

DECISION NOTICE OF AN INDIVIDUAL MEMBER OF GWYNEDD COUNCIL CABINET

DATE OF DECISION:	10 August 2018
DATE DECISION PUBLISHED	15 August 2018
DATE DECISION WILL COME INTO FORCE and implemented, unless the decision is called in, in accordance with section 7.25 of the Gwynedd Council Constitution 26 July 2018	23 August 2018

Cabinet Member: Councillor W Gareth Roberts
Cabinet Member for Adults, Health and Well-being

SUBJECT

Increase the fee from nursing care following the High Court's decision

DECISION

- To approve the following amended fees for Nursing care following the High Court's decision

	2018/19 Fee	2018/19 Amended Fee
Nursing Care	£606.92 per week*	£613.51 per week*
Dementia Nursing Care	£639.19 per week*	£645.78 per week*
*Not including Health contribution		

- Delegate the right to the Head of Adults, Health and Well-being Department to make any necessary changes to establish the final scale as a result of any further information, or any change in circumstances, which will come during the 2018/19 financial year.
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REASON WHY THE DECISION IS NEEDED

Please see attached officer report


DECLARATIONS OF PERSONAL INTEREST AND ANY RELEVANT DISPENSATIONS APPROVED BY THE COUNCIL'S STANDARDS COMMITTEE

None

ANY CONSULTATIONS UNDERTAKEN PRIOR TO MAKING THE DECISION

Consultation with
Gwynedd Council Statutory Officers and Local Members.
The results of the consultations are reported upon in the attached report

**DECISION NOTICE OF AN INDIVIDUAL MEMBER OF GWYNEDD COUNCIL
CABINET – OFFICER REPORT**

Name and title of Cabinet Member/s:	Councillor: Gareth Roberts
Name and title of Report Author :	Rhion Glyn, Senior Business Manager
Date of Decision :	10/08/2017
Signature of Cabinet Member/s :	

Subject : Increase the fee for nursing care following the High Court's decision

Recommendation for the Decision :

- 1. To approve the following amended fees for Nursing care following the High Court's decision.**

	2018/19 Fee	2018/19 Amended Fee
Nursing Care	£606.92 per week*	£613.51 per week*
Dementia Nursing Care	£639.19 per week*	£645.78 per week*
<i>* Not including Health contribution</i>		

- 2. Delegate the right to the Head of Adults, Health and Well-being Department to make any necessary changes to establish the final scale as a result of any further information, or any change in circumstances, which will come during the 2018/19 financial year.**

Reason why Decision is needed :

The Council sets the fees we pay independent care home providers to meet the care and support needs of our residents, annually. See below the weekly amounts for 2018/19

Care Category	£ per week
Residential Care	£525.07
Dementia Residential Care	£585.41
Nursing Care	£606.92*

Dementia Nursing Care	£639.19*
<i>* Not including Health contribution</i>	

In addition to the fee the Council pays independent care home providers for Nursing care or Dementia Nursing care, the Health Board contributes a weekly amount in order to meet the needs, which are met by a Registered Nurse. This contribution is called FNC – Funded Nursing Care. This contribution by the Health Board is relevant if the individuals receive Nursing care in a Nursing home.

Back in 2014, several Care Homes began legal proceedings requesting a judicial review of the Health Board's decision when setting their fees for 2014-15. They were seeking an increase in the payment made to them by the Health Board for the 'Funded Nursing Care' element.

A decision was made by the Supreme Court in 2017 which revoked the Health Board's decision for 2014-15 and the Health Board was ordered to re-examine the decision and ensure that the correct amount in terms of the 'Funded Nursing Care' was calculated.

The High Court's decision in 2017 noted the Registered Nurse's activities which should be included as part of the Funded Nursing Care. In addition to those elements which are already funded, the Court has determined that the following should be joint-funded by the Health Boards and the Local Authorities.

- Paid breaks
- Time it takes for the Registered Nurse to be supervised
- A proportion of time for personal care which represents the time spent on providing, planning, supervising or deputising which should be done by the Registered Nurse, with the rest of the time for personal and social care to be funded by the Local Authority.

Since the beginning of 2018, the Health Boards and the Local Authorities have been working together with Welsh Government to ensure compliance with the High Court decision, and also in order to consider the financial implications involved with increasing the weekly fee for 'Funded Nursing Care' and any increase to the Local Authorities' weekly fee for Nursing care.

By now, an agreement has been reached between the Health Boards and the Local Authorities on the financial increase which derives from the decision to meet the elements noted above. The weekly fee for 'Funded Nursing Care' will increase from £149.67 per week to £162.75 per week. Local Authorities will increase the fee for Nursing care by £6.59 per week per individual in order to address a proportion of the personal and social care.

We are aware that the legal representatives of Care Forum Wales have raised questions about how elements of the FNC – Funded Nursing Care is calculated and these are being dealt with separately. The outcome of those questions could affect the FNC – Funded Nursing Care rate and also the local authority amount for which we are seeking a decision. Consequently, the Cabinet Member is requested to delegate the right to the Head of Adults, Health and Well-being Department to make any necessary changes to establish the final scale as a result of any further information, or any change in circumstances, which will come during the 2018/19 financial year.

See below what this increase means to the fee we pay independent homes to provide Nursing care and Dementia Nursing care.

	2018/19 Fee	2018/19 Amended Fee
Nursing Care	£606.92 per week*	£613.51 per week*
Dementia Nursing Care	£639.19 per week*	£645.78 per week*
<i>* Not including Health contribution</i>		

The Supreme Court’s decision is also relevant to historical decisions in terms of setting the fee for Nursing Care. Arrangements are in place for dealing with this by providing back payment to the relevant Homes. This arrangement is made by the Health Board throughout Wales and is fully funded by Welsh Government.

Welsh Government will provide a separate grant to us in 2018/19 to fund the increase in our fee, with a view to transferring the permanent budget for the costs as part of the settlement in 2019/20. We have also received guidance from Welsh Government in terms of how the decision and the use of the grant tie into our Charging Policy arrangements.

In accordance with the High Court’s decision, we are expected to adopt the amended fees and implement them as soon as possible.

Declarations of personal interest by any Cabinet Member consulted with and any relevant dispensations approved by the Standards Committee

Not applicable

Any consultations undertaken prior to making the decision :

Head of Finance

"I am satisfied that the adjustment to the fees as outlined in the decision sheet is a fair reflection of what is necessary following the Supreme Court's ruling. I can confirm that the Welsh Government will fund this increase through a specific grant for 2018/19, with the intention of transferring the additional costs to the settlement for 2019/20.

The sheet states that homes continue to question some elements of the fees. I am satisfied that clear funding arrangements have been established among public bodies to deal with any further modifications that would result from this. Therefore, I would not have an objection to delegating the decision on the final fee of the fees to the Head of Adult, Health and Wellbeing Department if minor adjustments were necessary "

Monitoring Officer –

"The report has been the subject of legal input. It is noted that there is a specific context to this decision following the judgement of the Supreme Court in the case R. (on the application of Forge Care Homes Ltd) v Cardiff and Vale University Health Board [2017]. The proposed changes are aimed at reflecting the implications of the judgement on the fees which are set whilst acknowledging that a level of flexibility is needed to deal with the current situation for 2018/19"

Local Member/s

Not applicable