



## Report of the Cabinet Member for Care Services

### Adult Services Scrutiny Performance Panel– 10 September 2024

#### Briefing on Residential Care

<b>Purpose</b>	To provide a Residential Care briefing requested by the Scrutiny Panel, relating to both internally provided and externally commissioned residential care.
<b>Content</b>	This report includes a summary of how services are procured and quality monitored, and how costs are assessed and monitored for financial viability.
<b>Councillors are being asked to</b>	Exercise their scrutiny function in consideration of the report.
<b>Lead Councillor(s)</b>	Louise Gibbard - Cabinet Member for Care Services
<b>Lead Officer(s)</b>	Amy Hawkins - Head of Adult Services and Tackling Poverty
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## **1. INTRODUCTION**

- 1.1 For older people (aged 65+) there are 5 care homes owned and operated by the local authority which are registered to provide personal care, offering short term support from both the community and hospital, long-term care, respite, reablement, assessment and a place of safety. These Local Authority owned homes provide 156 beds. There are 36 private sector homes, 14 of which are registered to provide personal care and 22 of which are dual registered to provide both personal and nursing care. Four of these dual registered homes are registered to provide dementia nursing care. The externally commissioned homes offer 1549 beds.

## **2. RIGHT TO CHOICE OF ACCOMMODATION**

- 2.1 The authority's legal duty is to make arrangements for placing a person assessed as "in need" in care home accommodation of their preferred choice, subject to certain conditions. This duty originates from s35 (Duty to meet care and support needs of an adult) and s57 of the Social Services and Well-being (Wales) Act (2014), Statutory Code of Practice and associated Regulations, namely the Care and Support (Choice of Accommodation) Regulations 2015".
- 2.2 The statutory right for citizens to choose their preferred care home has an impact on the way care home services are procured. Competitive tender arrangements are generally not the most effective way of securing these services. These types of processes potentially undermine choice and theoretically could lead to de-commissioning of services at the end of contract periods, or at the point of re-tender. This could be detrimental to residents.
- 2.3 To maximise choice for citizens and avoid problems with needing to terminate contracts, de-commission services and re-locate vulnerable adults, contracts are awarded directly to care homes selected by citizens. A contract application process is followed where due diligence is carried out to ensure each home is operating lawfully and providing satisfactory services prior to contract award. Each Provider must agree to accept the rate paid by the Council. The Council's Contract Procedure Rules have provisions exempting these services from competitive tender processes.

## **3. DUTIES RELATING TO QUALITY AND COST**

- 3.1 General legal duties relating to commissioning of services arise under The National Framework for the Commissioning of Care and Support in Wales Code of Practice. This is statutory guidance issued under s169 of the Social Services and Wellbeing Act (Wales) 2014. The standards apply to both directly provided and externally commissioned services and take effect from September 2024.
- 3.2 Commissioning guidance describes how contract monitoring enables the gathering of data and evidence, which indicates to what extent commissioning intentions, quality and outcomes are being delivered, including monitoring that services are being delivered ethically and are sustainable.
- 3.3 Monitoring against contractual standards is based on the following principles:
- Monitoring is proportionate and relevant.
  - Providers of services accept responsibility for assuring quality.
  - Duplication with other services and agencies is avoided where possible by using and sharing information with partners such as CIW and Swansea Bay HB.

- Monitoring and contract management is informed by information gathered from a wide range of sources including:
  - Safeguarding Information
  - Care Management Reviews
  - Swansea Bay Nurse Assessor Reviews
  - CIW inspections
  - Corporate Complaints
  - Feedback from Residents and their families
  - Feedback from other Local Authorities and commissioning bodies

3.4 In practical terms, this will involve gathering and reviewing monitoring information on each provider throughout the year. Where performance issues arise, the provider will be required to address any quality or contract compliance issues within a specific timescale. In most cases performance issues are resolved by agreeing clear actions and timeframes without need to resort to more formal contract compliance measures.

3.5 Contract monitoring ensures issues which present risk to residents or to continuity of services can be assessed and prioritised and allows development of strategic solutions in response to thematic concerns.

#### **4. OTHER QUALITY ASSURANCE PROCESSES**

##### Care Management Reviews

4.1 Social Work staff will undertake an annual review of care provided to funded residents to ensure their social care needs are met. Any concerns about care received or provider performance will be addressed directly with the Provider and, for external care homes, will be referred to the contracting team for contract monitoring and contract management purposes. For in-house care homes this will be addressed with the Residential Manager and Responsible Individual for that service, and if necessary escalated to the Principal Officer (PO).

4.2 Swansea Bay Health Board nurse assessors undertake an annual review at each dual registered home to ensure that nursing needs of all Funded Nursing Care (FNC) residents are met. Concerns about nursing care will be shared with contract leads and addressed in the same way.

##### Safeguarding Referrals

4.3 All safeguarding referrals for private sector homes are shared with the Council Contracting Team, to enable follow up contract monitoring and contract management action where necessary. For in-house care homes, information is shared with the manager, Responsible Individual and PO and monitored via the Adult Services Quality Assurance and Performance group. Referral data is monitored for patterns and trends. Thematic data is shared with the care homes sector for learning and improvement purposes.

##### Complaints

4.4 In the first instance, residents are invited to raise complaints directly with their care home provider. If the resident is not satisfied with the Provider's response or wishes to complain directly to the council, they may invoke the Social Services complaints procedure, and also the CIW complaints procedure.

- 4.5 In 2023-24 6 complaints about residential services were received. These were resolved via the stage 1 complaints process.
- 4.6 For in-house care homes in 2023-24, 4 complaints were received, 2 upheld, 1 not upheld and 1 is ongoing.

#### CIW Inspections

- 4.7 All care home settings are subject to inspection and regulation by the Care Inspectorate for Wales (CIW). An evaluation of published inspection reports for inspections at private sector homes occurring during 2023-24 highlights the following:
- 23 out of 36 older persons care homes had an inspection.
  - 1 care home received a notice for being in breach of care homes regulations and 1 good practice recommendation.
  - 13 care homes didn't receive either a non-compliance notice or a good practice recommendation.
  - Good practice issues alone were raised at 9 homes.
- 4.8 The 1 care home where compliance issues were raised was not fully compliant in the following areas:
- Reg 35 standards relating to staff records
  - Reg 36 standards relating to training and supervision of staff
  - Reg 44 standards relating to physical environment
- 4.9 All areas of non-compliance and any good practice recommendations made by CIW have been addressed with each provider to ensure that appropriate actions have been taken.
- 4.10 With in-house care homes, three homes had an inspection in 2023-24:
- 2 care homes had no non-compliance notices and no good practice recommendations.
  - 1 care home had one good practice recommendation.

#### Creation of a Regional Quality Framework (RQF) for Older People Care Homes

- 4.11 A regional quality framework has been developed by the West Glamorgan partnership. The framework creates a clear set of expectations which focus on quality of life for residents and encourages continuous improvement of services.
- 4.12 The overall objectives of the RQF are:
- To monitor and support providers so that they may achieve the best quality of life in care homes in a way that improves outcomes for individuals and follows the principles of person/ relationship centred care.
  - Monitor quality of service in care homes in a robust and consistent manner.
  - Make judgements about the quality of care and outcomes for people living in care homes.
  - Provide a basis for partnership between care home providers and local authority/ health board commissioners to work together to improve quality.
  - Help individuals make informed choices between providers and provide information to professionals and agencies about the quality of care and support being provided.

- 4.13 The RQF was revised in 2023 to compliment the areas for assessment used by Care Inspectorate Wales within their inspection regime. Further work will be undertaken to ensure the framework is compatible with new statutory commissioning guidance.
- 4.14 The framework has three domains, Leadership and Management, Care and Support and Environment. Auditing against these areas is undertaken by the Local Authority's Contracting Team for residential homes with support from Swansea Bay University Health Board's long term care team.
- 4.15 There is a Quality Framework for the Adult in-house services that includes Older People's Residential Services. This uses CIW regulatory reporting mechanisms, Quality Observation visits and engagement activity and compliance audits, using a co-production, person centred, outcomes approach.

## **5. COSTS AND FEES AT PRIVATE SECTOR HOMES**

- 5.1 The principle that local authorities should understand the cost of commissioned services and set fee rates to ensure they are sustainable is long established. The following extracts from Standards 7 and 8 of the National Framework for the Commissioning of Care and Support in Wales frame these duties in the following terms:
- 5.2 Standard 7: Statutory partners must demonstrate that they understand the full costs of directly provided and contracted care in their area. Statutory partners and providers must work collaboratively to understand fair and sustainable costs of delivering care to inform decisions relating to fee setting and there must be a consistent and transparent approach to fee setting processes.
- 5.3 Standard 8: Statutory partners should use local, regional and/or national cost methodologies or benchmarks to determine a fair and sustainable price for quality care and support...Statutory partners must be transparent and consistent when setting fee rates ensuring that they are assessing fair and sustainable costs of care and support and ensuring public value. Statutory partners must confirm their fee rates to providers in a timely manner before the start of each financial year. Methodologies should take account of factors such as geography, organisational context, care and labour market conditions and fair work policy (pay, terms and conditions and progression frameworks). Contractual uplift mechanisms must include appropriate inflation mechanisms to keep pace with rising costs. Establishing consistent methodologies and benchmarks, should not detract from local democracy and local decision-making on price determination. Commissioners should take account of the impact of their commissioning and procurement activity on the sufficiency of care and support and on market stability.
- 5.4 The financial collapse of Southern Cross in 2012/13 highlighted the potential for larger corporate providers to operate higher risk business models that risk service failure and potentially undermine the stability of the market. However, the position locally is that the largest proportion of care homes are owned by small businesses that operate exclusively in Swansea. This type of ownership is not characterised by the same private equity backed investment model and presents a lower risk. There are however financial risks associated with care home services.
- 5.5 In 2012, following the failure of Southern Cross and prompted by the introduction of new commissioning guidance, and the judgements in a number of legal challenges across the UK, the authority gave providers a commitment to

establish fee rates which were based on a more informed understanding of provider costs.

- 5.6 A programme of work was undertaken in partnership with care home operators to develop a costs analysis tool. This invites Providers to share detailed information about their operating costs which is used to set fee rates at levels sufficient to sustain the sector. This work has resulted in a basic fee rate and created additional enhanced rates for people with nursing needs and for people with dementia nursing needs. These enhanced rates reflect the additional social care costs for people with more complex needs.
- 5.7 Occupancy levels are a significant factor in maintaining care home solvency. The care home market in Swansea typically maintains high levels of occupancy. Current average occupancy rates are 93%.
- 5.8 Providers accept that undertaking a detailed analysis of costs each year would be onerous. The authority has given a commitment to repeating the detailed analyses of costs at three yearly intervals. During the interim periods between the detailed costs analysis work, an annual costs review is undertaken to consider the need for uplift. This examines the impact of general cost pressures such as minimum wage adjustments, inflation and other relevant factors. The local authority will use this information to inform fee setting taking into account the full range of demands on the Council, our wider legal obligations to meet the needs of our population, and the resources at the Council's disposal.
- 5.9 Whilst it is impossible to set fee rates that guarantee the financial stability of the whole sector, the authority's approach to costs analysis and fee setting has been successful. Since 2012 there have been no care home closures occurring as a result of financial failure.

## **6. ADDITIONAL COSTS (KNOWN AS THIRD-PARTY CHARGES)**

- 6.1 Some private care homes charge more than the fees paid by Social Services. The fees paid by Social Services are referred to as the "usual costs". In certain circumstances the difference between the usual costs and the care home charges may be paid by a third party. These charges are referred to as "Additional Payments" within the regulations but are colloquially known as "Third Party Payments" or "Top Up fees".
- 6.2 The guiding principle under the regulations, is that people eligible for social services funding must not be *asked* to pay an additional amount towards the cost of meeting their assessed needs. However, a person may *choose* a care home that is more expensive than a local authority would usually pay (to enable freedom to choose any home within the marketplace), or to receive services or facilities that do not form part of their assessed needs. In such cases Social Services must arrange for the person to be placed in their chosen accommodation provided a third party, or in certain circumstances the person in need of accommodation, is willing and able to meet the additional cost.
- 6.3 The most recent audit of private sector top-up arrangements undertaken in 2023 confirmed the following:
  - 81% of funded residential placements attracted a third party top up. Costs ranged between £10 - £234 per week.

- 61% of funded nursing placements attracted a third party top up. Costs ranged between £5 and £30 per week.
- 85% of funded dementia nursing placements attracted a third party top up. Costs ranged between £6 and £125 per week.

## 7. COSTS AND FEES

### Legal Framework

- 7.1 Under the Social Services and Well-being (Wales) Act 2014 (SSWB Act), a local authority can only charge:
- up to the cost of providing the service
  - what the person can afford.
- 7.2 Under the Social Services and Well-being (Wales) Act 2014, the Care and Support (Charging) (Wales) Regulations 2015 (as amended) and revised Part 4 and 5 Code of Practice (Charging and Financial Assessment) issued by the Welsh Government together set out the requirements that local authorities must follow when determining whether to charge for care and support services and also when assessing the client's contribution towards those costs. Local Authorities must ensure people are not charged more than it is reasonably practicable for them to pay for their services and must not be charged more than the cost to the authority of providing or arranging the care and support they are receiving or which they are to obtain themselves through direct payments.
- 7.3 Swansea Council's policy follows the Welsh Government regulations and guidance by ensuring that implements a single 'charging policy', which complies with the requirements of the Social Services and Wellbeing (Wales) Act 2014.
- 7.6 Under the Act, each local authority has the discretion to impose a charge, or set a contribution towards the costs of social care, or a reimbursement for direct payments. When doing so, the Authority must follow the requirements set out in the Act, Regulations and Statutory Code of Practice. In imposing these charges a local authority cannot charge certain persons (exemptions) or for certain forms of care and support, and must apply certain financial 'limiters' to ensure the person is reasonably able to meet a charge, whilst retaining a certain amount of their income to meet daily living costs. These 'limiters' or rules vary depending on whether the person is receiving residential or non-residential care and support, for example:
- i. A person is required to pay no more than a set weekly maximum amount for non-residential care and support.
  - ii. A person is able to retain a certain amount of their capital assets which cannot be used towards care and support costs.
  - iii. A local authority is required to provide a statement of a charge, reimbursement or contribution agreed and for this to be revised as necessary.
  - iv. A local authority can, in some circumstances, apply a flat rate charge for preventative services and 'assistance'.
- Care and Support may include one or more of a range of services, including:
- i. Assistance (Part 2, of The Act: Information, Advice and Assistance)
  - ii. Re-ablement - improving daily living skills following a stay in hospital or period of illness
  - iii. Non-residential Care (Home Care/ Domiciliary Care)

- iv. Residential Respite Care
  - v. Day Care, whether the person attends a day centre or other day-time activities
  - vi. Flexible Support/ Family Support
- 7.7 Swansea Council 's approach to charging is that it should support corporate strategic priorities, to be sustainable in the longer-term, and that charging arrangements are applied equally e.g. all clients, with broadly the same assessed need for care and support, are treated equally, and therefore the same charges should apply subject to a financial assessment.
- 7.8 Swansea's charging policy ensures that the Authority's discretionary powers under the Act are applied fairly, and that all charging practices, such as undertaking a *financial assessment* or agreeing a *statement of charges*, are always aimed at reducing any discrepancies or anomalies for each individual's care and support.

#### Charging for Long Term Residential Care

- 7.9 When a decision is taken to charge for residential care, as with all charging, a financial assessment is then undertaken. The Authority aims to support the person to identify options of how best to pay any charge. Where a decision is taken that a person has **long term** care and support needs which are best met within residential care, then property is taken into account within the financial assessment. The main examples of capital considered are the value of property and savings a person holds.
- 7.10 A person's financial circumstances may lead to the offer of a deferred payment agreement (DPA) against the value of a property taken into account within the financial assessment. Deferred Payments are described in more detail in Annex D of the statutory Code of Practice.
- 7.11 The Act states that a local authority **must** ensure that the person has a genuine choice and must ensure that more than one option is available within its usual commissioning rate (standard rate) for a care home of the type a person has been assessed as requiring. However, a person **must** also be able to choose alternative options, including a more expensive home.
- 7.12 Where a home costs a local authority more than it would usually pay, a person **must** be able to be placed there if certain conditions are met and where a third party (or in certain circumstances the resident) is willing and able to pay the additional cost.
- 7.13 However, an additional cost payment **must** always be optional and never as a result of a shortfall in the funding a local authority is providing to a care home to meet a person's assessed care needs. Local authorities must follow the Care and Support (Choice of Accommodation) (Wales) Regulations 2015.
- 7.14 Any changes to charges are considered as part of an annual review of charges. Commissioning (standard) rate is also subject to annual review, as with all charges.
- 7.15 Respite Care is generally up to 8 weeks only, and in practice is likely to be 1, 2 or in exceptions 3 or 4 weeks. People are subject to the maximum weekly charge, for respite placements, with a financial assessment.



- 7.16 Where a person is a short-term respite resident in a care home the local authority must undertake any financial assessment of a person's means as if the person were receiving non-residential care and support, or receiving direct payments for non-residential care and support.
- 7.17 Temporary residential placements are those where the stay is for up to 52 weeks (or in exceptional circumstances is unlikely to substantially exceed 52 weeks) and therefore fees should be charged at the residential rate with a financial assessment.
- 7.18 Historically, internal services fees were higher than their external equivalent. Over the past four years the fees paid to external services were increased to the current position. The need to react to post pandemic/inflationary pressures has meant that some years saw significant increases in the fee rate. Charges to residents matched these increases.
- 7.19 In the same period, the cost of internal services has been increased by a fixed percentage. As these percentages have, on average, been lower than the increases in the external fee rate they have resulted in the current position where internal residential charges are lower than those in the external market. This is despite the cost of internal services being higher than the external market and the residents we support often having complex care and support needs. In addition, the internal care homes do not charge top up fees.
- 7.20 Work has been undertaken in equalising the charges between internal and external care homes.

## **8 SELF FUNDERS**

- 8.1 S35 of the Social Services and Well-Being (Wales) Act 2014 enables a person who can afford to pay, in full, for their own care and support (a "self-funder") to ask the Local Authority to arrange this on their behalf. The local authority may impose a charge for providing or arranging the provision of care and support or support of citizens with the means to pay.
- 8.2 In such circumstances, the Council's approach will be to charge according to our financial policy of full cost recovery. The Council will also seek to recover any additional charges (these may referred to as a "brokerage charge" or "commissioning charge") to maintain and support a placement. Such charges will be backdated to the date on which the placement commences, or to the date when contact was made by the self-funder requesting the Council's assistance.
- 8.3 People with assets in excess of £50,000 are required to pay in full for their care home placement. The local authority currently pays towards the cost of care home placements for approximately 800 people at external care homes. This equates to 51% of the available bed capacity. The remaining capacity is paid for mostly by self-funders. A small proportion is paid for by the Health Board under Continuing Healthcare arrangements or by other local authorities. Swansea Council commission approximately half of the available capacity. Care Home operators will typically charge higher fees to self-funders. In this respect care home operators have scope to adjust revenues to ensure their viability.

## **9 SUMMARY**

- 9.1 The report describes how the Council's responsibility for ensuring care home services are satisfactory, is shared with the Health Board and with CIW.

- 9.2 Procurement and contractual arrangements derive from the people's right to choose their preferred care home accommodation.
- 9.3 Responsibility for ensuring satisfactory quality is shared amongst a number of external agencies and internal teams. CIW have the ultimate responsibility for ensuring that services are operating within the statutory regulatory requirements. The Council and the Health Board share contractual responsibilities. Social Work and Safeguarding teams have key roles around ensuring services are safe and meeting needs. The complaints department will participate in processes which are designed to address customer dissatisfaction and improvements to services. Other external agencies such as the fire service and the Health and Safety executive also play an important part in ensuring that services are fit for purpose.
- 9.4 Instances of underperformance requiring formal contract compliance or action to address regulatory non-compliance are low for both internal and external care homes.
- 9.5 The Regional Care Homes Quality framework has recently been revised and will be kept under review. The framework will continue to be refined and improved so that implementation is compatible with updated statutory commissioning guidance.
- 9.6 Processes for understanding Providers costs and setting fee rates are well established. These processes are consistent with updated commissioning guidance which emphasises the need to promote a stable and resilient market.
- 9.7 Since the introduction of this process there have been no closures caused by financial failure.
- 9.8 In-house charges are governed by Swansea Council's Social Services Charging Policy. Work is underway to create parity between the charges applied at internal homes and the fee rates paid to external residential care homes.
- 9.9 Council commissioned placements account for approximately 51% of available capacity within the external sector. Care home operators have additional revenue streams via self-funders and charges for additional costs which contribute to their financial viability.

## **10. Legal implications**

- 10.1 The authority's legal duty is to make arrangements for placing a person assessed as "in need" in care home accommodation of their preferred choice, subject to certain conditions. This duty originates from s35 (Duty to meet care and support needs of an adult) and s57 of the Social Services and Well-being (Wales) Act (2014), Statutory Code of Practice and associated Regulations, namely the Care and Support (Choice of Accommodation) Regulations 2015.
- 10.2 General legal duties relating to commissioning of services arise under The National Framework for the Commissioning of Care and Support in Wales Code of Practice. This is statutory guidance issued under s169 of the Social Services and Wellbeing Act (Wales) 2014. The standards apply to both directly provided and externally commissioned services and take effect from September of 2024.
- 10.3 The principle that local authorities should understand the cost of commissioned services and set fee rates to ensure they are sustainable is long established. The

following extracts from Standards 7 and 8 of the National Framework for the Commissioning of Care and Support in Wales frame these duties.

- 10.4 Under the Social Services and Well-being (Wales) Act 2014, the Care and Support (Charging) (Wales) Regulations 2015 (as amended) and Part 4 & 5 Code of Practice (Charging and Financial Assessment) issued by the Welsh Government together set out the requirements that local authorities must follow when determining whether to charge for care and support services and, also when assessing the client's contribution towards those costs. Local Authorities must ensure people are not charged more than it is reasonably practicable for them to pay for their services and must not be charged more than the cost to the authority of providing or arranging the care and support they are receiving or which they are to obtain themselves through direct payments.
- 10.5 The local authority may impose a charge for providing or arranging the provision of care and support or support of citizens with the means to pay where a person who can afford to pay, in full, for their own care and support (a "self-funder") asks the Local Authority to arrange this on their behalf.

## **11. Finance Implications**

11.1 There are no direct financial implications arising from this report.

## **12. Integrated Assessment Implications**

12.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- Deliver better outcomes for those people who experience socio-economic disadvantage.
- Consider opportunities for people to use the Welsh language
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

12.1.1 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

**Background papers:** None

**Appendices:** None