

NORTH YORKSHIRE COUNTY COUNCIL

Care & Independence Overview & Scrutiny Committee

12th November 2012

Care Home Fee Negotiations with the Independent Sector

1. Purpose of the report

1.1 To report on the outcome of a mediation process following the lodging of a Judicial Review by the Independent Care Group and a number of individual care homes.

2. Background

2.1 Since 2010 there have been a number of Judicial Reviews lodged against local authorities in respect of the fees paid for residential care. These have created case law that a local authority should make itself aware of the actual costs of providing care and to pay due regard to this when setting its fee levels

2.2 A Judicial Review was lodged in respect of North Yorkshire's fees for 2012/13. Three other North East authorities were the subject of similar proceedings and the Judge decided to group the cases together but to take Newcastle City Council as the lead case.

2.3 North Yorkshire and the complainants agreed to a mediation process which took place in August 2012.

3. Mediation Outcome

3.1 The following statement was agreed following the process which encapsulates the key points:-

“Judicial Review

Joint statement from ICG and NYCC

ICG and NYCC are pleased announce that the mediation meeting held on 15 August 2012 has led to positive progress.

ICG, the care homes which participated in the Judicial Review action, and NYCC agreed that the legal process was a last resort and that they were keen to move forward together to consider the rate paid for care in North Yorkshire. The headlines are as follows:

- NYCC will work together with ICG on an exercise to consider the actual cost of care within residential homes. An independent accountancy/audit firm will be appointed. Information will be collected and verified independently and NYCC will give 'due regard' to this in the fee setting process for 2013 - 14 onwards

- Judicial Review proceedings will be ‘stayed’ for four months to allow for progress in terms of developing and undertaking an actual cost of care process.
- In the interim, the current standard rates paid by NYCC will be increased by 2.5% from 8 October 2012. Any changes to fees for 2013/14 will now be subject to this ‘due regard’ (see above).
- In addition, guidance regarding the use of third party top-ups will be finalised and circulated to care homes, potential residents and NYCC staff. The Council has confirmed that it will not in any way inhibit the ability of care home providers to charge Top Ups and will not infer any adverse inference from those care home providers who choose to levy Top Ups so long as the Top Up is lawful and there is a third party willing and able to make the contribution.
- The Council has also agreed that it will have due regard to the Pension Savings Disregard in determining the available funding, setting fees and allocating any annual increase in the pension benefits.

ICG Chair Mike Padgham says ‘In the spirit of goodwill, we have agreed to go on a journey with the Council to seek to establish through genuine research the actual cost of care in North Yorkshire. We will then work with the Council to see new fee rates adopted within a timeframe. We know that conditions are very tough financially and the Council will have to do this in stages but we are grateful to have reached this point with them. We commend them for working with us on it. We feel more optimistic about the future and welcome the start of a new stage in our relationship with the Council working together to improve social care for the clients who need support, the people who work in social care and the care homes across the County – many of which are small businesses.’

NYCC Director of Health & Adult Services Helen Taylor says ‘I am pleased that the mediation process has led to a positive outcome. We now have a pathway forward and we hope that providers will take part in the actual cost of care exercise. There has never been a more challenging time for social care and our jointly agreed approach will be crucial in continuing to meet the needs of vulnerable people in North Yorkshire.’ “

3.2 Joint work continues to implement the agreement

3.3 Newcastle City Council has recently been instructed by the Court to rerun the process for the setting of their fees for 2012-13.

4. Recommendations

4.1 The committee is asked to note this report outlining the mediation process following the lodging of the Judicial Review

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