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Date of sign off:	Impact Assessment initiated before consultation 6/3/2015 Impact assessment to be updated following consultation

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1. Background

1.1 Title:

Annual Uprating of Older Peoples Care Homes Banded Fee Rates for 2015/16 with a proposed offer to uprate Older Peoples Care Homes Banded Fee Rates for next three years: 2015/16 – 2017/18 and Annual uprating of fees for non-banded care home placements

Please Note: This impact assessment is ONLY concerned with the proposed increase in fees for 2015/6 and the three year offer. It is NOT an assessment of the review of the Fee Banding Rates Structure implemented in 2014-5, which was assessed last year. This is because we do not consider the impact of our fee banding model to have changed and are not proposing to make any changes to the model. We are, however, proposing to increase the fees paid under the model and to move to a three year agreement. Those proposals, therefore, are the focus of this assessment.

1.2 Description:

Devon County Council (DCC) commissions (pays fees to) independent and voluntary/charitable sector care homes to deliver residential and nursing care home services to eligible people in Devon.

Eligibility for financial support towards the costs of a care home placement is based upon an assessment of the person's social care needs. Where appropriate to meet that person's needs, DCC may arrange (contract for) a placement within a care home for that individual.

Having consulted on a revised Care Homes Fee Rates Banding Model during 2014/15, the Council is carrying out a consultation exercise around the following proposals this

year:

**The annual award for 2015/16: Banded Fee Rates
1.7% inflationary increase plus 1.5%, i.e. 3.2% overall**

- a) The Council is proposing to apply appropriate sector-specific inflation calculations to uplift the 2014/15 banded fee rates and proposes to award an aggregate inflationary uplift of 1.7 % on banded fees. This figure is calculated from the increase in the National Minimum Wage on 1st October 2014 and nationally accepted measures of inflation at September 2014. The detailed consultation document (attached) sets out the rationale that underpins this figure.
- b) In addition, the Council proposes to apply a further 1.5% uplift (in addition to inflation), to assist providers with possible future changes in the sector which may come about from the Care Act, and to invest in the future for those who work in the care industry.

Taking account of the full 3.2% award proposed for 2015/16, this would result in the following banded fee levels for 2015/16:

	Standard	Enhanced	Standard + nursing	Enhanced + nursing
	£ per resident per week			
Proposed banded rates for 2015/16 (rounded to nearest whole £)	£442.00	£471.00	£586.00	£608.00

New rates will be effective from Monday 6th April, with payments backdated to this date if necessary.

Three year agreement up to 2017/8: Banded Fee Rates- inflation plus 1.5%

To help with forward planning and to bring greater certainty to the market, the Council is consulting care homes on a proposal to enter into a three year agreement.

The Council proposes to apply the calculation for inflation (set out in the detailed proposal) plus an additional 1.5% in each of the years 2015/16, 2016/17 and 2017/18. The calculation will be based on inflation data in September each year.

Non-banded fees

Non-banded fees are, by definition, negotiated individually to reflect the specific needs of each placement. Therefore, using the calculation and formula set out in the attached documents, the Council proposes to award inflation at the same rate of 1.7% but not to apply the additional 1.5% awarded to banded fee rates.

Please Note:

These proposals relate to social care only. At the time of writing, it is not known if there will be an increase to Funded Nursing Care. If FNC is subsequently increased, the full

benefit will be reflected in nursing bands rates (subject to rounding).

1.3 **Service users:**

As at 31/01/2015 there were 2,424 people aged 65+ supported by DCC in care homes within the county, of which 845 have a mental illness in old age (taken from primary client group). This compares to a total of **2,559** at July 2014, reflecting the reducing trend of care home placements supported by the Council.

1.4 **Describe any reasons for change and intended aims and benefits:**

Having introduced the new model for banded fees for 2014/15, following extensive consultation, the Council is not proposing to change that model for 2015/16. However, the Council must keep the fee levels under review and consult on its proposals. The proposal for consultation for 2015/16 and beyond is designed to both recognise unavoidable cost pressures faced by providers and to build further resilience into the care home market and, in particular, to support investment in the workforce.

The proposal is to make an award for 2015/16 but also to invite views on whether providers would welcome the stability that would be offered by a three year agreement.

We are confident that our banding model is the right one to meet the needs of people in residential and nursing care homes, and that the increase we are offering care home operators will support market sufficiency.

Where placements are made outside of the banded rates (non-banded fees), the fee is agreed on the basis of the assessed needs of the individual and is set at the point of the placement, rather than according to banded rates. The Council believes it is right that such prices are uplifted for inflation on the same basis as for banded rates but does not propose to award the additional uplift because fees are negotiated on a case by case basis.

1.5 **Overlap with other policies, services etc:**

During 2013/14 DCC undertook a review of all aspects of policy that relates to residential and nursing care. This informed development of the banding model implemented in 2014/15, which we are uprating for 2015/16.

The policies and services we reviewed included:

Aspects of charging for residential and nursing care

FACS and self-funders

Upper cost parameters

Equipment for Residential and Nursing Care Homes

Quality and Safety of Commissioned Services, including refresher training for care management staff.

DCC Market Position Statement

DCC Residential and Nursing Home Placements Bands

Devon County Council Strategic Plan – Backing Devon

DCC Dementia Strategy

Devon Dementia Partnership

In addition, when considering the uplift for 2015/16 and beyond, the Council has taken account of the Care Act 2014. It is too early to say what impact the Act will have as many of its provisions do not take effect until April 2016, but part of the rationale for the additional uplift is to assist providers with any such impact.

1.6 The following stakeholders have been involved in this assessment:

On 6th March 2015 the Council is launching a consultation on its' proposals for uplifting its fee levels for 2015/16, and for the 3 years to March 2018. It is intended that the consultation will close on 6th April 2015. The consultation is being conducted via the Provider Engagement Network, through the Council's procurement portal and direct to care homes.

1.7 The following research or guidance has been referred to, or advice sought, in order to inform the assessment:

The Fee Banding Rate structure was developed with reference to the following documents:

- a) Laing & Buisson Care of Elderly People Market Survey Report 2012/13 and 2011/12
- b) Extract of Laing & Buisson *Fair Price for Care* subscription product within Laing & Buisson Care of Elderly People Market Survey Report 2012/13
- c) CQC registration data for homes in Devon
- d) GP practice data residents by age group in Devon
- e) Information collected by Personal Brokers in Devon in response to care home fee personal budget estimates
- f) Analysis of publically available accounts at Companies House and other accounts made available to DCC
- g) ONS published data
- h) Health and Well being outcomes report to Devon Health and Well being Board-

September 2013.

- i) 'Low Expectations- Attitudes on choice and community for people with dementia in care homes' Alzheimer's Society 2013
- j) Quality in care homes for people with dementia; an assessment of specialist provision – Siobhan Reilly – Ageing and Society vol 26 July 2006
- k) Settings of Care for Dementia Rapid Evidence Review – Devon Public Health

The process also involved an analysis of the local market, including:

- a) NHS GP registrations 31 July 2013 (activity and demand)
- b) NHS dementia register
- c) CQC data 31 August 2013 (supply)
- d) DCC and NHS commissioned activity by care home accessed October 2013
- e) Provider questionnaire re usage and occupancy November 2013
- f) Reports from Complex Care Team managers. Feb 2014

In considering the proposed inflationary increase for 2015/16 and beyond the Council has also taken account of:

- a) Average Weekly Earnings Index (not seasonally adjusted) from the Office of National Statistics
- b) Consumer Prices Index Data Set Jan 2015
- c) National Minimum Wage level

2. Analysis

2.1 Social impacts

Giving Due Regard to Equality and Human Rights

The local authority must consider how people will be affected by the service, policy or practice. In so doing we must give due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity and
- Foster good relations.

We must take into account the protected characteristics of age, disability, gender, gender reassignment, pregnancy and maternity, marriage and civil partnership, sexual orientation, race, and religion and belief (where relevant).

This means considering how people with different needs get the different services they require and are not disadvantaged, and that facilities are available to them on an equal basis in order to meet their needs. It also means advancing equality of opportunity by

recognising the disadvantages to which protected groups are subject and considering how they can be overcome.

We also need to ensure that human rights are protected. In particular, that people have:

- A reasonable level of choice in where and how they live their life and interact with others (this is an aspect of the human right to 'private and family life').
- An appropriate level of care which results in dignity and respect (the protection to a private and family life, protection from torture and the freedom of thought, belief and religion within the Human Rights Act and elimination of discrimination and the promotion of good relations under the Equality Act 2010).
- A right to life (ensuring that nothing we do results in unlawful or unnecessary/unavoidable death).

The Equality Act 2010 and other relevant legislation does not prevent the Council from taking difficult decisions but does require the Council to ensure that such decisions are:

- Informed and properly considered with a rigorous, conscious approach and open mind, taking due regard of the effects on the protected characteristics and the general duty to eliminate discrimination, advance equality and foster good relations.
- Proportionate (negative impacts are proportionate to the aims of the policy decision)
- Fair
- Necessary
- Reasonable, and
- Those affected have been adequately consulted.

	In what way is this characteristic relevant, or not relevant, to the service, policy or practice?
Age:	<p>The commissioning plan and the banded fee rates are only applicable for individuals over the age of 65 years old. Therefore only people over 65 are affected with regard to the banded fee rates aspect of this consultation:</p> <p>We are confident that the proposed mechanism for uprating the banded fee rates for 2015-6, the proposed banded fee rates for the usual cost of care and the three year offer have been set to, and will over the next three years, adequately reflect the usual cost of providing appropriate levels of care and accommodation for older people with differing needs.</p> <p>In relation to non-banded fees, placements usually apply to younger adults and because needs are individually assessed and reflected in the fee level we consider there to be no risk of discrimination on the basis of age.</p>
Disability:	<p>Older People placed in residential and nursing settings can have disabilities or long-term medical conditions and our assessment of their needs ensures that the fee paid or banded rate applied for their care reflects the level of support required.</p>

	<p>The needs associated with the condition of dementia are among the long-term conditions which are assessed when determining the level of support required and resulting fee paid for their care.</p> <p>The Fee Banding Rates Structure is fit for purpose to enable efficiently run care homes to meet the needs of people with disabilities and long-term conditions including dementia and the above-inflation award set out in these proposals further supports providers to meet that need.</p> <p>Non-banded fees relate primarily to adults with a learning disability or a physical disability. Negotiations are conducted on an individual basis for such placements and therefore we are confident that the proposals in this consultation will continue to meet those specific needs.</p>
Gender/Sex (men and women):	<p>This policy will affect more women than men because women tend to live longer than men so there are greater numbers of women in older age (population profile). In addition more women tend to work in the care industry and therefore will be affected if care homes close and in terms of the impact of this proposal on conditions of employment. DCC believes that its' careful consideration of the cost of care should ensure that care homes do not close as a consequence of the fee levels it sets and its above inflation offer will enable providers to invest in the workforce.</p> <p>Because fee levels are a cross cutting issue, the impacts of the level of the fees set have been considered under age, but see below, for other cross-cutting issues relating to specific needs</p>
Marriage and civil partnership	<p>These characteristics have been considered as not relevant in relation to the setting of fees, because an individual's care needs are assessed on the basis of individual physical, cognitive, medical and other needs and marital status does not affect fee levels.</p>
Pregnancy and maternity:	<p>It is unlikely that any service user will be pregnant.</p>
Race/ethnicity:	<p>Needs arising from race or ethnicity are generally expected to be covered by the existing model for determining fees and this annual uprating and three year proposal maintains that structure.</p> <p>The care home contract includes requirements to respond to any specific needs where this would normally be covered in the fees. Specific needs include translation/interpreting, gender segregation on cultural/religious grounds, diet.</p> <p>Because DCC operates an 'open market' contract, people have choice between homes and consequently individuals are able to choose a care home which they feel is best able to meet their needs.</p> <p>A person's needs are determined through the Individual Care Assessment and reflected in the Care Plan which is presented to the care home. Where there are particular needs, DCC expects the care home would meet these, for example identifying a female care worker for a female</p>

	<p>Muslim service user. If, however, this results in additional cost (i.e. other costs over and above the 'usual cost of care') this may be individually negotiated. The same could be said for specialist staff training, interpreters, dietary or other factors.</p> <p>The following short case study, offers an example of how cultural needs have been identified and met using a targeted payment:</p> <p>“Support for a resident who speaks a rare Chinese dialect: We placed her in residential care with a targeted payment, although she would probably have been able to remain at home, but her language meant she is really isolated, so to meet social isolation/communication/carer stress/health needs, she was placed in a home where another resident spoke the same dialect, as did at least 2 members of staff. We reviewed the case recently and her mental health has massively improved, so showing positive impact of her being with people she can communicate with” – paraphrased from care manager’s case record.</p>
Religion/ belief:	Once again, needs arising from religion/belief would normally fit within the standard specification and expectations of care home providers, so are covered by this year’s proposals. In the event that exceptional needs are identified, but not reasonably covered by the usual cost of care paid in that locality, a targeted payment could be considered.
Sexual orientation:	Lesbian, gay, bisexual and transgender There is ongoing work to assess the needs of LGB&T people in relation to care home provision but we are confident that this year’s uprating and three year offer is at a level which can enable care homes to sustain any good practice.
Trans- gender/gende r identity:	There is a similar knowledge gap regarding trans-gender identity for which work is also ongoing.
Overall degree of relevance to equality:	Medium
Geographic areas affected:	Devon

2.1.1 Positive impacts:

The overall impact of the 2015-6 fees uprating and proposed three year uprating will be positive because the uprating is significantly above general inflation, with the annual change in the Consumer Prices Index for January running at 0.3% at the time of this offer. The 3% increase in the National Minimum Wage on 1st October 2014 has been included in the calculation of care home sector inflation which underpins the 1.7% aggregate inflation uplift which is included in this proposal.

The banded fee rates should, therefore, sustain and support efficiently run care homes and should not be the cause of any unplanned closures.

2.1.2 Negative impacts and mitigations or justification:

The Council does not consider there to be any negative impacts as a consequence of awarding an above inflation award and considers that offering a three year agreement further mitigates against uncertainty in the market place.

The Council recognises that, in some parts of Devon, there may be a consolidation of the market or where the nature of available provision does not reflect need. Where a particular home is unable to adapt, or chooses not to, there is a risk that the home may close. In assessing market sufficiency the Council, under its duties arising from the Care Act, maintains close oversight of any changes in market conditions and works closely with providers to anticipate and address any such risk.

The Council carefully monitors a range of indicators to anticipate any risk to market supply and is strengthening its approach to quality assurance and potential or actual provider failure.

2.3.4 Neutral impacts:

None identified

2.2 Economic impacts

	In what way is this factor relevant, or not relevant, to the service, policy or practice?
Impact on knowledge and skills:	The financial model used to calculate the usual cost of care, identifies the costs associated with ensuring staff are sufficiently trained and includes this as a cost. This year's fees proposed uprating and three year offer ensures those costs continue to be covered and

	affords the potential for providers to increase their investment in their workforce.
Impact on employment levels:	DCC has set its' proposed fee levels, having had due regard to the usual cost of care. This year's proposed fees uprating and three year offer take into account the costs associated with staff wages and enhancements.
Impact on local business:	This year's proposed fees uprating and three year offer is sufficient to enable local care home provision to be sustained and improved.

2.2.1 Positive impacts:

The care home sector in Devon is a significant employer of staff and purchaser of local services and commodities. By ensuring a financially sustainable market of providers via this year's fees uprating and three year offer, this sector will continue to impact positively on the economic vitality of Devon

2.3 Combined Impacts

2.3.1 Linkages or conflicts between social and economic impacts:

Our proposal to uprate fees for 2015-6 and offer a three year agreement for banded fee rates is supported by our analysis of the capacity in the care home market and our assessment that this should sustain a sufficient care home market.

Table 1 Care home capacity

Care Homes registered for OP	Aug -13		Jul-14		% Change in Capacity Aug-13 to Jul-14	Demand as of July 2014*
	Number	Capacity	Number	Capacity		
Care Home with nursing	67	2,881	65	2,800	-2.81%	2,105
Care home without nursing	197	4,784	192	4,734	-1.05%	3,713
All care homes	264	7,665	257	7,534	-1.71%	5,818

Note: Where a care home is registered for both with and without nursing it has been counted as with nursing

Care homes that are registered for MH and LD have been excluded from this table

Capacity is based upon registered capacity with DCC care homes included

*Demand based upon Devon NHS data of people registered with GP's living in care homes

Table 1 above demonstrates that, across Devon as whole, capacity in the care home market has remained relatively stable. As of July 2014 there were 257 care homes across the county that state they provide services to older people or people with dementia, covering every market and coastal town in Devon. The range and diversity of these care

homes offers people choice about where they live.

Whilst a snapshot at July 2014, the analysis remains broadly accurate at the point of publication of this impact assessment. However, the Council continues to monitor local variations in supply and will act accordingly.

As the Market Position Statement evolves we will continue to share our best intelligence with the market to complement any market research undertaken by providers and to assist with their business planning.

As our fees banding model is unchanged, the calculations and research which led to that model stand, and are detailed in the previous impact assessment which can be found at <https://new.devon.gov.uk/impact/>

2.3.2 'Social Value' of planned commissioned/procured services:

DCC invited providers applying to be on DCC's new contract from 2014 to demonstrate how they deliver social value, and this year's fees uprating and three year offer is sufficient to enable care homes to continue to deliver social value.

Care homes can provide wider social value for example providing support to non residents (particularly family carers) encouraging and supporting volunteering activity, encouraging local community participation, supporting local employment and supporting local economies.

2.3.3 Potential impacts on partner agencies:

There is no notable impact on partner agencies. Any uplift to the Funded Nursing Rate will be passed on in full.

3. Actions and risk management

3.1 Actions:

The approach to sustaining an appropriate independent care home market in Devon relies on the correct assessment of individual needs so that the relevant fee band is applied (or non-banded fee agreed) and residents' placements are properly resourced. That assessment and placement at the appropriate fee level is our key mitigation against potential discrimination and we are confident that this year's fees uprating and three year offer will maintain the mitigations identified in the impact assessment carried out when reviewing the Fee Bands Structure which was implemented last year.

3.2 **How will you monitor the actual impacts of recommendations/decisions (consider what service user monitoring and consultation is necessary)?:**

The impacts of our Banded (and non-banded) Fee Rates will continue to be monitored through:

- On-going provider engagement
- On-going service user and family carer engagement via Healthwatch and individual review
- Proactive risk assessments with the NHS
- Contract & performance monitoring.
- Proactive quality assessments in partnership with the NHS.
- An increased focus on quality assurance and improvement in close partnership with providers

3.3 **Risk assessment**

Inherent risk (mark an X in one box).

The risk **without** mitigating actions in place/prior to any changes.

Severity	Catastrophic	5					
	Major	4					
	Moderate	3					
	Minor	2					
	Negligible	1		x			
				1	2	3	4
			Rare	Unlikely	Possible	Likely	Almost certain

Likelihood (in a 5 year timeframe)

Current risk (mark an X in one box).

The risk **with** mitigating actions/changes in place.

Severity	Catastrophic	5					
	Major	4					
	Moderate	3					
	Minor	2					
	Negligible	1		x			
				1	2	3	4
			Rare	Unlikely	Possible	Likely	Almost certain

Likelihood (in a 5 year timeframe)