



Title: **Care Homes: An Update on Accountabilities, Assurance Processes and the Fees Review**

Public Document: **Yes**

Wards Affected: **All Wards in Torbay**

To: **Health Scrutiny Board** On: **29th November 2012**

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1. Key Points and Summary

- 1.1 This report seeks to clarify the respective accountabilities of the Trust, the Council and the Care Quality Commission and then includes two sets of annexes providing detailed information in regard to assurance processes and an update on the review of care home fees which is the subject of a period of consultation, with a decision expected to be made at the Council meeting in February 2013. .

2. Clarification of Accountabilities

- 2.1 Under the Annual Strategic Agreement, held between the Council and Torbay Care Trust, the Care Trust held and discharged a range of accountabilities and duties on behalf of the Council. This included discharging the statutory accountabilities of the role Director of Adult Social Services (DASS) which had been vested in the Chief Executive of the Trust.
- 2.2 However on the 1st of April this year the Care Trust was dissolved and the responsibilities the Care Trust had held for the provision of services transferred to the newly established Torbay and Southern Devon Health and Care Trust.
- 2.3 At the same time the DASS role returned to the Council and is now held by the Interim Chief Operating Officer and Director of Adult Services and Resources. The Council is therefore now directly accountable for some decisions (for example setting the level of care home fees) which were previously delegated to Torbay Care Trust.
- 2.4 Under the current agreement between the Council and the Trust the Trust is, in line with the nationally acclaimed Torbay model for integrated Zone based services, accountable for the assessment of the needs of individual people and arranging services (including residential and nursing home care) to meet those assessed needs.
- 2.5 The position in regard to care homes is further complicated because

responsibilities for the registration and inspection of care homes, and other providers of care services, which were previously held by local authorities are now discharged by the Care Quality Commission (CQC).

- 2.6 Registration with the CQC endows the home with a licence to trade and provides assurance to the Council, the Trust and members of the public that the home has in place systems, processes and procedures which meet a minimum set of quality standards.
- 2.7 Under the Choice of Accommodation Directions the Trust, on behalf of the Council, is obliged to place anyone assessed as needing residential or nursing home care in a home of their choice so long as that home is a registered provider, where the cost of the same is not more than the Council would usually expect to pay.

3. Market Summary

3.1 Working on behalf of the Council the Trust commissions a range of social care placements from independent sector residential and nursing homes to the value of around £22.5million each year. The income received from client contributions (circa £8million) is offset against this amount leaving a net annual cost to the Council of approximately £14.5million.

3.2 The actual number of people supported in care homes fluctuates constantly as existing residents are discharged, or die, and new residents are admitted. However at any one time around 890 people are being supported in residential or nursing home care. The approximate make up of this figure is:

- Residential care (long stay): 760
- Nursing care (long stay): 94
- Short stay: 36

3.3 In line with national trends to promote care at home, where ever this is possible and appropriate, the volume of care purchased in care homes has been falling at an average of around 4% per annum. This is illustrated in the chart below:

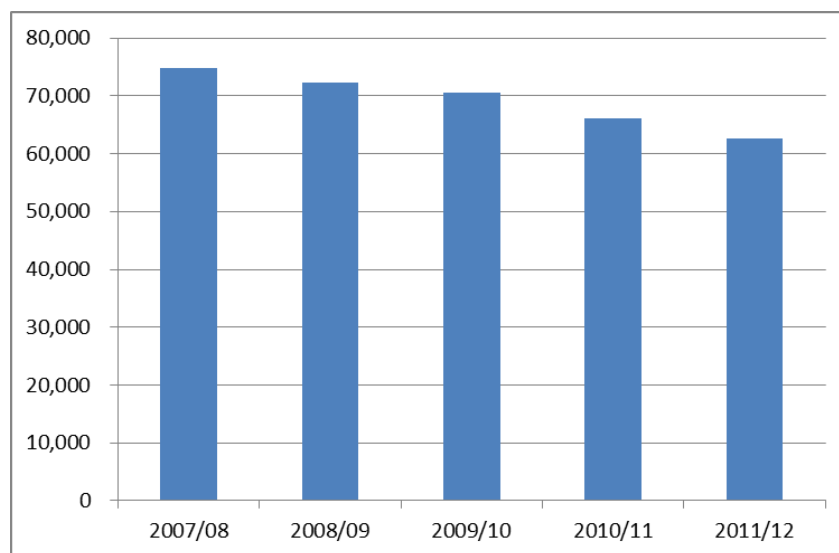


Figure 1: **Bed Weeks of Care Purchased 2007 ~ 2012**

- 3.4 There are 108 care homes, with 2,525 bed spaces, in Torbay which are registered to provide care services by the CQC. This total of 108 homes includes;
- 16 Nursing Homes.
 - 59 Residential Homes, for people over the age of 65.
 - 33 Residential homes for people aged 18 to 65 with learning disabilities or mental health needs.
- 3.5 This ratio of nursing to residential homes in Torbay is notably different to figures which are quoted for national averages:
- | | | |
|---------------|----------------------|-----------------------|
| ▪ Nationally: | 52% Residential Care | 48% Nursing Home Care |
| ▪ Torbay: | 85% Residential Care | 15% Nursing Home Care |
- 3.6 The experience of staff in the Zone teams and commissioning staff is that the variance in these ratios is indicative of an oversupply of residential care.
- 3.7 There is also a difference in the average size of homes with the national average being around 60 beds where as in Torbay the average size is 28 beds. The actual number of beds per home is illustrated in the charts set out in Appendix 1 for residential homes, nursing homes and homes for people aged 18 to 64.
- 3.8 In summary out of the 2,525 registered beds in Torbay at any one time around 890 beds (approximately 35%) are likely to be commissioned by the Council. But, in line with national trends, the number of beds has been falling by 4% per annum, and will probably continue to fall.

4 Fees Review

- 4.1 Proposals for the fees to be paid for residential and nursing home care in Torbay in 2012/13 were developed between the Care Trust and the Council and notified to home owners on the 27th March 2012. The Council subsequently received a request to review the proposed level of fees in a letter which indicated that a group of home owners would seek a judicial review of the position if the Council did not accede to the request.
- 4.2 Since the original proposals had been developed legal proceedings had been initiated by home owners in a number of other areas in the country. Having due regard to this increasingly litigious environment, and the judgements emerging from those proceedings, it was accepted that there were deficits in the previous process and therefore it was decided that it was appropriate to review the approach which had been taken to setting fees levels for 2012/13.
- 4.3 The outcome of this process was set out in a report on a revised set of proposals '**Review of Care Home Fees in Torbay 2012 – 2014**' which was circulated to all home owners in Torbay on the 11th October 2012 for consultation (Appendix 2a & 2b).
- 4.4 The consultation period included the opportunity of responding to the revised proposals by letter, e-mail or telephone, the offer of 1:1 meetings with home owners, an open meeting for all home owners and discussions with the Torbay Quality Care Forum (an organisation which represents a number of home

owners, currently believed to be 18 owners of 25 homes).

- 4.5 The consultation period was originally set to close on the 9th November 2012. However a request to extend the consultation period was received at the open meeting for home owners held on the 25th October 2012 and the review team had received a lower response rate to the consultation than had been anticipated. It was therefore decided to extend the consultation period to 7th December 2012.
- 4.6 The fees proposals not only contain revised proposals (from those proposed on 27 March 2012) for the level of fees but also considers other provisions including:
- Reducing the number of bands of care from 24 to 4, with an additional category for people with exceptional needs.
 - A revised assessment tool for residential care, which had been developed with input from care home managers and matrons.
 - Extending the revised fees proposals, for care homes and nursing homes for older people, to cover a two year period from 1/4/12 to 31/3/14.
 - An interim, without prejudice, payment for to home for people aged 18 to 65 to allow time for further work to understand and develop proposals for the more complex circumstances of this service user group.
 - Transitional protection, through to 31/3/14, to protect the fees, for all those residents who are currently in placement, at the level offered for 2012.

Details of these provisions set out in the paper '**Review of Care Home Fees in Torbay 2012 – 2014**' which is attached as part of Appendix 2.

- 4.7 The reality is that care homes now operate in an open market and the objective of the Council is to reach the position where the price for an individual package of care can be agreed on the basis of the particular needs of an individual.
- 4.8 Officers believe that this is the correct approach because reliance on defined bands of care establishes artificial thresholds and demarcations in the market which will tend to become a standardised set of prices which it is expected will be paid. This expectation distorts the market and will produce anomalies for providers, the Council, the Trust, care management staff and residents.
- 4.9 The objective of the proposals is therefore to establish a market price for care which takes account of:
- The actual costs of providing care.
 - The need to reward the investment made by the care home owner and shareholders.
 - The ratio of publicly funded to private residents accommodated by homes.
- 4.10 Consultation process are still under way; the early indications are of significant concerns being expressed in regard to a number of assumptions which had to be made by the team which developed the costing model, including:
- The level of fees charged to private residents.
 - The return on investment and abatement of capital values.

We have made it clear to home owners that they need to provide us with appropriate evidence within the consultation period as to their concerns.

- 4.11 Comments have also been made in regard to the specific needs of people with dementia. The suggestion has been made that the particular needs of this group of service users have been overlooked because the proposed fee structure does not include separate fee rates for people with dementia.
- 4.12 However the Council and the Trust believe that the assessment tool, which has been developed as part of the review process, takes account of the specific needs of people with dementia. Additionally the proposed fee bands of Standard and Standard Plus, with the provision for exceptional needs, will enable fees to be agreed according to needs of individual service users rather than the term used to describe their illness or disability.
- 4.13 Once the consultation period has closed the review team will consider all the feedback received and prepare a final report and recommendations which will be presented to full Council in February for a final decision.
- 4.14 As detailed above evidence suggests that there is an oversupply of residential homes in Torbay, potentially leading to low occupancy rates and/or an over reliance on social care placements. This could create risks for the future viability for some homes and is one of the factors that will be considered in the economic impact assessment which is being completed as part of the consultation process.
- 4.15 However it has to be remembered that the homes operate in an open market and the owners will need to make appropriate business decisions. The Council and the Trust would wish to work collaboratively with home owners in such situations, to provide appropriate support to them and their residents.

5. Assurance Processes.

- 5.1 As indicated in the introduction the Trust and Council are bound by the outcome of CQC registration processes and the wishes to the individual service users as expressed through the Choice of Accommodation Directions.
- 5.2 However in the course of working with the 890 people who are, at any one time, in residential or nursing home placements staff of the Trust become privy to a wide range of information about how individual residents and their family's view the care they are receiving.
- 5.3 In some situations there will be obvious concerns about one or more residents in a home. Whilst these situations can be distressing and time consuming the structures and process for managing these situations are set out in the local safeguarding process and procedures which accord with national guidelines.
- 5.4 The more difficult situations to manage are those where there are a number of lower level concerns none of which would individually constitute a safeguarding concern or reach the threshold for 'statutory' action.
- 5.5 In these situations the main difficulty is that the information, or knowledge, is frequently diffused amongst a number of members of staff and so needs to be collated and brought together into a single place.
- 5.6 A part of the remit for CQC is to make visits (announced and unannounced) to

care homes to assess and review care standards. These visits will often highlight issues which need to be addressed. Staff in the Trust's Contract Management Team will be aware of these issues and will work actively with home owners and the CQC to ensure that action plans are in place to ensure the issues are addressed.

- 5.7 Where any persistent or chronic concerns remain Trust staff will liaise with the Safeguarding Team, and Strategic Commissioners, to decide on what action can and should be taken. Where necessary this will include the suspension of placements, and ultimately the transfer of residents to other accommodation.
- 5.8 In managing these situations Officers of the Trust and the Council have to be mindful that whilst there is a clear duty of care to residents acting inappropriately, or without good cause, could unnecessarily compromise the viability of the home and the livelihood of the owner and staff.
- 5.9 The approach that the Trust is taking to managing these situations is described in Appendix 3.

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Appendices

Appendix 1: Charts Indicating Bed Numbers by Care Home Type

Appendix 2: Information Provided to Care Home owners about the Outcome of the Fees Review

- Covering Letter to All Home Owners
- Report: 'Review of Care Home Fees in Torbay 2012 – 2014 (amended 17th October 2012)

Appendix 3: Contract Quality Assurance and Monitoring of Care Homes in Torbay

Documents available in members' rooms

Fees Review Consultation Pack: This pack contains copies of all letters, reports, and presentations sent to home owners.

Document / Format	Title / Content	Date	Author
E-mail	<i>'Important Request for Information'</i> <ul style="list-style-type: none"> ▪ e-mail containing information request. 	04/09/12	Lin Gibbs <i>(on behalf of Fran Mason)</i>
E-mail	<i>'Letter from Fran Mason and presentation given by Anthony Farnsworth'</i> <ul style="list-style-type: none"> ▪ PDF copies of letter and ▪ PDF copy of Power Point Slides following presentation made on the 6th September at open meeting. 	12/09/12	Lin Gibbs <i>(on behalf of Fran Mason)</i>
E-mail and hard copy via post	<i>'Care Home Fees – IMPORTANT LETTER AND DOCUMENTS'</i> <ul style="list-style-type: none"> ▪ Letter from Caroline Taylor ▪ Consultation Questionnaire ▪ Report: Review of care Home Fees in Torbay 2012 - 2014 	11/10/12	Lin Gibbs
E-mail	<i>'IMPORTANT DOCUMENT: care homes Workshop Event 25 Oct Follow Up'</i> <ul style="list-style-type: none"> ▪ Covering letter from Caroline Taylor ▪ Copy of presentation ▪ Final amended report ▪ Usual cost of care Torbay Methodology 		Lin Gibbs <i>(on behalf of Caroline Taylor)</i>
E-mail	<i>'Important Letter from Fran mason re extension of consultation period'</i> <ul style="list-style-type: none"> ▪ Letter from Caroline Taylor 		Lin Gibbs <i>(on behalf of Fran Mason)</i>

Background Papers:

None other than those attached as appendices or included in the consultation packs.