

Report of: Director of Adult Social Services

Report to: Executive Board

Date: 20th June 2012

Subject: Procurement of Residential and Nursing Placements (Residential Governance Quality Framework and Fees)

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Access to Information Rule 10.4(3) Appendix number: 2 and 3	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. Adult Social Care (ASC) currently spends approximately £41.084m (gross) on Older People's residential and nursing care home places with independent sector providers who have care homes within the city. Negotiated fees have been in place for a number of years with these providers and each care home fee is currently set individually.
2. During the last year there have been a number of significant and successful legal challenges against local authorities concerning the way that fees have been set and the rationale used by Authorities in setting the usual cost of care.
3. Following an Executive Board report in September 2011 ASC employed the services of Ernst and Young, an international accountancy firm, to assist with negotiations with independent care home providers to temporarily reduce the fee level paid to them during the last six months of 2011/12, and to assist officers of the Council to develop a framework to be used to assess the quality of care provided and to develop a new fee structure linked to that quality framework.
4. Executive Board approved a recommendation to establish a residential governance advisory board comprising of elected members, service provider representatives, service user representative, voluntary sector representative and

NHS Leeds representative was established to oversee the project with the remit of advising on the development of a new quality framework and fee structure linked to quality.

5. At its meeting of the 14th April 2012 Advisory Board members agreed to recommend the Leeds Quality Framework Standards and Service Specification. Board members have agreed that a procurement route is an open fair and transparent manner in which all providers will be treated the same.
6. The methodology used to arrive at the recommended fee structure has the support of care home providers represented on the Advisory Board and we feel sufficiently confident on that basis to offer this proposal to the remainder of the care home providers in the city prior to the commencement of the tendering exercise.
7. The Residential and Nursing Care Services Framework Arrangement 2012-2017 will operate for a period of five years and will ensure that residential and nursing establishments operate to the new Leeds Quality Standards and at fees which reflect a fair settlement on the cost for care in the sector in Leeds.
8. In common with most other Local Authorities, the cost in Leeds of purchasing long term residential and nursing care for older people is the largest single item of expenditure within the Adult Social Services budget. In pursuing an agreement in relation to fees, all concerned have been mindful to seek to mitigate the range of potential current and future financial risks to both Care providers and the Council, based on a sound methodology for the assessment of the cost of care in the City.
9. The adoption of the recommended quality framework and associated fee structure will place Leeds as among the first to have successfully concluded a longer term arrangement for the provision of this type of care.

Recommendations

The Executive Board is recommended to agree to:

10. the adoption of the quality framework approach and the associated recommended fee structure as set out in this report which follows on from the work of the Advisory Board and the extensive collaboration to achieve a new business relationship with Independent Sector providers of residential and nursing care for older people.
11. the initiation of a procurement process to commence immediately and to note that the Director of Social Services will take a delegated decision to award the framework contracts in accordance with the Council scheme of delegations in order to ensure that the recommended quality framework and fee structure can be implemented from the 1st October 2012.
12. that the recommended new monitoring arrangements are put in place in order to assure the intended improvements in quality.

13. that the risks and mitigation plans are implemented with regard to the financial risks identified.

1. **Purpose of this report**

1.1 This report seeks authority from the Executive Board to proceed with a procurement exercise in regard to the Residential Quality Governance Framework and associated fees for Older Peoples care homes in Leeds.

2. **Background information**

2.1 During the financial year 2011/12, as part of the overall corporate efficiency targets in relation to procurement, Adult Social Care agreed to target a very challenging total reduction of £5.75m on Local Authority supported residential and nursing care placements for older people in Leeds.

2.2 Expenditure on residential and nursing care for older people is the largest overall item of procurement expenditure within ASC.

2.3 From the outset, officers had recognised that the issue of fee reductions on the scale envisaged was likely to be a very challenging and potentially protracted process given the extensive negotiations and occasional disagreements which have intermittently taken place over the course of the preceding 10 years.

2.4 In addition, nationally, there had been a number of Judicial reviews which had taken place during that financial year where some authorities have been deemed to be making unlawful decisions in relation to their fee setting processes for residential and nursing care services.

2.5 Given the above, the Director of Adult Social Services submitted a report to the Executive Board on the 7th September 2011 recommending the establishment of an Advisory Board to include representatives of all groups with a direct interest in commissioning, providing and receiving sustainable high quality care for older people with a primary remit of bringing forward a long term sustainable fee settlement linked to quality services. A Quality Framework linked to the fee settlement, along with proposals to deal with the issue of sector inflation would also be devised (this work would not include residential placements in other service areas such as learning disabilities and mental health, which are being dealt with separately). This was set in the context of a reducing Council budget, and therefore the requirement to devise affordable solutions. A further report was then submitted to Adult Social Care Delegated Decision Panel on 18th January 2012 with a recommendation to the Director that the services of Ernst and Young, an international accountancy firm be engaged to assist officers of the Council to develop a Quality Framework and a new fee structure.

2.6 Adult Social Care currently spends approximately £41.084m (gross) on Older People's residential and nursing care home placements with independent care home providers who have homes within the City. Negotiated fees have been in place over a number of years with these providers. During the last year there have been a number of significant and successful legal cases against local authorities over the way that the fees have been set.

- 2.7 An Advisory Board was established in November 2011 and is chaired by the Executive Member for Adult Social Care. The Board consists of five elected members (one from each of the parties on the Council), five representatives from the independent provider sector, a service user representative, a voluntary sector representative and representation from NHS Leeds. The Advisory Board has met on a monthly basis since its inception and has been well attended by all members.
- 2.8 Monthly meetings were held with the Advisory Board to keep them informed of progress on the development of the Quality Framework standards and the methodology to derive the fees and agree the recommendations to be taken to the Executive Board. In December 2011 an options paper was presented to the Advisory Board advising them of the different ways in which providers could gain acceptance onto the Framework Agreement.
- 2.9 At the Advisory Board meeting on the 20th December 2011 the members recommended that a procurement route be utilised to ensure that services were procured in a fair, open and transparent process. A procurement option was recommended amongst other things to reduce the risk of legal challenge. Work continued throughout December 2011 to March 2012 to develop the quality standards framework and service specification which was approved by the Advisory Board members on 13th April 2012.
- 2.10 A 'cost of care soft market' exercise was undertaken in February 2012 whereby all providers were invited to submit their actual costs of care using a predefined template, so that officers could gain an understanding of the issues faced by the market and take account of the actual cost of care in developing the fees for the new framework to be implemented.
- 2.11 The provider representatives of the Advisory Board identified some issues with the proposed cost of care methodology to be used to derive the fee that the Council would be willing to pay for residential and nursing care. Further work and analysis was undertaken and some amendments to the methodology were proposed and agreed. The methodology used to calculate the recommended fees is agreed to be appropriate and robust, however, whilst substantially agreed, the fee figures produced using the methodology have been the subject of significant further discussion in which some improvements and some adjustments to the fee structure have been offered to seek to attract the largest number of providers to tender. The recommended fee structure at para 3.3.6 represents the outcome of those discussions.
- 2.12 Currently all providers receive an individual negotiated fee which is resource intensive to implement for both Officers of the Council and Officers of the Care Homes. The range of fees paid is variable with some good homes being paid lower fees and some poor homes being paid higher fees. In order to ensure good quality services in the future for the citizens of Leeds there is a need to align quality of services with the fees that are paid. By introducing quality standards framework linked to fees this will incentivise the market place to strive

to achieve the best performing level of quality in order to be able to claim the higher rate fee.

- 2.13 During 2011 and 2012 there have been a number of judicial reviews challenging local authorities, instigated by care home proprietors where Councils have been deemed to be acting unlawfully by setting a fee to be paid without undertaking proper consultation with the care homes on the actual cost of providing that care. As is evidenced throughout this report, a considerable amount of consultation has been undertaken with a wide range of stakeholders including the care homes in Leeds.
- 2.14 Implementation of a new Framework Arrangement for care homes will bring stability to the market as the contract duration will be for five years and it will also bring clarity of expectations to the market and promote greater partnership working with the market.
- 2.15 The public can be confident and will have the security of knowing that the price of care is based on the true cost of care and be assured that for local authority funded residents a 'third party top up' contribution to meet the costs of caring for their relative will categorically not be required.

3. Main Issues

3.1 Strategic Context & The Quality Framework Model

- 3.1.1 The strategic context in which this initiative fits is of a whole system of interrelated patterns of care for older people. Initiatives put into place over the past decade in the City have seen increasing numbers of older people maintained within their own homes for a greater proportion of their life. This has been matched by a gradual decline in both the numbers of people requiring publicly funded care in a residential or nursing care home and a reduction in the proportion of their lives that they need to be cared for there.
- 3.1.2 It can be seen therefore that, in the past, residential care in particular may have been used by people with less dependency, the current picture strongly suggests that most admissions to these kinds of care settings are of much more dependent older people requiring more intensive and increasingly specialist care. Given the gradually changing profile of people needing this type of care it is essential that the provision high quality care is both incentivised and assured.
- 3.1.3 Development of the Quality Framework Model commenced in September 2011 and the first draft was initially developed by officers from LCC, Ernst and Young and NHS Leeds. The quality standards and service specification were approved by the Residential Governance Quality Framework Advisory Board in April 2012.
- 3.1.4 The Quality Framework Model comprises of four quadrants covering: Quality Standards, Financial Security and Development, Environment and Resources and Payment and Incentives. The providers will not be judged against the payments and incentives quadrant. The Quality Framework consists of two levels; a standard level and an enhanced level and is outcome focused. A set of

11 standard criteria sit beneath the outcomes and all providers who apply to go onto the framework arrangement will have to be able to demonstrate during the first year that the contract is in operation that they can meet all of the criteria stated within the quality framework standards.

- 3.1.5 In December 2011 a workshop was held to which all providers were invited to attend. The aim of the workshop was to communicate and consult on the aims of the Residential Governance Quality Framework project with the independent care home market and as a result of this workshop both the Quality Framework standards and service specification were then amended and refined as a result of the workshop held with the providers.
- 3.1.6 A small group of service provider representatives were then asked to further refine and develop the model through a series of meetings with officers that took place between December 2011 and March 2012. In February 2012 a further workshop was held to which all providers were invited to attend and again where further amendments/refinements were made to the Quality Framework standards and service specification.
- 3.1.7 During March 2012 five resident/relative groups were visited by officers of the Council. Officers asked residents/relatives what, if any, they felt were the most important standards that all providers must comply with. Residents/relatives were also asked how they felt services should be monitored in the future. Information gained from these consultations was then used to ensure the areas identified had already been addressed within the Quality Framework standards and service specification.
- 3.1.8 Final draft documents were circulated to all providers, other stakeholders and advisory board members in March 2012 for final comments. Advisory Board Provider representatives felt that they could not agree the documents at that time as some members of the Leeds Care Association (LCA) had expressed concern about some of the standards. A meeting was held with LCA representatives and as a result of this further minor amendments were made to the standards and service specification. The Advisory Board members met on the 13th April 2012 and agreed the content of the Quality Framework and the service specification.

3.2 **The Quality Standard and Enhanced Quality Measures**

- 3.2.1 All the quality measures for both the standard and enhanced level of service are contained as an appendix to the main specification of the framework arrangement.
- 3.2.2 The quality standards and measures to be used for monitoring these standards have been developed over the last six months as part of the overall Residential Governance framework project.
- 3.2.3 The Residential and Nursing Care Specification sets four specific resident outcomes for the service. These are:

Resident Outcome 1 – Promoting health, wellbeing and independence.

Residents live in an environment which enables independence, health and wellbeing. Residents have the opportunity to have optimum health throughout their life, and are supported to proactively manage their health and care needs. When people become ill, early intervention means that Residents are less dependent on intensive services, recovery takes place in the most appropriate place and they are supported to regain health, independence and wellbeing.

Resident Outcome 2 – Improved choice and control of services people receive and effectiveness of services which enhance quality of life

Residents are supported to choose a personalised service which is tailored to their individual and diverse needs. The service accommodates and encourages the involvement of Carers and the maintenance of contacts and networks. Residents are supported to engage socially as they wish.

Resident Outcome 3 – Safeguarding adults whose circumstances make them vulnerable and protecting them from avoidable harm

Residents enjoy physical safety and feel secure. They are free from physical and psychological abuse, including financial abuse, harassment, neglect and self-harm. The dignity of Residents is of paramount importance and they are treated with respect at all times. Their right to make decisions is supported and where they are unable to actively make decisions, their best interests are paramount.

Resident Outcome 4 – Ensuring that people have a positive experience of care and support

Residents and their Carers are satisfied with their experience of the Service, are clear about what to expect and feel that they are respected throughout the care process. The provision of the Service is effectively managed with regular reviews and quality assurance systems built in, which focus upon the views, experience of and outcomes for Residents and their Carers. Residents' health and safety is protected from avoidable deaths, disease and injuries.

- 3.2.4 The standards are divided into the three main provider areas of the Quality Framework viz: Quality Standards and Outcomes, Environment and Resources, Financial Security and Development (the fourth quadrant of the Quality Framework is payments and incentives which does not require monitoring on the part of the provider). Within these three main areas, there are 11 standards overall (which are further sub divided), on which the quality of the provider will be assessed.
- 3.2.5 The standards document is set out in a format which describes the standards we will be measuring, what we expect to see from the provider, the monitoring information the Council will expect to see and the method of acquiring that information. It also states if a particular standard relates to the standard level of service or the enhanced quality service and the measurement for this, which will reflect the level of payment to be made to a provider. The actual assessment of the standards will be undertaken by officers in the commissioning team. Throughout the development of the standards, it has always been the intention to ensure the measurement of these does not place an overly burdensome task on the care home managers. For this reason, the project team will continue to work with Care Home Managers to ensure the collection of evidence to validate the

standards and determine the enhanced payment is not too burdensome for the care home managers.

3.3 **The New Fee Structure**

3.3.1 For the last three financial years, the Authority has frozen the fees it pays for local authority placements in the Leeds-based residential and nursing care market. This has been actioned on the back of a number of influencing factors including a relatively high fee paid in Leeds, when compared to our statistical and local comparators, pressures on the Authority's budget and an increasing demographic. (See Appendix 1 – 'Benchmarking Data'). This approach is not sustainable in the future and was an important driver for the work identified in this report.

3.3.2 The Authority has a duty to annually review and set its fees, currently LCC negotiates a fee structure with each individual home; historically inflationary uplifts have to be determined by a contractually agreed method.

3.3.3 In addition, ASC has a concern that the fee paid is not necessarily aligned to quality and therefore that best value (in terms of both cost and quality) may not be being achieved. Consequently, commissioning officers have determined that the way forward is to streamline the number and range of fees and to set a fee that is relevant to the Leeds market and affordable to the Authority. In doing so commissioners identified a number of key outcomes:

- determine a fee that is fair and supports the cost of care
- determine a fee that is affordable within the confines of the Authority's budget
- to offer stability to the market for the contract period (5 years)
- to offer financial incentives to enhance quality
- to provide transparency for the public

3.3.4 The Authority determined that the fee payable should be based upon the costs of the Leeds market and be reflective of the costs of care. In partnership with Ernst and Young, a soft market test was undertaken which targeted all providers within Leeds and asked them to submit figures based upon actual costs incurred in running their care homes; and that these be split into three elements: direct cost, indirect cost and their cost of capital. Providers were asked to submit data for each of the four services: residential care, residential EMI, nursing and nursing EMI.

3.3.5 Forty seven percent (47%) of homes submitted their details and the results were recorded and analysed and formed the basis of the fee negotiations. To determine an equitable cost a weighted average was applied. In this context, this equated to the volume of beds in homes, recognising that there is an element of economies of scale for the larger homes.

3.3.6 The proposed fees are to be implemented over two stages October 1st 2012 and April 1st 2013 and are as follows:

Service	October 1st 2012	April 1st 2013
<i>Non-quality framework</i>		
Residential	£376	£376
Residential EMI	£385	£385
Nursing	£404	£404
Nursing EMI	£407	£407
<i>Quality framework - standard</i>		
Residential	£424	£429
Residential EMI	£437	£442
Nursing	£454	£459
Nursing EMI	£458	£463
<i>Quality framework - enhanced</i>		
Residential	£446	£446
Residential EMI	£464	£464
Nursing	£479	£479
Nursing EMI	£484	£484

3.3.7 Scenario impact analysis has been undertaken to ensure that the proposed fees identified in Table One above are affordable to the Council. Please see confidential Appendix 2 – ‘Scenario Testing’.

3.3.8 Another element of this process has been to reach agreement on a basis for determining an annual review of the cost of care and potential annual uplifts. The Authority has suggested that an annual exercise be undertaken, that allows providers to evidence financial pressures. Key elements of this proposal include:

- Inflationary pressures must be evidenced e.g. salary uplift
- Deflationary elements will be submitted in mitigation of the above
- Increases will be based on the impact of the whole Leeds market and not on individual providers
- Inflationary uplifts will only be applied to the direct and indirect elements of the fee.

- Inflationary uplifts will be applied from the anniversary of the contract
- The fees remain affordable to the Authority

3.3.9 It should be noted that the proposal has a significantly reduced range of fees payable, and that this should have a positive impact on the resources required to manage and negotiate contracts. However, it is considered that there will be a net increase of resources required to undertake the increased workloads particularly concerning monitoring the quality standards and the annual review of the cost of care. A further exercise is required to determine how this will be deliverable.

3.4 **Implementation Issues**

3.4.1 **Non-Framework Provider Implementation**

3.4.1.1 There will be two scenarios where a provider will not be part of the framework. Firstly, where a provider has chosen not to tender for the framework for their own business reasons e.g. they are aiming their care home purely at the self funding market. Secondly, where a provider has tendered for the framework but has either failed to pass the prequalification stage, has not achieved the necessary marks to qualify for the framework through the tender exercise or has failed to meet the Quality Standard required to remain on the framework.

In the first scenario, it will not necessarily mean that a provider is providing a poor quality service however, it does mean that ASC has been unable to subject that home to the rigorous quality checks set out in the framework. In the second scenario, it will almost certainly mean that there are serious quality issues with a provider. For these reasons, it is proposed that non-QF providers are paid at lower rates than those providers who have successfully joined the framework arrangement.

3.4.1.2 Under the Choice of Accommodation Directions, an individual may express a preference to reside at a home which sits outside the framework contract. The guidance in the Local Authority Circular LAC(2004)20, states that if some do exercise their preference in this way, the accommodation must be suitable for the persons individual needs.

3.4.1.3 Therefore, it will not be possible for the Council to refuse to contract with a provider simply because they are not on the framework arrangement. However, the Council would be able to refuse to contract with a provider where we have formally suspended them through the suspension procedure or where CQC have issued any enforcement actions or restrictions on the provider registration.

3.4.1.4 Where providers have chosen to remain outside the framework arrangement or have failed to be appointed to the framework, they will have the choice of either accepting funded residents at the non-QF rate or setting a fee which will require a third party top up. If a resident chooses a home which is not part of the framework arrangement then, subject to the relevant restrictions, we will enter into a spot (individual) contract for that person at the non-QF rate.

3.4.1.5 A list of providers who are on the framework arrangement will be created so that care managers can share this with potential/proposed new residents to provide information on quality providers where no third party top up would be payable. The guidance allows for this stating “The Directions and Regulations do not, however, prevent an authority having a list of preferred providers with which it will contract where a potential resident expresses no preference for particular accommodation, nor from recommending such providers to prospective residents.” - section 6.1 of the guidance.

3.4.2 **Appeals Process**

3.4.2.1 There will be two types of appeal providers could make to the Council following the submission and evaluation of the tenders. Firstly, there could be an appeal concerning a providers failure to be awarded a place on the framework arrangement. Secondly, once a provider is on the framework arrangement, an appeal could arise following a decision taken not to award the enhanced rate to a provider or where a provider has been deemed not to be meeting the basic standard. In each case a different appeals process would be needed. In the case of an appeal concerning the failure to award a place on the framework contract, this should be dealt with through the normal tender procedure. This would initially involve giving feedback to the provider on why their bid failed. Should the provider still be unhappy with the decision, they would need to submit this in writing and a final decision would be taken by the Procurement Project Board, following advice from the legal team in the Procurement Unit. Any further action by the provider would need to be taken through the normal legal process.

3.4.2.2 In the case of an appeal about the status of a provider once they are on the framework arrangement, this process is in development and options to involve the LINK will be explored.

3.4.3 **Third Party Top Ups**

3.4.3.1 Third party top ups are introduced in the fee setting process through the Choice of Accommodation Directions and guidance issued to local authorities through Local Authority Circular LAC(2004)20. A summary of the main provisions within the guidance which relate to top ups are as follows:

3.4.3.2 At the beginning of each financial year or other planning period the Council should set a fee to meet the assessed care needs of supported residents in residential accommodation (the usual cost) – section 2.5.4 of the Accommodation and Directions guidance.

3.4.3.3 When setting its usual cost the council should be able to demonstrate that this cost is sufficient to allow it to meet assessed care needs and to provide residents with the level of care services that they could reasonably expect to receive if the possibility of resident and third party top contributions did not exist – section 3.3 of the Accommodation and Directions guidance.

3.4.3.4 If an individual expresses a preference for a particular home, the council must arrange for care in that accommodation provided: 1) the accommodation is

suitable for the individuals needs, 2) to do so would not require the council to pay more than its' usual cost, 3) the accommodation is available and 4) the provider is willing to contract on the council's usual terms and conditions – section 1.3 of the Accommodation and Directions guidance.

- 3.4.3.5 If an individual expresses a preference for a particular home, the council must arrange for care in that accommodation.
- 3.4.3.6 Where a resident explicitly chooses a home which is more expensive than the council's usual cost, the council can make a placement provided the resident (in limited circumstances) or a third party is willing to make up the difference between the usual cost and price the home is wanting to charge, a third party top up – section 3.1 and 3.2. of the Accommodation and Directions guidance.
- 3.4.3.7 The Council will remain liable for the full amount of the fee, including the third party top up should there be any default in payment – section 3.5.2 of the Accommodation and Directions guidance.
- 3.4.3.8 ASC have now been through a process to establish a usual cost of care (subject to approval by the DASS and the council's executive board) through the Advisory Board which has included service provider representation. As the methodology to establish the usual cost was agreed at the Advisory Board, and has been set to represent a fair cost for residential and nursing care in the city, it is proposed that any provider wishing to take part in the framework arrangement should not be able to charge a third party top up for local authority funded residents (this will include current residents where there is already a third party top up being charged). This has been stated in the contract documents and will allow potential residents to be confident that when selecting a framework provider they can do so knowing there are no additional fees to find and in the knowledge that the quality of the provider will be regularly monitored.
- 3.4.3.9 The proposed Framework Arrangement will not include Self-funding (private) residents i.e. those residents who do not qualify for Council funding due to their assets exceeding a specific threshold. Although the Council may assist self funding residents with finding a care home placement these residents enter into their own private contract with a Provider to which the Council is not a party. As is the case under existing arrangements, Providers will be able to negotiate a separate contract fee with the self-funding resident upon admission. However the information about the fees as identified through the current process will be made available to the public to assist them in any negotiation with providers.

3.5 **The Procurement Process**

- 3.5.1 At the Residential Governance Quality Framework Advisory Board meeting held in December 2011 the Board was asked to consider and recommend an implementation option for the introduction of the quality standards and new service specification. Three options were presented to the Advisory Board and after some discussion it was agreed by Advisory Board members that a procurement option should be undertaken as this was a robust and fair process that would ensure compliance with the quality standards, was transparent and

robust and would minimise the risk of legal challenge. This option would also invite genuine interest from the partners in the market place. Officers have worked with the Procurement Unit to simplify the standard documents that are used in procurement exercises in order to take account of the providers in the market. Documentation has been simplified as much as possible and timescales for completion and submission of documentation will be extended

- 3.5.2 It is anticipated that the procurement documents will be advertised on SCMS the week after the Executive Board meeting (subject to ratification of the proposal to hold a procurement exercise); all providers will be contacted to notify them that the documents have been advertised.
- 3.5.3 An Evaluation Panel comprising of officers from Commissioning, Access and Inclusion and a service user representative (Advisory Board member) will undertake the evaluation of the tender documents. NHS Leeds are unable to participate in the process. The evaluation panel members will ensure that organisations can meet the requirements identified within the Pre Qualification Questionnaire, and officers with specialisms in safeguarding and health and safety will undertake a check on the care homes policies. Care homes will be asked to read and sign a copy of the standards as part of the procurement process and any care homes who state that they cannot meet any of the standards will not be considered for inclusion on the framework arrangement.
- 3.5.4 Care homes have been asked to respond to 9 questions which the evaluation panel will then score. A minimum score for each question is required and care homes who fail to meet the minimum requirements will not enter onto the framework arrangement. All tender submissions will be validated during the first 12 months of operation of the new contract coming into effect but for those care homes who apply to go onto the framework arrangement on the enhanced fee a validation visit will take place within three to six months of the contract commencing. If the care home cannot be validated/fail to meet the required enhanced standards then they will receive payment at the standard fee rate and will not be able to re-apply for the enhanced fee rate until January 2014. Care homes will be able to apply for the enhanced fee rate on each and every anniversary of the contract start date.

4. Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The quality standards and service specification have been developed by working in partnership with a number of service providers, six meetings took place between Dec 2011 and March 2012 whereby discussions were held and areas for amendment, inclusion or clarification were identified and where appropriate included in the standards.
- 4.1.2 All service providers have had several opportunities to comment on both the quality standards and the service specification. Two workshops were held to which all providers were invited. Approximately 60 care home managers attended an event in November 2011 and approximately 30 care home managers attended an event in February 2012. Information from these events

was, where appropriate, incorporated into the quality framework standards and service specification.

- 4.1.3 Residents and/or relatives have been consulted in order to develop the quality standards and service specification. Officers attend five residential/nursing care homes and spoke with either residents or their relatives to identify what their priorities were and to ensure that they were reflected in the standards.
- 4.1.4 Older People who may use care homes in the future were also consulted on two occasions in December 2011 and February 2012 and they identified what they felt were key standards for inclusion.
- 4.1.5 Elected members (representing all parties) who sit on the Advisory Board were informed and consulted with on a monthly basis throughout the project.
- 4.1.6 The methodology for the cost of care has been developed by working in partnership with a number of service providers. All providers were invited to submit their 'cost of care' using a pre-determined template. The templates were circulated to all providers in early February 2012 with a closing date of 29th February 2012. A response rate of 47% was achieved.
- 4.1.7 Additionally other stakeholders internal to the Council were consulted at various points of the development of the key documents and their comments were invited in order to ensure we had as wide a consultation and representation as possible.
- 4.1.8 The Quality Framework Standards, Service Specification and initial briefing paper were uploaded onto Talking Point (the Council's current electronic consultation system) in Dec 2011.
- 4.1.9 Briefing papers were circulated to key stakeholders at various points during the project.
- 4.1.10 Additional consultation on the methodology used to derive the fee is being undertaken with all providers being invited to comment on the methodology and the proposed fee during June 2012. A comprehensive communication plan is being developed to ensure that all stakeholders remain fully informed and engaged with the implementation process.

4.2 **Equality and Diversity / Cohesion and Integration**

- 4.2.1 An Equality Impact Assessment has been undertaken in relation to the development of the quality standards and service specification and this demonstrated that equality and diversity had been considered during the development of both the quality service standards and the service specification.
- 4.2.2 However some gaps were identified within the impact assessment, namely we do not know who the self-funders are and what the impact of the introduction of the quality framework standards would be on these individuals. We are aware that some care homes may elect not to apply to go onto the Quality Standards Framework and as a result could increase their fees

- 4.2.3 However, a further Impact Analysis will need to be undertaken once the current consultation with care homes has been concluded as this will identify which care homes do not intend to submit a tender. Officers of the Council will then work with those care homes to ensure that consultation takes place with residents who are affected by the introduction of the new quality standards. The outcome of which will be fed back into the process.
- 4.2.4 We will develop a strategy to plan for the introduction of the revised fee structure to reduce the potential impact on residents/relatives based on the outcome of the consultation, but until the procurement exercise has been undertaken we cannot at this stage identify the homes where there may be an impact
- 4.2.5 The procurement process will be closely monitored by the project team in order to assure that service users and carers needs and interests are protected throughout.
- 4.2.6 A review of the Equality Impact Assessment will be undertaken on completion of the procurement exercise.

4.3 **Council policies and City Priorities**

- 4.3.1 The services provided under this report will contribute to the Health and Well-Being City Priority plan.

4.4 **Resources and value for money**

- 4.4.1 The 2012/13 budget for Leeds based residential and nursing placements is £41.084m (gross). Over the period of the contract this equates to £205m. The overall budget for Council funded permanent residential care in Leeds for the proposed duration of this contract has been fixed at this 2012/13 value which assumes an efficiency.
- 4.4.2 In determining the impact upon available resources, it is important to note that there are several variables that have a significant influence on the financial cost associated with residential and nursing placements. These include fee, number of service users meeting eligible needs, length of stay (that is to say the average number of weeks of care paid for by the Local Authority provided to an individual, usually referred to as 'bed weeks') , the mix of service users e.g. residential, nursing, the number of providers who will deliver services at the fee mix. Most of these variables are cannot be controlled by the Authority.
- 4.4.3 A number of models have been created to help quantify, financially, a number of scenarios based on these variables. These have included looking at trends, potential movement through the framework (e.g. an increased number of providers being paid the enhanced fee). Attached at confidential appendix 2 are a number of potential scenarios with explanatory notes.
- 4.4.4 The results of these scenarios indicate that the proposals are likely to result in a small increase or decrease in the overall cost of placements when compared to the current cost. These scenarios have been reviewed and assessed for their likelihood and risk, and a range of deliverable options have been considered in

the event that the cost is in excess of the current budget, all of which are considered deliverable within the envisaged timescales

- 4.4.5 It should be noted that the proposed fee structure, is comparable with other authorities and the enhanced fees in most cases are above other authorities' rates for 2012/13. However, an exact comparison with other authorities is difficult as some of the lowest local authority fees depend on third party top ups from individuals.
- 4.4.6 The proposals also ensure that any uplift in prices (within the contract period) is evidenced based, applicable to the whole Leeds market, is restricted to the impacted element of cost and that any uplift is affordable to the Authority. It is anticipated that this will reduce ongoing pressure around the impact of inflation throughout this contract period.
- 4.4.7 The reward of being able to procure residential and nursing care services for the citizens of Leeds is sustainable quality which can be evidenced against a Leeds quality standards framework; sustainable fees; reduced exposure to high fee rates charged by some providers; reduced threat of legal action by implementing contracts in a fair, open and transparent manner and the ability to better manage demand for services evidences value for money is being achieved.
- 4.4.8 The cost of providing this kind of care in Leeds will remain affordable to the Council throughout the life of the five year contract and beyond on an evaluation of the anticipated assumptions and risks and the likely placement requirements based on current information.

4.5 **Legal Implications, Access to Information and Call In**

- 4.5.1 Prior to the commencement of the process the advice of expert Counsel was secured which was used as a guide throughout to ensure that all actions taken would be sufficiently robust to resist legal challenge, for example by means of judicial review.
- 4.5.2 In addition, and throughout the process, challenge sessions have been held with Corporate Legal Services to ensure that the lessons learned from all the judicial reviews of similar cases was applied to the Leeds process. Ernst and Young also provided expert legal advice.
- 4.5.3 Throughout this project Corporate legal Services analysed all the judicial reviews of 2011 and 2012 relating to care home fees and provided written briefings of advice to the project team. As a result, Legal Services are confident that the Leeds process will withstand any similar legal challenge.
- 4.5.4 Appendix 2 and 3 are marked as confidential under Access to Information Procedure Rule 10.4 (3) as they contain financial and business information of providers in the city and information on the negotiating position of the council in agreeing a fee structure with the independent sector providers. In applying this exemption, the council has considered the public interest test, as the information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The council acknowledges that

there is a public interest in the fee structure for residential care however, we consider that the public interest in disclosing the information in the Appendices is outweighed by the public interest in maintaining the exemption. It is in the public interest that the council is able to negotiate residential and nursing fees which represent best value for money and in order to do this, the council must be able to share information confidentially with providers, who all operate in a commercially competitive market. By releasing information in the Appendices, it could prejudice the council's negotiation position on fees, on this occasion and in the future, and harm the council's ability to achieve best value for money.

4.6 Risk Management

- 4.6.1 An options paper was presented to the Advisory Board in December 2011 and they recommended a procurement route be taken to implement the quality standards as it was felt that this was the most appropriate, robust and fair process. It would ensure compliance with the quality standards through the procurement process and minimise the risk of legal challenge as all providers would be treated in a fair and transparent manner.
- 4.6.2 Whilst there is a risk that some care home providers may opt not to enter onto the new framework arrangement there is capacity within the market to meet additional demand, but this capacity will only exist as long as the major care home providers apply to go onto the framework arrangement. Please see confidential Appendix 3 for a detailed market analysis and risk impact.
- 4.6.3 For those providers who elect not to apply to go onto the framework arrangement there is a risk that they may introduce or increase third party top-ups. In order to understand the potential number of people this will affect a consultation exercise will take place with the market place to try and ascertain the total number of care homes who will be applying for inclusion on the framework arrangement. Once this exercise has been completed work can then commence to finalise a strategy to communicate the impact this may have on the residents who reside in those care homes, and devise a means to mitigate this impact.
- 4.6.4 For those care homes who fail to secure a place on the framework arrangement the non quality fee could be introduced by a phased process so as to give those providers time to plan for the reduction in fee that they will receive. Consultation can then be planned with the residents that are affected. Discussions will take place with care homes after procurement to agree timescales for implementation of the revised fee.
- 4.6.5 Potential new service users (and/or their relatives) will be encouraged to choose a care home that is on the framework arrangement when looking at the different care homes available as quality standards within these homes will have been validated and fees will be charged with no third party top ups. It is envisaged that there will be a significant choice of homes within the QF framework.
- 4.6.6 There is a risk that care homes which do not get onto the framework arrangement will give notice to their existing residents. The risks of this happening mitigated by the adverse publicity such a course of action would attract. An information and media strategy is in preparation aimed at

communicating the benefits of this initiative to the people of Leeds, particularly service users and their carers. Also, the care home would have to look at the sustainability of the home if they gave notice for a large number of residents.

- 4.6.7 There is a risk that some care homes would refuse to accept any LCC funded residents in future but as stated before this would have financial implications for the care home as they may find that in the future the home is constantly under occupied thus it would no longer be financially viable.
- 4.6.8 In order to reduce the risk of Judicial Review a consultation on the fee methodology is being undertaken and care homes will be asked for further comments about the proposed indicative fee

5. **Conclusions**

- 5.1 Much work has been undertaken by Ernst and Young and officers of the Council to develop the quality standards and service specification and fee methodology. This has ensured that the recommended fee is affordable to the Council and provides a fair cost of care to the providers.
- 5.2 A methodology based on providers actual cost of care has been devised and indicative fee levels have been circulated to all members of the Advisory Board.
- 5.3 In order that the quality standards/service specification and new fee regime can be implemented fairly, an open procurement process should be implemented with a view to the new contracts being fully operational by October 2012.
- 5.4 Work will be undertaken during the summer of 2012 to further develop and refine the monitoring and validation process. Officers will continue to work with the service providers and the Advisory Board to complete this before new contracts are implemented.
- 5.5 The reward of being able to procure residential and nursing care services for the citizens of Leeds is sustainable quality which can be evidenced against a Leeds quality standards framework. Sustainable fees for providers of care public reassurance, reduced exposure to high fee rates and 'top ups' for care charged by some providers; reduced threat of legal action by implementing contracts in a fair, open and transparent manner and the ability to better manage demand for services are all significantly advantageous features of this initiative.

6. **Recommendations**

- 6.1 The Executive Board is recommended to agree to:
 - 6.1.1 the adoption of the quality framework approach and the associated recommended fee structure as set out in this report which follows on from the work of the Advisory Board and the extensive collaboration to achieve a new business relationship with Independent Sector providers of residential and nursing care for older people.
 - 6.1.2 the initiation of a procurement process to commence immediately and to note that the Director of Social Services will take a delegated decision to award the

framework contracts in accordance with the Council scheme of delegations in order to ensure that the recommended quality framework and fee structure can be implemented from the 1st October 2012.

- 6.1.3 that the recommended new monitoring arrangements are put in place in order to assure the intended improvements in quality.
- 6.1.4 that the risks and mitigation plans are implemented with regard to the financial risks identified.

7. **Background documents**¹

- 7.1 Choice of Accommodation Directions Local Authority Circular LAC (2004) 20
- 7.2 Residential Governance Quality Framework Governance Structure
- 7.3 Quality Framework Overview
- 7.4 Quality Framework Standards

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.