

NORTH TYNESIDE CARE HOME OWNERS ASSOCIATION ('NTCHOA')

RESPONSE TO:

NORTH TYNESIDE CARE HOME OWNERS ASSOCIATION CONSULTATION RESPONSE 2019/20

Introduction:

1. On 15 July 2019 North Tyneside Council ('the **Council**') produced its 'Pricing Strategy For Older Person's Residential Care 2019/20 Consultation Document' ('the **Consultation Document**'), which was circulated to care home owners in North Tyneside on 22 July 2019. Within the Consultation Document, the Council states announces that it "is proposing to review the weekly rates paid for residential and nursing home services 2019/20 for older people (and other groups as appropriate) and wishes to consult with the care home market in North Tyneside on its proposals". The proposals themselves are set out within the Council's 'Proposed Pricing Strategy For Older Person's Residential Care 2019/20' ('the **Pricing Strategy**'), which document accompanies the Consultation Document.
2. NTCHOA is an association made up of and represents the interests of independent care homes within North Tyneside. NTCHOA's interest is recognised by the Council within the Pricing Strategy (p.2).
3. This paper stands as the NTCHOA's formal response to the council's proposals.
4. While this paper is prepared by NTCHOA for and on behalf of its members, it does not stand to the exclusion of any other additional responses that any members and/or care providers may wish to make directly to the Council.

Consultation Obligations:

5. Having decided to consult, the Council is obliged to do so properly. In short, this means that it must take into account all relevant information and disregard all irrelevant information. It must also ensure that it provides sufficient information so that those responding to the consultation may do so intelligently.
6. At present and for the reasons set out within this response, the basis upon which the Council has formulated its proposals is unclear; the proposals applying a new methodology for calculating care home fees. In order for the Council to comply with its consultation obligations, it must first provide further information and allow sufficient time for consultees to consider this information and respond.

Extent of Consultation:

7. The Proposed Pricing Strategy sets out proposals for:
 - Setting a rate for residential care services for older people;
 - Application of a differential rate for EMI (Elderly Mentally Infirm) / dementia care, using the residential rate as a basis for this;
 - Application of a banded payment rate for different grades of residential care, following the completion of a quality monitoring visit and using the residential blended rate as a basis for this;
 - Review of the quality monitoring tool and the scoring methodology;

- Determination of an hourly rate for additional 1:1 care, as determined following assessment and as detailed in individual support plans;
 - Dealing with inflationary price increases over the life of the proposed new contract, including general cost increases and living wage increases;
 - Formalising all of the above in a new three year contract / agreement.
8. The proposals were circulated by the Council without prior engagement with care home providers and/or NTCHOA. Accordingly, there was no opportunity for providers and/or NTCHOA to seek clarification and understanding of the basis upon which the proposals were formulated.
 9. The Council informed care home providers that it required responses to its consultation by 12 August 2019; that is, within 3 weeks of the Council circulating the Consultation Document. Particularly in light of the fact that the consultation fell over the holiday season, but in any event, this deadline was wholly insufficient to deal both with the principal issues of the Council's approach to fee rates and its proposed new commissioning contract; both of which are detailed and technical. Accordingly, within email correspondence commencing on 23 July 2019, NTCHOA informed the Council that it required more time beyond the holiday season, within which to consider and respond to the consultation. At the same time, NTCHOA provided the Council with an initial draft copy of its 'cost of care workings'.
 10. Within its email correspondence with the Council, in an attempt to address the shortcomings in the information provided by the Council and the logistical timing challenges presented by the consultation, NTCHOA suggested a timetable for agreement with the Council. The Council declined NTCHOA's invitation/suggestion. However, on 28 August 2019, the Council agreed to extend time for NTCHOA to submit its response to the consultation to Friday 20 September 2019, which has since been amended to 24 September 2019. While it is understood that the Council would ideally like to receive a response also to the draft contract by this date, this is not possible within this timeframe and the current incomplete status of the contract. This response to the consultation does not, therefore, include NTCHOA's response to the proposed new contract, which the Council has acknowledged will and may form part of separate and ongoing work between the Council and care home providers/NTCHOA. For the avoidance of any doubt, NTCHOA will in due course provide a detailed response to the proposed new contract and wishes to engage further with the Council regarding the logistics of doing so.
 11. The Council seeks to limit the extent of its consultation to the 7 questions it has raised within the Consultation Document. Further, the Council wishes to limit the responses to these questions to one side of A4 in font size 10. This is too restrictive and prevents full and sufficient responses addressing all relevant matters which fall for consideration. Were the Council to fail to take full consideration of consultation responses that stray beyond the 7 questions it has raised and/or exceed one size of A4 in font size 10 in response to each of these questions, the Council will fail in its public law consultation obligations to take account of all relevant considerations. NTCHOA trusts that the Council will not do this, thereby avoiding an unnecessary distraction to the central issues of importance and an undermining of the Council's duty of engagement and relationship with care home providers.

Background:

12. What they have missed out – refer and reserve position

'Statutory Obligations on the Authority'

13. On pages 3 to 4 of the Pricing Strategy, the Council endeavours to set out the applicable legal framework. It is not the function of this response to address the granular detail of the Council's legal obligations; rather it is for the Council to properly direct itself regarding these obligations and to comply with them. However, **there are two matters** which we consider it appropriate to address:

14. **The first matter** relates to the Council's omissions. The Council fails to reference paragraph 4.35 of 'The Care and Support Statutory Guidance' within the Pricing Strategy. This extract from the Guidance states:

"4.35 Local authorities should consider the impact of their own activities on the market as a whole, in particular the potential impact of their commissioning and re-commissioning decisions, and how services are packaged or combined for tendering, and where they may also be a supplier of care and support. The local authority may be the most significant purchaser of care and support in an area, and therefore its approach to commissioning will have an impact beyond those services which it contracts. **Local authorities must not undertake any actions which may threaten the sustainability of the market as a whole, that is, the pool of providers able to deliver services of an appropriate quality, for example, by setting fee levels below an amount which is not sustainable for providers in the long-term.**" (emphasis added)

15. The Council further fails to reference Annex 1 to the Statutory Guidance, including (but not limited to) paragraph 11) of Annex 1 where it states:

"In all cases the local authority **must have regard to the actual cost of good quality care in deciding the personal budget to ensure that the amount is one that reflects local market conditions.** This should also reflect other factors such as the person's circumstances and the availability of provision. In addition, **the local authority should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.** Guidance on market shaping and commissioning is set out in Chapter 4. Local authorities **must** also have regard to the guidance on personal budgets in Chapter 11, and in particular paras. 11.22-11.24 on calculating the personal budget." (emphasis added)

16. **The second matter** relates to Continuing Healthcare ('**CHC**'). On p.2 of the Pricing Strategy, the Council states: "The fee levels in this report will primarily be for older person's services for short term and long term care, but will also be used as a baseline for nursing and continuing healthcare provision". On p.13 of the Pricing Strategy, the Council states: "The costs in the calculator take account of the "social care" costs only and do not include any nursing costs. It is proposed that all costs associated with nursing care will be met through the funded nursing care element of the placement (from April 2019 this is set at £165.56 per week). Information in relation to nurses and nursing provision has been excluded from this analysis. In addition the figures exclude any continuing health care costs as these will be met by the CCG through the CHC top up of £60.00 per week from April 2019. Though it is noted and accepted that the CCG use the social care base cost, the FNC cost and the CHC top up cost to calculate the overall payment of the CHC placement".

17. In relation to this 'second matter', we comment as follows:

- In light of the fact that the Council confirms that fees proposed by the Council are being used a baseline for nursing and CHC, it is surprising that the Council fails to set out

any information regarding the legal framework that pertains to FNC and CHC and the setting of fee rates thereunder. This raises the question as to what (if any) considerations the Council has applied in the formulation of its proposal that the nursing care costs will be sufficiently met by FNC.

- The Council should be aware that the legal definition of FNC is restricted. The Council should be aware of the matters that have and those matters that have not been taken into account by the DHSC in its formulation of FNC rates. The Council should be aware, therefore, that insofar as providers (as they have been encouraged to do) have relied upon suitably qualified senior carers to deliver FNC funded services (under the direction of nurses), the senior carers time is not captured within the FNC fee rate. In light of the requirement that there not be any funding gaps and insofar as FNC is being delivered Council funded residents, it appears that the Council has not made any or any adequate enquiries and provision for these 'social care' costs that are not being met by the DHSC. These costs were previously identified by Mazars as running at a rate of £7 per resident per week. As the granular detail of the extent of the Council's enquiries into costs and the assumptions it has made therein are not fully known, we are not in a position to identify within the Council's figures, what the impact of this is. It is nonetheless an important issue that the Council does need to address and resolve.
- As we understand the Council's comments, CHC is an issue for the CCG despite the fact that the CCG does rely to an extent upon the Council's fee rates for social care. If our understanding here is incorrect, it is important that the Council makes this known to us. Otherwise, we merely make it known (as we have done in the past) that we do not consider it appropriate to rely upon the Council's fee rates in the setting of CHC. Further, that there are ongoing concerns regarding the CCG's failure to make adequate provision for the funding of CHC eligible residents who are within residential homes. We have been informed by the CCG that they have appraised the Council of issues surrounding the funding of individuals within care homes who are eligible for CHC funding. As this funding is not being released by the CCG, who seek to deliver the necessary nursing care through the District Nurse services, no additional funding is being provided for the additional 'social care' element. There is therefore presently a funding gap, which on the CCG's analysis must logically fall to the Council to meet. This issue has not been addressed either in the Council's analysis of the legal framework, nor its cost calculations and enquiries. It is an important issue that the Council does need to address and resolve.

Background:

18. There is a significant amount of background which the Council has omitted to address within the Pricing Strategy. Much of it is referenced within recent correspondence from David Collins Solicitors (sent on behalf of the NTCHOA) dated 26 March 2019. We do not propose referencing this further within this response, it is nonetheless relevant background, particularly with regards to the Council's approach to the care home market within North Tyneside and its delays in the discharge of its duties to the market. This we see again reflected within the present proposal which itself seeks to addressing the setting of fees for the year 2019/20, which is matter which the Council should have resolved prior to or shortly after 1 April 2019 – not at the end of 2019. The Council's failure to deal with this matter in a timely manner, (despite representations from NTCHOA) itself only serves

to create uncertainty within the care home market, thereby undermining that market contrary to Council's legal duties not to do so.

NTCHOA Cost of Care & Fee Analysis

19. As part of this submission we have included the Cost of Care report and findings that was undertaken by NTCHOA. This represented nearly 70% of the total number of available beds in the North Tyneside area. Out of the remaining 30% of beds that did not take part, FSHC & Roseberry Care Centres accounted for 20% and we have documented what we believe to be their current position.

20. Occupancy - The actual occupancy within the Cost of Care was 90.27% compared to the current council stated occupancy of 87.5%.

21. Costs - The actual costs are in excess of the CFC arrived costs and we have (in answer to 'Consultation Q1') detailed where we believe the major variances to be. However, we also make the following additional points:

- 1) We have inflated the costs for staff increases for April 2019 and this information is provided.
- 2) All the costs collected are specific to North Tyneside care homes. This is not the position under the CFC model adopted by the Council for the purposes of the proposals.
- 3) All costs collected are from March 2019 and relevant to the current fee discussions (with an increase in LW for April 2019 shown separately). We do not believe all the information collected by either the Council or CFC model is current and seek further clarification of this herein.
- 4) It should be recognised by the Council that there is a differential between general residential clients and general nursing clients which is not covered by FNC. There are additional care hours as evidenced by our report and there is a social element to nursing costs not covered by the FNC payment (as previously highlighted in the NHS review undertaken by Mazaars and adopted by LaingBuisson in its recent review of FNC costs).

22. Weekly Fee Analysis - We believe that it was important to demonstrate how other income, particularly the private market, impacted on the overall market in North Tyneside. This information is detailed in appendix 4 of our report. Putting aside for the purposes of this response, the legality of any reliance by the Council on cross subsidisation of the funding gap between its fee rates and that which is necessary - although private fees and TPT are cross subsidising some of the funding gap, there is insufficient income from them to sufficiently bridge the gap; thus providers can no longer sustain such a large shortfall. We make the following points regarding weekly fee income:

- 1) The total weighted average fee income is insufficient to cover the costs of care (excluding profit) for every category of care.
- 2) The Council fees are £54 to £132 short of the actual costs of care (excluding profit) for March 2019 and are clearly being subsidised by the private market to a large extent.

- 3) It is now clear why 20-25% of homes in North Tyneside are failing/closing in the past 12 months. It is our understanding that there would be more homes closing if they were not large corporations and able to cross subsidise from other parts of their business in other geographical areas.

The Proposals:

23. We will address each of the 7 questions asked by the Council:

Consultation Q1

‘Please consider the Proposed Pricing Strategy and in particular the information used by the Authority in order to arrive at the potential rates. Has the Authority taken into account all of the relevant costs of delivering residential care in North Tyneside? If not, please detail what other costs, in your view, should be considered and why.

24. Of fundamental importance to the Council’s statutory and public law duties when considering and/or calculating the costs of care and what fee rate(s) are necessary in order to support a sustainable market (thereby discharging the Council’s legal duties), is the need to ensure that there has been a sufficient enquiry, and that the information relied upon by the Council is accurate and relevant to the local market. The Council must not misdirect itself.
25. There are a number of serious concerns regarding the approach the Council has taken and the information it has used in the formulation of the proposals. The full extent of these concerns cannot be fully realised on the basis of the limited information the Council has provided to date within the Consultation Document and the Pricing Strategy. As per the requests for further information/explanation that are set out below, the Council needs to address this so as to put NTCHOA and care providers generally in a position where they are able to consider and give fully informed responses to the Council’s consultation questions.
26. The Council references (and we assume considers) 3 different models for calculating providers actual costs. These are the Laing & Buisson 2016 model, and the 2016 ADASS and Care Fund Calculator model. As to each of these models, we comment as follows:

Laing & Buisson Model

- It is unclear why the Council has chosen to reference and rely upon an out of date L&B model when considering the costs of care in North Tyneside for the year 2019/20. We attach the most recent figures from the L&B model from 2018/19 (L&B P1-4). As can be seen, the final figures contained within this latest model show costs that are significantly in excess of the out of date costs considered and relied upon by the Council within the Pricing Strategy on page 12 for year 2019/20.
- The L&B model has its own ROCE calculations. It is therefore unclear why the Council has applied the CFC ROCE for this illustration. One cannot sensibly and rationally cherry pick from costing models.
- The Living Wage Increase for 2019 is incorrect. It should be 4.85%.
- Fundamentally, the model does not contain costs data that is specific to the North Tyneside area. NTCHOA has supplied robust local data to the Council, which the Council should rationally prefer and use over and above national data. The Council’s duties lie with the local and not the national care home market.

Adass Model

- The costs contained within the model are incredibly stale, having been collected over 5 years ago.
- The CFC ROCE has again been used. We repeat our comment above regarding the cross pollination of information (which may, as in this case, have been collected over different periods) and approaches from different costing models.
- Again, the Living Wage Increase used for 2019 is incorrect. It should be 4.85%.
- Again, the model does not relate to, nor contain data regarding the local care home market in North Tyneside.

Care Fund Calculator Model

27. The Council has used the CFC model in order to arrive at the draft proposed rates. There are serious concerns regarding the approach taken by the Council; that approach having led the Council to propose fee rates which are significantly and unsustainably below providers actual costs and the amount required so as to be sustainable in the short, medium and long term. Accordingly, the proposed fee levels are not consistent with the Council's market duties.
28. We have already supplied the Council with a detailed 'Cost of Care Report' prepared by NTCHOA (which the Council was invited to participate in) and which sets out actual costs data taken from care home providers operating in North Tyneside. We have further uplifted the costs in that report for Living Wage 2019 increase, so we can use this as a comparator to the costs in the CFC model.
29. We make the following points:
- 1) On p.13 of the Pricing Strategy, the Council asserts that it has received information from 30 older person's homes in North Tyneside; the Council having identified on p.6 of the Pricing Strategy that there are 31 older person's care homes in North Tyneside. The clear inference from the Council's assertion, is that the Council made specific and consistent cost related enquiries of 30 care homes in North Tyneside for the purpose of assimilating and using that data in the formulation of the proposals. However, having consulted with its members and having obtained cost related data from 18 of the care homes within North Tyneside, NTCHOA has not been able to identify any provider who has been knowingly approached by the Council for data and or information relating to their costs; nor what their financial requirements are in order to be able operate their services sustainably; nor the cost and broader market pressures they are currently facing. Accordingly, we have not been able to ascertain the nature (let alone the precise details) of the questions and enquiries made by the Council of care home providers as part of its review. This is important as we are at present endeavouring to fully understand how the proposals have come to be formulated and whether the information relied upon by the Council is accurate and reflective of providers' costs within North Tyneside. These are critical enquiries, not least because the Council has invited a response addressing the information it has used and the relevance of that information, but also within the context of trying to fully understand the significant differences that exist between those costs identified by the Council as reflecting the local costs in North Tyneside and those identified within the NTCHOA's

Cost of Care Report. We therefore ask that **within 10 working days of the submission of this response**, the Council discloses the following to us:

- Copies of the actual questions that the Council put to the 30 care homes it refers to, in order to elicit the information the Council refers to within the third paragraph on p.13 of the Pricing Strategy.
 - The dates and or period when these questions were put to these 30 care homes and when their answers to the questions were received.
 - An explanation as to why the Council did not send a copy of these questions to NTCHOA, and or inform NTCHOA that the Council was seeking information from providers relevant to the ongoing concerns being expressed by NTCHOA regarding the Council's setting of fee rates and NTCHOA's invitation that the Council engages with NTCHOA over the obtaining and collation of information.
 - If the Council did not put specific questions in a comprehensive format to the 30 care homes it refers to, please fully explain how the Council obtained the information that it refers to and over what period(s) does the information cover.
 - On p.13 of the Pricing Strategy, the Council says that the information it obtained included dependency tool information. Insofar at the answers to the above questions do not already address this point, please confirm whether the Council obtain actual information regarding actual staffing levels, and what (if any) enquiries did the Council make so as to ascertain the actual levels and costs of agency staff within these staffing levels.
 - On p.13 of the Pricing Strategy, the Council refers to certain costs which it says were included within its analysis. Of each of the cost heads analysed by the Council, please identify which contain actual costs taken from care homes within North Tyneside (stating which period(s) those costs relate) and which were analysed by reference to national data, identifying the precise source of that data.
 - On p.14 of the Pricing Strategy, the Council states: "The Care Fund Calculator tool takes account of the effective and efficient operation of care home provision and includes cost indicators based on information sourced from services and provisions around the country. The tool also takes account of local cost indicators and markets. This is used to arrive at one weekly cost – the 'blended rate'." How the Council has done this is opaque. Until we fully understand the source of the information used by the Council and how it was obtained, it is impossible for us to formulate a definitive response which addresses the accuracy of the information the Council has used and its relevance to the costs of delivering care in North Tyneside.
- 2) The rationale for the Council's exclusion of 1:1 care costs is unclear, particularly if (as the Council states) these costs can be identified. What is also unclear, is whether the Council's reference to 1:1 includes the costs incurred by providers in their delivery of additional support which falls outside that which it would be reasonable to expect them to provide within the standard fee rates being proposed. There are many circumstances where care providers have to employ additional staff to meet these

additional care needs, but where those needs are not continuous over the course of a day and which do not therefore create a need for 1:1 care. Nonetheless, they do give rise to a considerable additional cost to providers. **Within 10 working days of the submission of this response** please clarify these matters and what provisions the Council proposes to address these costs for providers and to ensure that care provision remains person centric and not arbitrary.

- 3) As is evidenced within the Cost of Care report produced by the NTCHOA and as one would rationally expect, there is a clear increased cost in the provision of social care services to those individuals who require nursing care; this is highlighted by the increased care hours needed for this category of resident. The Council assumption on page 13 of the Pricing Strategy is incorrect. These costs need to be taken into account. As in the case of dementia (see 4) below), a failure by the Council to do so, discriminates (both directly and by association) against this category of individuals.
- 4) The CFC tool is only used for residential care only. It is unclear why, particularly if the information is available to the Council, that it has not made any provision for the actual costs for dementia care; rather than just looking to preserve the present differential, on the assumption that it bears an accurate reflection of the additional costs of dementia care provision? The discriminatory and associative discriminatory effects of this are deeply concerning. As is evidenced within the Cost of Care produced by NTCHOA and as one would rationally expect, there is a clear additional cost in the provision of dementia services which exceeds the present differential.
- 5) Within Appendix 4 and 5 of the Council's Pricing Strategy, the Council provides a summary only of how the CFC model is calculated and a breakdown of the costs are given. However, and as we have referred above, these costs do not accurately nor rationally reflect the costs of care within North Tyneside. As we have also said above, we cannot fully set out the reasons for this without the Council first providing us with the further information we are asking for. Subject to this caveat and doing the best we can with the limited information that has been provided, we summarise what appears to be the major variances between the Council's stated position regarding the costs of care in North Tyneside and the actual costs as evidence by NTCHOA within its Costs of Care report:
 - (i.) Staffing costs
 - a. Other Care – Support Staff – The value for other staff is £19.93 in the CFC costings while the NTCHOA's report shows a cost of £69.12 for chefs (£14.94), kitchen/catering assistants (£12.66), domestics (£18.05), laundry assistants (£13.85) and other staff (£7.30). The values in the 2016 L&B report show £85.66 (appendix 2 – pricing Strategy) and the 2016 Adass report has a value allocated of £46.00 (appendix 3 – Pricing Strategy), both of which are before inflating to 2019 costs. Plainly, it is not possible to cover the costs of support staff with a cost of £19.93 per week
 - b. Agency Costs – There is no allowance for agency costs within the model. The use of agency is a well-documented, very real and unavoidable cost pressure on providers.
 - (ii.) Maintenance of capital expenditure – The Council has not made any allowance for the maintenance of capital expenditure. This is of further impact in the long term if there

are no new entrants to the market as the overall age of care homes will increase. On page 17 of the pricing strategy the Council states it “has a sufficient level of care homes and does not need new provision”.

(iii.) ROCE – The method used for calculating the ROCE is clearly insufficient in its results and does not cover the costs of rental or commercial loans within North Tyneside. This is evidenced as follows:

- a. Rental Costs – The actual care home rental costs within NTCHOA’s costings are £121.36. This represents 8 care homes and leaves a deficit of £57.38 (£121.36 - £63.98).
- b. Capital Costs (Property Costs) – The use of house prices (page 25 – Strategy report) to base ROCE is irrational and clearly does not represent the actual capital costs. From our calculations the capital cost per bed, using the CFC method, would be in the range of £25,000 to £30,000 per bed. The current build cost (including equipment purchase) of a residential care home in North Tyneside is £71,760 (BCIS). The capital value of a bed in North Tyneside in October 2006 (GLP report commissioned by North Tyneside Council) was £38,579 when there were 46 care homes in the North Tyneside area. There are now only 31 homes in North Tyneside with a higher GLP rating (mostly grade 1 and grade 2 homes).
- c. Interest – We have data from providers regarding loans and interest rates and although it is difficult to compare figures due to differing capital, term and interest rates, we can confirm that interest and loan payments are in excess of the proposed ROCE for most providers with commercial loans. It should be noted that although Four Seasons Health Care did not take part in NTCHOA’s Cost of Care, their interest rates payable are way in excess of any other provider in North Tyneside. This is information that NTCHOA has been able to obtain from FSHC public company accounts.
- d. Taxation – The capital repayment of debt is after taxation. There is no reference to taxation within the CFC model. Therefore, we can only assume no allowance has been made for taxation.
- e. Taking into account the actual costs of rent and loans, then the ROCE is insufficient to cover these costs, let alone any profit/return on equity, which is an essential element for the sustainability of any care home.

30. Given the above, it is evident even on the limited detail that has been supplied, that the Council’s proposals have not been formulated on accurate information, nor have they been formulated rationally.

31. It is regrettable that the Council did not agree to our previous proposal to address the further information we need. We hope that the Council will now do so and agree to meet with NTCHOA representatives so that we can work through and gain an understanding of the figures and approach the Council has taken in reaching what are ill-informed proposals. To this end, we note and refer to the Council’s stated intention on p.5 of the Pricing Strategy to want to work collaboratively with the sector.

Consultation Q2

‘The draft Pricing Schedule links the cost of dementia/EMI care to the baseline residential care cost. In your view, is this an appropriate method of calculating the costs of dementia/EMI care? If not, please explain why, and set out what you believe to be a more appropriate methodology, and explain why in your view, this is more appropriate.’

32. We refer to and repeat our comments at paragraph 29, 4) above under ‘Consultation Q1’.

33. The approach proposed by the Council (which is to simply preserve the present differential) is irrational, given the Council’s acceptance of the need to identify actual care costs. Why stop short of calculating the costs of dementia care when it is an identifiable cost and a stand-alone category of care for a large proportion of individuals with often complex care needs? If the Council has (as it claims) collected information from 30 homes, why has it not obtained any costings for this category of care?

34. The proposed fees rates, as set out on page 15 of the pricing strategy, have the following differential to general care:

Grade 1	£21.85
Grade 2	£20.51
Grade 3	£19.22
Grade 4	£18.14

35. The actual differential based on actual costs, as evidenced within NTCHOA’s Cost of Care report is £76.89. Patently, the Council’s proposal is not sufficient, nor sustainable.

36. The Council’s proposal assumes a differential in care hours of approximately 2 hours. As evidenced by the Cost of Care report, the actual differential in number of care hours is 7.21.

37. Patently, the Council’s approach is not appropriate. The correct costs and the amount required is set out within the Cost of Care report.

Consultation Q3

‘As part of the draft Pricing Schedule, the Authority proposes to review the current quality monitoring tool for care homes. It is proposed that this will include consideration of the home’s latest CQC rating and that this will be fed into the home’s overall quality score which informs the home’s overall grade in the Proposed Pricing Strategy. It is the Authority’s view that this methodology will have a positive impact on the quality of care delivered in North Tyneside – do you agree? If not, why?’

38. The use of CQC ratings is not suitable method for use within the quality monitoring tool for the following reasons:

- 1) The Council is aware of the improvements (page 16/17 Pricing Strategy) that providers have made to improve the environment within their care home. This was the result of major investment by providers as a consequence of their reliance on the existing pricing structure. It is wholly unreasonable for the Council to now change its position, now that the investment has been made. Will the Council consider reimbursing the investment made to improve the grading?
- 2) The CQC rating may not change for close to three years. As one would reasonably expect, a care provider will respond to and correct any issues identified by the CQC. This could well and most likely would involve cost on the part of the provider. Although the CQC may not return to undertake a further inspection for 3 years, the service and the costs of the service, closely following the CQC inspection and in any event within that 3 year period, will improve/increase. Were the Council to slavishly link its costs to the CQC rating, it is not tracking the true costs of the service. Rather, the approach would be punitive in financial terms and particularly unjust for a provider whose care home rating may be reduced for a technical, rather than an outcome driven reason.
- 3) The Council has not undertaken any enquiry into whether there it is cheaper for a provider to provide care in a care home with a lower CQC rating. It is the position of NTCHOA that one cannot assume there to be such a cost saving, particularly as the reasons for different ratings will often not be costs driven. Indeed, there is a strong case to be said, that a provider with a lower CQC rating may well require further investment to improve its rating; and where services that see their CQC rating falls, will not see any savings in their costs. Where does the Council believe there to be cost differences between CQC ratings and how are those differences prorated as against the proposed fees?
- 4) It is extremely difficult to obtain an outstanding rating and only HC One has achieved that in the North Tyneside area and they cater for private clients and very little contracting with the Council.
- 5) The overall impact will be an automatic decrease in scoring as most of the care homes in the area have now improved there environmental rating to the highest possible grading and will now lose 5% scoring as a minimum. This is further underscored by a report by Scott Woodhouse (North Tyneside Council) in the Council document “Budget Business Cases” dated 1 February 2018 (pages 5 & 6) where it is stated that this new method of quality monitoring will save the Council £300k. It is not sustainable to take another £300,000 out of the system.

- 6) In addition to providers losing points by changing GLP environmental gradings to CQC gradings, the Council has decided to increase the score needed to obtain a grade 1 quality banding from 80% (page 16 pricing strategy) to 85% (page 18 pricing strategy). There is no explanation (let alone a rational explanation) for this change and is grossly unreasonable and unfair.

Consultation Q4

'It is proposed that following this Consultation, the Authority will be in a position to make a decision in relation to the care costs for the year 2019/20 and also to decide upon a methodology for increasing those fees over the following three years to 2022/23.

The Proposed Pricing Strategy proposes two methods for price increases over the years detailed above. They are:

- (a) Percentage increase on baseline; or**
- (b) An annual re-run of the agreed funding model?**

Please confirm which of the above models you believe will more accurately address the increasing costs of delivering care in North Tyneside and explain why?'

39. It is important to clarify precisely what the Council's is proposing as it is presently unclear. The Council's wording of the second method on page 10 of the consultation document is:

“(b) An annual re-run of the agreed funding model”

40. Does this mean an agreed funding model with providers or the CFC funding model; the latter of which is not (for the reasons set out within this response paper) agreed? The Council needs to clarify this, along with the following:

- 1) Dependency – Will both options cover any increased dependency of residents? The Council has already noted that residents are becoming more dependent with greater needs (after being kept at home for as long as possible).
- 2) How would either model account for increased loan interest rates? The Council's own budgetary model has a projection of interest increasing rapidly over the next few years.
- 3) How would either model make provision for increases in agency costs?
- 4) Is the Council proposing that the first re-run of the model (which as the Council expresses on p.18 of the Pricing Strategy, is its preferred option), will take place in March 2020?

41. So that we can fully consider and respond to the consultation question, **we ask that the Council clarifies then above matters within 10 working days of receipt of this response paper.** Subject to the Council's clarification of these matters and on the assumption that they are adequately and properly provided for within both proposals, we see no particular difficulty with either option.

Consultation Q5

‘The Authority is proposing (for new packages and placement costs) a new 1:1 hourly rate where additional support is required. The Proposed Pricing Strategy proposes what this might be in 2019/20, and how the Authority has arrived at this proposal. In your view, does this take account of the costs of providing additional 1:1 support in North Tyneside?’

42. We refer to and repeat what we have already said at paragraph 29, 2) under ‘Consultation Q1’.
43. Further, we do not believe the Council has covered all the costs associated with providing additional 1:1 care. The following should be included:
 - 1) Full agency costs – If it is not possible for the home to provide the additional support and agency is needed, then the full cost of the agency should be reimbursed. The additional 20% for agency is not sufficient and from our recent data collection, the hourly charge for a carer in March 2019 (before LW impact) ranged from £13.95 to £16.44.
 - 2) Management time – A considerable amount of senior and management time is used for advising and supervising.
 - 3) Equipment costs/repairs and maintenance – Equipment and R&M costs are becoming more common particular for those who are at end of life or those with more challenging behaviour.
44. The Council has not set out any detail as to how a request for either additional support or 1:1 will be determined in the event of a disagreement between the Council and the provider regarding whether or not it is needed and if so, in what quantity. This needs to be clarified and **we ask that the Council does so within 10 working days of its receipt of this response paper.** In providing this clarification, the Council needs to respect and understand that it is the care provider who has the statutory responsibility to assess and meet care needs. If the provider assesses a need for 1:1 or additional support, they are required to provide it, otherwise they will be acting in default of their regulatory obligations.

Consultation Q6

‘The Authority is seeking to put in place a new three year contract (joint with the Clinical Commissioning Group) from April 2019, covering the areas set out in this Proposed Pricing Strategy document. Are there any other areas you believe should be included in the new contract? If you do make suggestions, please explain your reasons for making each suggestion.’

45. We refer back to and repeat what we have said at paragraph numbered 10 of this response paper.
46. The matter of contracts is technical, and we need to liaise with the Council over the logistics of addressing the new proposed contract.
47. In the meantime, we ask for your confirmation as to whether or not the Council has undertaken an assessment as to whether the new contract has any new cost implications for providers. If so, what are they and in what amounts? **We ask that you provide this confirmation within 10 working days of the date of your receipt of this response paper.**
48. Finally and as regards CHC (page 2 Pricing Strategy) – We refer to our comments under paragraphs 16 and 17 of this response paper. If the Council is proposing that the new contract is a jointly commissioning contract with the CCG, then the issue of CHC and its costs becomes a relevant matter. We simply flag this up at this stage and reserve our position on this pending our engagement with the Council regarding the new contract.

Consultation Q7

‘Are there any other areas the Authority should consider as part of the Pricing Strategy?’

49. There are a number of additional matters which should be taken into account by the Council, which we summarise in brief below. It may be that other matters arise once we have the Council’s responses to the further information that we have requested herein.

- 1) Reference is made on p.3 of the Pricing Strategy to NTCHOA undertaking a cost of care analysis to identify cost indices. This is incorrect. The analysis was not limited in this way; it was just cost indices we agreed upon.
- 2) Private market – this is severely impacted with introduction of new home as identified by Council (page 7 Pricing Strategy) and as the Council identifies, it is a reducing market. This impacts our previous reference herein to cross subsidisation from this market.
- 3) Effective and efficient – on Page 14 of the Pricing Strategy the Council state that CFC “takes account of efficient and effective operation of care”, but does not explain how. Please provide this explanation within 10 working days of your receipt of this response paper.
- 4) New entrants to the market - There are no new entrants to the Market. There is one home due to be built in late 2020 but the Council has recognised in its pricing strategy report (page 7) that this will cater for private residents only. It is expected that this care home will take private clients from other care homes and this will make it difficult for those homes to remain sustainable. This has also been noted on the Council Pricing Strategy on page 7. It is clear when we look at the cost of care that private funding is essential to remain sustainable.
- 5) Care home closures - One home has closed with a total of 30 beds. See below Roseberry Care Centres.
- 6) There are a number of homes in the North Tyneside area which raise concerns within their public documents and these include:
 - 1) Four Seasons Healthcare (FSHC) - It is well documented that FSHC has financial difficulties and this is referenced in the Council Pricing Strategy on page 7. Four Seasons have four care homes in North Tyneside with a total 246 beds.
 - 2) Roseberry Care Centres (RCC) - Roseberry Care Centres closed Springfield Court and still has one care home remaining in North Tyneside. RCC care homes are predominantly in the North East. I attach the accounts for RCC dated 31 December 2018. In particular, the following is noted in the accounts:
 - i) Page 4 – Going Concern Note – This note makes reference to the liabilities of the company and to the need to have reduced rents

- ii) Page 4 – Occupancy – The occupancy of the company is 87%. This is the same as the occupancy currently in North Tyneside according to the Council figures on page 6 of the pricing strategy
- iii) Page 4 – Average weekly fee rate is £612. This is in excess North Tyneside Council rates
- iv) Page 13 – Loss for the financial year – The company continues to make a loss year on year.

All of the above indicate that at current North Tyneside occupancy and rates, it is just not sustainable.

- 7) Care homes for sale - Through searching for care home sales we can see that there at least 2 care homes for sale with a total of 65 beds. We do understand that there are more care homes for sale but are unable to identify them. The Care Homes for sale are local providers and in our opinion, not able to be subsidised by other care homes in the business.
- 8) Care home quality - The Council have stated that there is an overall improvement in the CQC ratings and that this is a consequence of inspections undertaken by CQC. We would make the following points:
 - i) Closure of Home – The home which closed during the year was classed by CQC as Requires Improvement. By removing this home, the % of homes in RI would automatically decrease.
 - ii) Re-Grading – We understand that one provider (Prestwick Care) has had its home regraded after legal discussions with CQC and this was not due to an inspection.
 - iii) New Owners – New owners of one nursing home have invested a considerable amount of start-up capital in order to make improvements necessary to improve CQC grading.

Taking the above into account, we don't believe that quality has improved much at all. It is important to note that it is extremely difficult to achieve an outstanding CQC grading.

NORTH TYNESIDE CARE HOME OWNERS ASSOCIATION

24 September 2019