
2004/05	2.5%	366.54	398.21

- 2.3 In preparation for the 2013/14 fee review the Council undertook formal consultation with the Kent market, supported by the Trade Associations, to investigate how the cost of older persons' residential and nursing care had altered throughout the course of 2012/13. The consultation did not receive a large response, many providers being unwilling to share information about their costs. Re-tendering the contract in 2014 gave the Council the ability to request accounts as part of the tender exercise and completion of the cost model was a prerequisite to joining the new contractual framework and to clarify providers' costs and income. This information enabled the Council to carry out a full cost analysis in order to ensure compliance with the Local Authority Circular (2004) 20 and minimise the prospects of successful legal action against the Council.
- 2.4 Responses were received from approximately 60% of the Kent market for the 2014 tender. The high level of responses provided confidence that the data received gave an adequate picture of the sector for the analysis on which the 2014 Guide Prices were calculated.
- 2.5 The establishment of the Guide Prices in July 2014 received a lot of negative feedback from a high number of residential and nursing care providers. The Guide Prices were set using the information that providers submitted in the cost model and the decision was taken not to account for providers operating with an inefficient business model and then applied a number of professional judgments to make sure that due regard was given to the fair cost of care.
- 2.6 The outcome of the analysis demonstrated that there was no difference to the cost of delivering care across the County and showed that KCC was paying less than it should for residential, more than the average costs for dementia residential and less than the average for nursing. What does vary is the level of supply and that is why East Kent Guide Prices have always been lower than West as there is far greater supply of some services. The following table shows the outcome of the initial analysis to confirm the average prices.

<b>AVERAGE ACTUAL COST OF CARE PROVISION</b>			
	<b>2013 Guide Price</b>	<b>Actual Average Cost of Care</b>	<b>Difference</b>
Area 1 Resi	336.93	352.18	4.53%
Area 2 Resi	351.49	352.18	0.20%
Area 1 EMI	404.44	397.46	-1.76%
Area 2 EMI	440.30	397.46	-10.78%

Area 1 Nursing	429.26	505.27	17.71%
Area 2 Nursing	480.22	505.27	5.22%

- 2.7 The following table shows the agreed Guide Prices that took effect from 6 October 2014 and the agreement was that for those providers that joined the new contract and where their prices were below the new Guide Prices, their prices would increase to the new level. KCC did not reduce the costs of dementia residential in light of the findings of the analysis.

AGREED GUIDE PRICE FOR CARE PROVISION				
AREA	CURRENT GUIDE PRICE	Actual Average Cost of Care	OCT 2014 GUIDE PRICE	DIFFERENCE
Area 1 and 2	336.93	352.18	352.18	4.53%
Resi	351.49	352.18		0.20%
Area 1 EMI	404.44	397.46	408.48	1.00%
Area 2 EMI	440.30	397.46	440.30	0.00%
Area 1 Nursing	429.26	505.27	450.72	5.00%
Area 2 Nursing	480.22	505.27	487.42	1.50%

- 2.8 At the Adult Social Care and Public Health Cabinet Committee on 11 July 2014, the Older Persons' contract and establishment of 2014 Guide Prices was discussed. The report contained an exempt appendix which had all of the analysis that had taken place and this was published publically following the decision by the Cabinet Member. This can be found at <https://democracy.kent.gov.uk/ieDecisionDetails.aspx?ID=648>.
- 2.9 A commitment was given at the point of this decision that, over a three year period, KCC would work towards a) removing the area pricing so that the whole of Kent would have the same cost (and parallel work with the Accommodation Strategy would address over supply issues) and b) to move to a more sustainable position for nursing care.

### 3. Establishing the provisional Guide Prices for April 2016

- 3.1 The Accommodation Commissioning Group that oversees the tender within Social Care Health and Wellbeing agreed that the level of information collected via a cost model was not required for the new tender as part of setting the Guide Prices. This is because the level of understanding through the placements and needs of individuals is a lot more transparent with the establishment of the Central Purchasing Team to manage the placements. Completion of the cost model received a lot of negative feedback from providers regarding the length of time it took to complete the model.
- 3.2 In line with the market behaviour and level of need of individuals requiring services, and the Adult Transformation Programme to have less reliance on long term care placements, there is a need to introduce a fourth category for the Guide Prices; nursing high. This is to distinguish between those individuals with nursing care needs and those with nursing dementia needs (amongst other high and complex needs). The dependency level for nursing high is currently being determined and requires input from providers of care and case management. This will form part of the tender documentation.

- 3.3 Analysis of the market behaviour has included the responses to the placement offers through the Kent Business Portal (KBP) and the final agreed costs of placement based on an individual's need. Additionally, analysis has been undertaken looking at the rate of responses and the balance of the availability of accommodation versus choice. Put simply, this is whether a third party top up is required or not and where KCC waives a top up due to the financial circumstances of the third party.
- 3.4 In October 2014, 178 providers joined the new contract. As at 15 September 2015, a further 28 have joined the contract. The advert for this opportunity is re-published once a month to over 1300 interested suppliers that have registered on the KBP.
- 3.5 The design of the contract was to introduce an indicative (not to exceed) price that would be the maximum price to do business with the Council. When the contract was first let, 29% of providers submitted this price at the published Guide Prices for their area and category.

Service	% of Providers at Guide Price	% of Providers 10% Greater than Guide Price	% of Providers 50% Greater than Guide Price
Medium Needs	29	59	7
High Needs	28	63	3
Nursing Needs	43	30	8

- 3.6 Initially, there was an allowance for providers to review their indicative price in June 2015 assuming they had completed their KPI returns however, following feedback from providers in February 2015, the process was changed so that providers could review their prices at various stages through the contract. This was as follows:

Providers who joined the DPS	KPI Data Period	Review Period	Change Implementation Date
October, November, December 2014	January, February, March 2015	April 2015	May 2015
January, February, March 2015	April, May, June 2015	July 2015	August 2015
April, May, June 2015	July, August, September	October 2015	November 2015
July, August, September 2015	October, November, December 2015	January 2016	February 2016

- 3.7 The following shows how providers have adjusted their prices:

Implementation Date	Requests	Eligible	% Increased Price	% Decreased Price	% No Change
May 2015	33	6	17	83	0
August 2015	153	111	15	5	80

- 3.8 The majority of Providers wished to reduce their Indicative price nearer to Guide Price in order to increase the chances of being selected on the ranking sheet. However in some cases Providers decided to increase their Indicative price due to the implication of former self funders and deferred payments. The new contract will need to ensure these areas are much more transparent and the Residential Charging and Placement Policy more closely referenced.

- 3.9 The design of the pricing schedule was to encourage providers to assess individuals and price to meet their needs. This would mean that the market would decide what, effectively, was the new Guide Price based on an individual's choice under the Availability of Accommodation section of the Care Act 2014.

#### **4. Transformation and Strategic Intent**

- 4.1 Kent's Accommodation Strategy launched in July 2014 sets the direction of travel in relation to future commissioning along with the Homecare Strategy, the vision for enablement, prevention and the Adult Transformation Programme focusing on acute demand. The CCG's are also investing in community services which will have an impact on the future level of demand for care home placements. This does mean that those requiring care in future will have greater level of need and care homes are required to respond to the needs as well as demand. KCC has to align all transformational activity with a distinct recognition on the price of purchasing care. The activity that has happened and is required in this area includes:

- Focused work on the model of care and commissioning activity for extra care housing including an operational focus to redirect people that previously would have ended up in a care home and developing a marketing strategy
- Forecasting work on the demand making sure that any reduction in need is balanced with the increase in population and requirement of particular types of care
- Workforce strategy to make sure the recruitment and retention of care staff and nursing staff is reflected in the services that need to be commissioned
- Price profiling against need and market drivers – the 2014-2016 contract was designed to set the guide price and see how the market prices against the needs of individuals, this has provided greater transparency for the establishment of Guide Prices for April 2016 and how the assumptions will be used for third party top ups where people choose more expensive services, confirming the amount that the Local Authority would usually contribute to the cost of a placement
- Reviewing how quality assurance is incorporated into both contract monitoring and the wider role of safeguarding all of Kent's vulnerable adults

#### **5. Policy Implications**

- 5.1 By implementing a higher Guide Price, some individuals will no longer be required to pay a top up and some will reduce. This requires detailed work from the Income and Assessment Team and a communication will be required to individuals and their relatives on the impact of these changes, following final confirmation of the Guide Prices for 2016.

#### **6. Financial Implications**

- 6.1 The provisional Guide Prices, as detailed in Appendix One and the table below, do not include the impact of the introduction of the National Living Wage. Further work would be required at the point the settlement is known and the tendered prices from providers may need to be adjusted in order to take this into account. There is a risk that providers will not trust that the prices will be adjusted in light of the announcement and may not tender, therefore it is important that the Pricing

Schedule clearly articulates the process and formula for this process so that it is hard wired into the contract,

6.2 The work undertaken to set the provisional Guide Prices for April 2016 has been on the basis that:

- any individual **below** the new provisional Guide Price will be increased to the new Guide Price for the placement category so long as the provider joins the DPS and accepts the contracts terms and conditions
- all contract prices for existing clients that are above the provisional Guide Prices will not receive a corresponding increase but will need adjustment for the impact of the National Living Wage
- the provisional Guide Prices will be increased once the settlement relating to the National Living Wage is known and allocated

6.3 The Registered Nursing Care Contribution funded to Nursing Homes for the nursing element of the service is under review by the NHS. The rates at Appendix One are for the Social Care contribution only

6.4 As stated, for the 2014 Guide Price setting, there continued to be two area prices which have now been set as one Kent price for each need category in accordance with the commitment given by the Cabinet Member in 2014. The Provisional Guide Prices for decision are proposed to change as follows:

	Guide Price 2014	*Provisional Guide Price 2016	% increase
	£	£	%
Residential (All Areas)	352.18	367.99	4%
Residential High Area 1	408.48	448.72	10%
Residential High Area 2	440.30	448.72	2%
Nursing Medium Area 1	450.72	497.81	10%
Nursing Medium Area 2	487.42	497.81	2%
Nursing High Area 1	450.72	523.01	16%
Nursing High Area 2	487.42	523.01	7%

*\*These do not include the NLW impact from 1 April 2016*

6.5 The impact of increasing the Guide Prices, and the subsequent impact on client charges, shows that this would cost an additional £3.8m to fund this increase. This has been factored into the very challenging discussions regarding the 2016/17 budget of which there has been considerable pressure to seek reductions to this.

## 7. Legal Implications

7.1 There is a risk that providers may challenge the rates as set out in the provisional Guide Prices at Appendix One and above. This process commenced from information provided in 2014 and analysis of the market prices has been undertaken from October 2014. The design of the contract is for providers to price against need and therefore it was much clearer to identify issues of the availability of accommodation and also choice. Officers are confident that due process has been undertaken in establishing the Guide Prices as this is a real and true reflection of market behaviour.

- 7.2 Although the Council has set a provisional Guide Price, the design of the contract is for the market to set an indicative (not to exceed) price when joining. Underlying sustainability of the social care market for older people is a key factor when analysing the costs of care. Price adjustments caused by the implementation of the Living Wage will need to be mechanised within the contract to ensure providers do not price based on risk of future increases, nor are unfairly penalised, by having to adhere to mandatory policy changes.

## **8. Personnel and Training Implications**

- 8.1 The provisional Guide Prices will be available, however they will become formally approved Guide Prices after the impact of the settlement in relation to the National Living Wage (as confirmed by the Government as part of the Comprehensive Spending Review) and also once KCC has approved the budget for 2016 in February 2016. Once formally approved they will be published and issued to the Operational teams, Finance colleagues and the Central Purchasing Teams.
- 8.2 There is planned activity in relation to training on the new contract and how to make placements against the new contract and the roll out of the new Guide Prices will form part of that.

## **9. Equality Impact Assessment**

- 9.1 An Equality Impact Assessment has been undertaken for the implementation of the new provisional Guide Prices and is attached as Appendix Two.

## **10. Cabinet Committee Input**

- 10.1 The item was discussed at the Adult Social Care and Health Cabinet Committee on 11 September 2015.
- 10.2 Officers introduced the report and explained the changes which were being proposed to the contract and the context for those changes and responded to comments and questions from Members, as follows:-
- a) the decision would be taken in two stages; the guide price would be determined in November and the contract awarded in February. Demand and price would need to be balanced, and this would take much analysis; and
  - b) a forecast of the impact of the changes would be that fewer people would require a residential or nursing placement but those who did would have a greater dependency.
- 10.3 The Cabinet Member, Mr G K Gibbens, assured Members that, although he would be taking the first decision (about guide price) before the committee next met in early December, all Members would have an opportunity to see and comment on the proposed decision, as part of the County Council's usual decision-making process. He urged all Members to take the opportunity to read the proposed decision paperwork when it was published and sent to them.
- 10.4 The Committee resolved that the work on this issue to date be endorsed and continue to the decision stage, as set out in the report considered on 11 September.

## 11. Recommendations

11.1 The Cabinet Member for Adult Social Care and Public Health is asked to:

- a) **APPROVE** the provisional Guide Prices as set out in Appendix One and to note that a further key decision is required in February 2016 for the final Guide Prices following County Council confirmation of the 2016/17 budget and subsequent contract award.
- b) **AGREE** The Corporate Director for Social Care, Health and Wellbeing or other nominated officer undertake the necessary actions to implement the decision.

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# Appendix One

## Kent County Council Guide Prices Provisional – 2016/17

RESIDENTIAL MEDIUM	RESIDENTIAL HIGH	NURSING MEDIUM	NURSING HIGH
£367.99	£448.72	£497.81  Free Nursing Care Contribution (FNC) FNC + GUIDE PRICE = TOTAL £112.00 + 497.81  <b>Clinical Commissioning Groups (CCGs) are responsible for paying invoices covering the funded nursing element for individuals</b>	£523.01  Free Nursing Care Contribution (FNC) FNC + GUIDE PRICE = TOTAL £112.00 + 523.01  <b>Clinical Commissioning Groups (CCGs) are responsible for paying invoices covering the funded nursing element for individuals</b>

Under Review