

ADULT SOCIAL CARE & HEALTH CABINET MEMBER MEETING JOINT COMMISSIONING BOARD

Agenda Item 23

Brighton & Hove City Council

Subject:	Fairer Contracting		
Date of Meeting:	11 September 2008 15 September 2008		
Report of:	Joy Hollister Director of Adult Social Care and Housing		
	Amanda Fadero Director of Quality & Engagement Brighton & Hove Primary Care Trust		
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Key Decision:	Yes	Forward Plan No. 7 Digit Ref: ASC 3345	
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 In March 2008 the Adult Social Care Committee and Joint Commissioning Board approved that Brighton & Hove City Council and Brighton & Hove City Teaching Primary Care Trust (PCT) will undertake joint work to produce a further Report on Fairer Contracting with recommendations to return to members. This is in line with recommendations in the Joint Commissioning Strategy for Older People 2007-10.

2. RECOMMENDATIONS:

- 2.1 This Report is seeking in principle agreement of the Cabinet member for Adult Social Care and Health to the proposals listed below:
- The new Joint Council and PCT pre placement contract for both residential care homes and care homes with nursing from 1 April 2009
 - The Preferred Provider Scheme which is included in the contract
 - Individually negotiated fees
 - The Incentive Scheme

3. RELEVANT BACKGROUND INFORMATION/ KEY INFORMATION

3.1. Background

3.2. *Quality*

Following lessons learned in local commissioning/contracting projects last year, it is clear that new processes are needed to drive up quality in care homes for older people and older people with mental health needs. Currently the Council and PCT pay those care homes that provide excellent or good care the same as those that are providing adequate or poor care. There is also a national impetus to improve users' experience in care homes. These initiatives coincide with unprecedented local activity in the care home market and it is expected that there will be improved bed capacity in the city within the next eighteen months. Monitoring of the market will continue, particularly in light of the current slowdown in the economy and impact on building projects.

3.3 *Fees report*

A Report with recommendations for Fee Rates to Care Homes will be presented later in the financial year and it is acknowledged that this will have a significant bearing on how Fairer Contracting is regarded by providers.

3.4 *National picture*

Around a quarter of local authority respondents to a recent survey (CCMN Annual survey of UK local authority baseline fee rates 2008-9) reported that they paid fees based on quality criteria. Laing and Buisson report that the actual number of local authorities with fees related to quality is likely to be closer to half and this may rise to three quarters by the beginning of the next financial year. (Laing and Buisson 2008)

3.5. Joint Council and PCT Contracts

The recommendation is for two new Council/PCT contracts, one for care homes with nursing and one for residential homes. These are based on an updated Council pre placement contract which includes details of the Preferred Provider Scheme. The updated contracts have new service specifications which are based on recommendations from the Care Service Improvement Partnership Agency.

3.6. Preferred Provider Scheme

3.7. *Overview*

The recommendation is for a Preferred Provider Scheme. This ranks care homes in the city according to quality. This quality is determined by the CSCI rating, and for nursing homes it will also include clinical standards as audited by the PCT.

Care homes on the Preferred Provider Scheme will be entitled to various benefits including preferred rates. The fees report, detailing the recommended fees to be paid to providers will be brought to Cabinet members later in the year.

A Prioritisation Protocol will be used to ensure that vacancies are filled using either the home that the service user requests or the best quality home available on the Preferred Provider Scheme. Details of the Preferred Provider Scheme will be published on the Council and PCT websites.

3.8. *Eligibility*

The Preferred Providers Scheme is open to all care homes for both older people and older people with mental health needs in the city. In order to be included on the Preferred Provider Scheme a care home must be rated **2** or **3 star** in their most

recent CSCI inspection. Additionally nursing homes must deliver clinical standards that are audited as good or excellent (**2 or 3 star**) by the PCT.

Nursing homes need to be rated **2 or 3 star** in CSCI **and** in their clinical standards to be accepted on to the Preferred Provider Scheme.

Care homes wishing to join the scheme must be able to agree the terms of the Council/PCT pre placement contract and willing to work in partnership with the Council/PCT. All care homes meeting the criteria will be accepted on to the Scheme as it becomes operational.

All care homes joining the Preferred Provider Scheme will be eligible for the Preferred rate for all **new** funded service users. Existing service users will remain at the previous rate. In April 2011 any service users at the previous rate in good or excellent homes will be transferred to the Preferred rate.

The intention is in time, to contract entirely with care homes on the Preferred Provider Scheme, unless a service user requests to be placed at a home rated as adequate. The Council and PCT will not place service users in poor homes. At present there are insufficient care homes rated 2 or 3 star to meet capacity, but this is expected to change by 2010.

Block contracts are not included in the Scheme. Currently there are three nursing homes where the Council block contracts a total of 88 beds. Two of the homes are rated good and the third is rated adequate. All care homes with block contract arrangements will be supported to improve/maintain the quality of care rating as good/excellent.

3.9. *Payments*

The same fees will be paid for both 2 and 3 star homes in order to keep the payments as straight forward as possible. This decision will be reviewed as the Scheme matures.

Preferred Provider rates will be paid for new residents from the date that a CSCI report, rating a home either good or excellent, is published. There is no differential rate between single and shared rooms on the Preferred Provider Scheme as the intention is to use single rooms whenever possible.

3.10. *Choice*

Self funders are able to choose the care home in which they are placed.

Council/PCT funded service users can elect to go to a specific care home rated with three, two or one stars. Their choice will take precedence over the Prioritisation Protocol. The Council/PCT will not make new placements at homes rated poor (with no stars). Service users will be made aware of the quality of care homes.

3.11. *Suspensions and re-admissions*

If a service provider ceases to be rated either 2 or 3 stars they will automatically drop from the Preferred Provider Scheme. This will result in placements not being prioritised and service users not placed at the Preferred Rate, although some service users may be placed at the non Preferred Provider Scheme rate.

If a care home is registered for both residential and nursing care, and there are issues with clinical standards sufficient to result in a suspension, the care home will be suspended from taking both nursing and residential placements.

If the home does not meet the requirement of the Scheme existing residents will continue to be funded at the rate at which they were placed. Similarly if a home rejoins the Scheme new placements will be made at the preferred rate with the existing residents' rates remaining at the rate at which they were placed.

If a care home does not conform to the Council/PCT's pre placement contract requirements, following all dispute resolution mechanisms, new placements will be suspended in the usual way.

3.12. Individually Negotiated Fees

Individually Negotiated Fees are agreed payments that reflect **specific** and **exceptional** care needs. There is an expectation that the majority of placements will be made at the set rate, however the care needs of an individual service user may merit an individual fee payable by either the Council (where it is a social care need) or PCT (for Continuing Healthcare).

If a home believes that they are entitled to these individually negotiated fees they must make the case to the appropriate commissioners, stating the reasons for the enhanced payment and the expected duration for it to be in place.

3.13. The Incentive Scheme

The Incentive Scheme gives Commissioners a tool to influence the market. It is based on the successful scheme operated by the Council's independent home care contracting. Homes engaging with specific initiatives such as promoting efficient hospital transfers or being part of a pilot scheme could be eligible for one off incentive payments. Homes rated as no star (poor), are not eligible for the Incentive Scheme; it is open to those rated one star and above. Incentive payments can be of varying size, and will be dependent on the specific task that is being incentivised.

4. **CONSULTATION**

4.1. Stakeholders

Stakeholders have been kept abreast of key developments in Fairer Contracting through regular briefing notes.

4.2. Care home providers

Throughout the Fairer Contracting process there have been regular meetings which have been attended by the Commission for Social Care Inspection, key care home providers and their representatives.

In May 2008 the Brighton & Hove Registered Care Homes Association hosted a meeting dedicated to Fairer Contracting that was attended by 34 care home owners/managers. A further meeting is planned for autumn 2008.

5. **FINANCIAL & OTHER IMPLICATIONS:**

5.1. Financial Implications

Forecast expenditure in 2008/09 on nursing and residential care for older people and older people with mental health needs is £14.8 million.

The Fairer Contracting process is expected to improve quality and achieve Value for Money and is in accordance with best practice.

Fee options are being modelled to assess the likely cost pressure on the budget for 2009/10 onwards and recommendations on fee levels will be made in a separate report alongside the Adult Social Care and Housing budget strategy for 2009/10.

Anne Silley Head of Adult Social Care Finance Services 07/08/08

5.2. Legal Implications

The contracts referred to in this report are 'Part B' services for the purpose of EU procurement law and UK procurement Regulations, and therefore not subject to the full application of either. The Council is nevertheless required to comply with EU Treaty objectives of non-discrimination and openness in procurement, as well as comply with its obligation to seek Value for Money. The proposal for moving current providers over to the new Fairer Contracting method is capable of complying with this

requirement, as long as the approach to pricing is capable of withstanding Value for Money analysis. The Council must take the Human Rights Act into account in respect of its actions but it is not considered that any individual's Human Rights Act rights would be adversely affected by the recommendations in this report.

Sonia Likhari Contracts Lawyer 08/08/08

The proposals will enable the Council to ensure best value and informed choice for its service users and will therefore make the best use of its resources in order to meet its statutory duties to older people with care needs.

Hilary Priestley Senior Lawyer 11/08/08

5.3. Equalities Implications

An Equalities Impact Assessment has been carried out, and recommendations heeded.

5.4. Sustainability Implications

The new contracts have included clauses on sustainability eg use of email rather than paper based correspondence.

5.5. Crime & Disorder Implications

There are no implications for crime and disorder.

5.6. Risk and Opportunity Management Implications

A risk log has been maintained since the beginning of the project. There have been risks around identifying the Council finances for the Scheme. Currently finances are being modelled and recommendations will be made in the Fees Report.

5.7. Corporate / Citywide Implications

Fairer Contracting meets the Council's new corporate priority, 'Better Use of Public money'. It also met the previous priority of, 'prosperity' which is about developing a prosperous and sustainable economy.

6. **EVALUATION OF ANY ALTERNATIVE OPTION(S):**

6.1 Preferred Provider Schemes in use elsewhere in the country were examined. Providers' comments on alternative Schemes were considered.

6.2 There is the opportunity to do nothing. If this were the case it is unlikely that providers would have the resources or the impetus to drive up quality to the standards needed locally. The current good relationships between Commissioners and Providers would be damaged and the costs for Continuing Healthcare would remain high.

6.3 Fairer Contracting, by paying a fair rate with a fair contract is intended to secure local care home provision for local OP and OPMH. At the same time it is intended to drive up quality and make savings for the PCT. A cost pressure is likely to fall on the Council which will be assessed as part of the budget strategy for 2009/10, details will be provided in the planned Fees Report.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The recommendation is for a Joint PCT/Council contract. This will drive up quality by rewarding care homes that provide the best quality of care, and to cease placing service users in poor homes. Clinical standards, additional to CSCI standards will be used to rate nursing homes.
- 7.2 Stakeholders have been consulted throughout the Fairer Contracting process and are aware and largely in agreement with the recommendations.

SUPPORTING DOCUMENTATION

Appendices:

None

Background Documents

1. Fairer Contracting Report to the Adult Social Care Committee on 03 03 08
2. Fairer Contracting Report to the Joint Commissioning Board on 31 03 08
3. Laing and Buisson (July 2008) [Baseline Fees Survey 2008/09 – CCMN Special Report] Community Care Market News Vol.15 (4) pp 100-101