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DATE: 24 September 2014

## **CARE SERVICES POLICY DEVELOPMENT AND SCRUTINY COMMITTEE**

### **SUPPLEMENTARY AGENDA 1**

**Meeting to be held on Thursday 2 October 2014**

**Please see the attached reports marked “to follow” on the agenda.**

#### **8 PRE-DECISION SCRUTINY OF CARE SERVICES PORTFOLIO REPORTS**

##### **8c Care Act 2014 Impact (Pages 3 - 14)**

Please note that this report is not now for pre-decision scrutiny and should be considered in the Policy Development section of the agenda.

##### **8f Temporary Accommodation Update (Pages 15 - 22)**

Orpington Ward

##### **8j Day Nursery Provision: Proposal to Market Test (Pages 23 - 34)**

Penge and Cator and Orpington wards

***Copies of the documents referred to above can be obtained from  
<http://cbs.bromley.gov.uk/>***

(Reports 8 (d), 8 (i) and 15 are still “to follow.”)

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Report No.  
Please obtain  
a report  
number

## London Borough of Bromley

### PART ONE - PUBLIC

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**Decision Maker:** Care Services Policy Development and Scrutiny Committee

**Date:** **Care Services Policy Development and Scrutiny Committee - Thursday 2 October 2014**

**Decision Type:** Non-Urgent                      Non-Executive                      Non-Key

**Title:** **CARE ACT 2014 IMPACT**

**Contact Officer:** Chris Curran, Commissioning Development Officer  
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**Chief Officer:** Executive Director of Education, Care & Health Services

**Ward:** (All Wards);

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1. Reason for report

The Care Act received Royal Assent in May 2014. Its provisions commence on 1 April 2015 and 1 April 2016 (for charging reforms). The law modernises the statutory framework for adult social care, updating and replacing many preceding statutes and bringing into primary legislation much of existing best practice. Considerable work has been undertaken as part of Education, Care and Health Services Department's Care Act Programme in order to investigate and establish the impact of the Care Act. This report presents Members with an initial financial model of the impact of the Care Act alongside the key assumptions underpinning this model.

This report follows an initial report to Executive in November 2013 (CS 13049 – Adult Social Care – Impact of the Care Bill and Future NHS Funding).

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2. **RECOMMENDATION(S)**

**Members are asked to note and comment on the initial financial model.**

### Corporate Policy

1. Policy Status: New Policy: The Care Act reforms and updates adult social care introducing some new policies and codifying some pre-existing policies
  2. BBB Priority: Supporting Independence:
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### Financial

1. Cost of proposal: £192k in 2015/16:
  2. Ongoing costs: Recurring Cost:
  3. Budget head/performance centre: n/a
  4. Total current budget for this head: £266k for 2014/15
  5. Source of funding: Government Grant/Better Care Fund
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### Staff

1. Number of staff (current and additional):
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: Statutory Requirement:
  2. Call-in: Not Applicable:
- 

### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

- 3.1 The Care Act was passed in May 2014. The law modernises the statutory framework for adult social care, updating and replacing most preceding statutes and bringing into primary legislation much of existing best practice. This modernised adult social care system focuses on the principle of well-being for individuals with care needs and also for carers, and emphasises the prevention and delay of needs for support. Alongside these practice elements, the Act introduces a number of financial and charging reforms including the Cap on Care Costs, 'care cap'. The key changes introduced by the Care Act were outlined in the report to Executive in November 2013.
- 3.2 Draft Regulations and Statutory Guidance were published on 6 June, with a consultation period lasting until 15 August. The Regulations and Guidance are due to be released in final form in October 2014. Consultation on regulations and guidance for the financial reforms including the care cap is due in December 2014.
- 3.3 The non-financial provisions will commence on 1 April 2015 and most of the financial reforms commence on 1 April 2016.
- 3.4 The Care Act imposes a number of changes required for compliance that have financial implications for local authorities; these form the focus of this report. But, more broadly, it also incorporates many important principles that align with Building a Better Bromley, such as prevention, enabling individuals to retain as much responsibility as possible and prioritising support by an individual's family, friends and local community. These are highlighted in the general duties on local authorities, Clauses 1 to 7 in the Care Act. Officers will explore opportunities to access funding to further embed these principles in order to enhance the social care offer care locally, including, where appropriate, working jointly with Bromley Clinical Commissioning Group partners through the Better Care Fund. Doing so offers the prospect of transformational change - aligned with the Care Act - delivering demand management from long-term state-funded care to short term interventions and low-level support in the community. This report focuses on the anticipated costs arising from delivering compliance; comprehensive delivery of these principles may entail higher costs than are outlined within this paper which takes a 'de minimis' standpoint as a starting point for Members' understanding financial situation.
- 3.5 **Funding**
- 3.5.1 Central Government in Spending Round 2013 pledged to fund all new costs arising from the Care Act. In 2014/15 £125k of funding was received in order to establish a programme to deliver the Care Act. Central Government has allocated funding for 2015/16 of £1.885m from formula grant and a nominal £750k has been provisionally agreed locally from Better Care Funding, subject to confirmation by the Local Authority, Bromley Clinical Commissioning Group and NHS England. The Government, as part of the spending review 2013, announced additional national funding of £1bn from 2016/17 towards the cost of the Care Act but the Department of Health is working together with the Local Government Association (LGA) and the Association of Directors of Adult Social Services (ADASS) and the sector to establish an accurate projection of the ongoing costs arising in order to provide sufficient funding.
- 3.5.2 For 2014/15, the £125k received from Government has been used to offset the £266k authorised by Executive in July and November 2013 for ECHS to fund the Care Act Programme (3.6 below) and pre- 1 April 2015 implementation costs. At this stage this report is not proposing that any further funding is required for 2014/15, but this position

depends on the finalisation of the training programme requirements (3.7.6 below) and on the final form of Regulations and Statutory Guidance.

### 3.6 Care Act Programme

ECHS Department set up a Care Act Programme to make the preparations required for implementation of the Act. Work has been completed over the past months to review the requirements of the Act and to understand the changes required in order for adult social services to be at least compliant. This Programme has improved the Council's understanding of the Act since it was set out in high level terms as reported to Executive in November 2013 (Reports CS 13049 and RES 13208) and previous best projections of costs that were based on preliminary national and London Councils estimations.

#### Financial Model

### 3.7 Financial Model: Introduction

3.7.1 As part of this Programme of work a detailed financial model of the estimated costs which are identifiable at this stage has been created by London Borough of Bromley officers and this is presented to Members in this report.

3.7.2 As stated in 3.4, the model reflects a 'de minimis' reading of the impacts of the Care Act and comprehensive delivery of the principles enshrined in the general duties may require additional resources.

3.7.3 It is important to note that projecting the financial impact of the Care Act is a difficult task. A number of models have been produced over the summer by Surrey, Lincolnshire, Birmingham, Barnet and other councils. The number of variant models reflects the complexity of the number of elements involved. In the Bromley model there are approximately 50 assumptions made, and some of which have to be projected several years ahead. Where the Bromley model estimates volumes and behaviours this has been based on the experience of officers and on national and local data where this is available. Therefore whilst this is an informed model, it is complicated and small variances in estimations have the potential to compound to create significant variations in the overall financial projections. The assumptions will need to be tested and refined as the various elements of the Act are implemented.

3.7.4 The Bromley model identifies cost pressures arising from four main areas:

- **The Care Cap and Cared-for Assessments:** The financial reforms create a significant incentive, beginning in October 2015, for people with care needs to request and receive a care assessment.
- **Carer Assessments:** Under current legislation a carer only has a right to an assessment if they carry out a substantial caring role regularly; under the Care Act there is an unqualified right for carers to request and receive an assessment.
- **Carer Support/Services:** Carers have a right under the Care Act to receive sufficient support to offset identified unmet significant risks to well-being. Currently councils have discretion about meeting carer needs.

- **The Care Cap:** Individuals assessed by the Local Authority as having eligible needs will have a 'care account' that meters the amount that it would cost the local authority to meet those eligible care needs, excluding 'hotel costs'. An individual will no longer be required to contribute towards their eligible care and support costs once the care account reaches the 'cap', initially set at £72,000 and rising with inflation. All accounts will start at £0 on 1 April 2016. A 'tiered cap' will be introduced for adults of working age (when an eligible care need is first identified); it is expected that a cap of £0 will exist for under 40s. Details on all these matters are due to be made public in December 2014 draft regulations and guidance.

The care cap will result in an immediate loss of client contribution income from working age adults and will, in time, create significant lost income from older adults who stay in care long enough to reach the cap.

- 3.7.5 The main results of the four areas above are that the Council will require additional assessment workforce, an improved service offer will be needed for an expanded number of carers, and income will be foregone as a result of the change to charging rules.
- 3.7.6 In addition, there are a number of smaller scale service changes that are required to deliver the modernised system of care, which include: improved access to advocacy, an IT system for care accounts, improved information (web-based) for individuals, and improved processes around support planning and personal budgets. A number of projects are in place under the Care Act Programme in order to make progress in all these areas. This also includes training provision for the Care Services workforce alongside significant revision to practice guidance, policies and procedure since it is vital to delivering compliance that adult social services staff understand the provisions of the legislation and the underlying principles. As stated in 3.5.2, it is likely that the 2014/15 training requirements can be met from existing resourcing. Provision is made in the model for training in 2015/16.
- 3.7.7 Detailed projections in all areas have been made for four years, 2015/16 to 2018/19 inclusive. The Care Cap impact has been projected beyond this.

### 3.8 **Financial Model: Key Assumptions**

#### *The Care Cap and Cared-for Assessments*

- 3.8.1 There are estimated to be 858 self-funders in care homes in the borough (239 in residential and 619 in nursing). It has been assumed that 25% of these will not request an assessment despite the care cap. It is assumed that there are 1,795 self-funders in domiciliary care and other care-related support in the community, and it has been assumed that 20% of these will not request an assessment despite the care cap. The planning assumption is that ECHS will need to undertake 40% of the one-off cap assessment burden between October 2015 and March 2016, and the remaining 60% between April 2016 and September 2016. The total number of additional care assessments for self-funder service users is 719 in 2015/16 rising to slightly over 2,000 thereafter. There is no ongoing service cost pressure for self-funders but it has been assumed that some of these self-funders will benefit from reablement and minor equipment which are prohibited by law from being charged for.

#### *Carer Assessments*

- 3.8.2 It has been assumed that the number of carers receiving assessment will rise as a ratio to the number of service users known to the Council. The model uses a figure derived from a local sample as a starting point, applying this also to carers of self-funders.

Several assumptions have made to refine this further. Firstly, it is assumed that only 75% of the effect will take place in 2015/16 following the change in the law on 1 April 2015, with 100% thereafter as culture and communication take effect. Secondly, with knowledge of the past decade, the model assumes that carer requests for assessment will depend on the charging regime, and that carers are unlikely to want to be assessed if the result is that they have to pay the full cost of any support regardless. For the reasons above it is assumed that there will be an extra 1,722 carer assessments in 2015/16 increasing to 2,159 extra in 2018/19, over current levels (1,130 per year).

### *Carer Support/Services*

- 3.8.3 Estimations are made about the form that carer support might take following assessment, including discounting a small number for being ineligible or best suited to a support that has no cost to the Council. The current ratio between low-level telephone support / group access and higher level respite-equivalent support is expected to move slightly towards the higher level, recognising that the Act introduces a duty on a local authority to offset unmet risks to carer well-being and this is likely to require a higher level of intervention in a higher proportion of cases. For the same reason, it is assumed that additional funding for lower level support is required.

### *The Care Cap*

- 3.8.4 Based on current Bromley rates the average time spent in a Bromley residential care home before reaching the cap (£72,000) is 4.2 years and for a Bromley nursing home is 3.5 years. Unless someone in domiciliary care is receiving a package costing more than £138 per week it will take at least 10 years to reach the care cap. The model projects the numbers reaching the cap in both care homes and the community, for those already known and those unknown.

### *Potential Other Costs*

- 3.8.5 A number of service changes are referred to under 3.7.6 as being required for compliance with the Act. These elements and others have been provisionally costed as part of the model, however, further work will be required to set out rigorous cost-effective proposals in these areas. As set out under 3.4, Members should also be mindful that delivery of the wider principles of the Act may require further improvements outside of the elements identified in this report.

## 3.9 Financial Model: Net Cost Pressure

- 3.9.1 The table below summarises the net financial implications to the Council in 2015/16 and the estimated impact from 2016/17. A detailed summary page of the financial model is included as Appendix 1.

	2015/16 (£'000s)	2016/17 ('000s)	2017/18 ('000s)	2018/19 ('000s)
Total estimated cost	2,826	4,579	4,176	4,505
Funding Grant	-1,885	-3,500	-3500	-3500
Better Care Fund	-750	-750	-750	-750
<b>NET COST*</b>	<b>192</b>	<b>329</b>	<b>-74</b>	<b>255</b>

\* Officers have identified scenarios where the actual costs could be lower but the costings identified represent the most realistic assumptions at this stage.



- 3.9.2 As can be seen from the summary, the model suggests that funding will not be sufficient to cover the cost impact of the Care Act in 2015/16 and that there will be a loss implication estimated at £192k. The gross costs for impacts of the Care Act are estimated to be less than £5m per year over the next four years. From 2019/20 older people in care homes reaching the cap adds a significant additional cost. This extra cost is £8m in the peak year of 2020/21, falling to slightly over £6m in years thereafter. Therefore the maximum total gross cost pressure from the Care Act is projected to be £12m in 2020/21.
- 3.9.3 For 2015/16 the Council will receive £1.885m in specific grant; local nominal agreement for £750k funding from the Better Care Fund is still subject to confirmation from the Local Authority and Bromley Clinical Commissioning Group, and NHS England.
- 3.9.4 The above model assumes continuation of funding of £750k from the Better Care Fund. In addition the model includes estimated annual funding of £3.5m in Government Grant from 2016/17 because the Government, as part of the spending review 2013, announced additional national funding of £1bn from 2016/17 towards the cost of the Care Act.
- 3.9.5 There is expected to be a consultation paper in the Autumn providing details of the allocation of funding for 2016/17 (the current social care formulas used to apply funding are expected to change). No allocations, even provisional, have been provided to local authorities at this stage (but £3.5m has been assumed for the purposes of the model and this report) which provides a degree of uncertainty and inherent risks. Any estimates of funding must be treated with extreme caution until final allocations are confirmed in December 2015; the report highlights broad costings and funding which must be treated with caution at this stage (see para 3.7.3.)
- 3.9.6 To highlight the uncertainty of costs the Care Act Regulations and Guidance are not yet finalised and both London Councils and the LGA have identified a lack of adequate Government funding which could jeopardise reforms.
- 3.9.7 Officers will continue to update the projections when more information is available.

### 3.10 Risks

- 3.10.1 The Care Act has been modelled as not having any effect on the cost of service provision to service users (except for the Cap), however, as noted in London ADASS' response to the draft regulations and guidance consultation, testing of new eligibility wording has suggested that 15-25% more people may be found eligible. This presents initially as a major risk, although due to the low level of service cost it seems likely that the main component of cost would be from an assessment burden, and local interim estimations assess this total risk to be no more than £200k annually. However, it has not been included within the modelling and within the balance because it is a recognised issue under review by the Department of Health and ADASS and the Government have indicated that the final wording issued in October 2014 will be set at the equivalent of Fairer Access to Care Services 'Substantial' banding, meaning a zero cost impact. ECHS will monitor this risk.
- 3.10.2 The procedure for care accounts gives greater visibility of the price for care paid by the local authority. This creates the possibility that the disparity between the prices paid by private and public purchasers of care will reduce thereby creating risks around market sustainability and/or the costs paid by the local authority for care.
- 3.10.3 As recognised in this model, the Care Act introduces a significant increased assessment and care management burden for councils. The spike in demand for staffing may lead to higher staff costs or possibly a lack of workforce supply leading to recruitment problems and difficulties in delivering the new duties of the legislation.

3.10.4 Whilst the model presented in this paper represents a significant improvement in the Council's understandings of the impact of the Act, the number of assumptions made, the complexity of the projections, and the lack of rigorous evidence in some areas means that there is a risk that the modelling may not reflect the realities. Officers will ensure that the Bromley model is cross-checked with models available nationally as these continue to develop over the next few months.

## **4. POLICY IMPLICATIONS**

- 4.1 The Care Act replaces over 60 years of piecemeal legislation in adult social care dating back to the 1948 National Assistance Act. The majority of laws passed in that time are repealed and incorporated within the single codified Care Act (2014) including the Chronically Sick and Disabled Persons Act (1970) and the NHS and Community Care Act (1990). A large number of Regulations and Statutory Guidance are also replaced, including the current foundation of eligibility, the Fairer Access to Care Services (FACS) criteria guidance. This is fulfilment of the Law Commission's review of adult social care.
- 4.2 The Care Act incorporates the key national policy themes of the last decade including personalisation and choice and control, support for carers, care markets, integration with the NHS and other partners, prevention, and improved information and advice. Some commentators have noted the significance of the switch to the 'well-being' foundation of the Act rather than the 'independence' foundation of Fairer Access to Care Services. The Government's policy intentions for the sector were set out in the White Paper, *Caring for Our Future: reforming care and support* (2012).
- 4.3 The introduction of financial reforms in the Act is a response to the Dilnot Commission on the Funding of Care and Support. The Government has recognised the catastrophic care costs faced by some individuals and the measures including the Care Cap are designed to reduce this burden on individuals.

## **5 FINANCIAL IMPLICATIONS**

- 5.1 The financial implications are contained within the body of the report and in Appendix 1.

## **6 LEGAL IMPLICATIONS**

- 6.1 The changes in the law have been set out under Policy Implications.
- 6.2 It should be noted that the regulations and statutory guidance are currently only in draft form. These amount to some 750 pages, setting out in considerable detail the requirements behind the duties in the primary legislation. Officers planning the preparation and implementation of changes for the Act have been working on the basis of the draft documents but until these are released in final form (due October 2014, and subject to Parliamentary scrutiny) there is still a small degree of uncertainty.
- 6.3 The financial processes introduced in 1 April 2016 has the potential to lead to an increased number of challenges and appeals where, for example, a self-funder disagrees with the rate set for their care account following assessment. As yet, the primary legislation only includes a placeholder clause (s.72) for appeals and it will be important to

monitor this aspect as and when the Government issues and consults on its proposals in this area

## 7 PERSONNEL IMPLICATIONS

- 7.1 The Care Act introduces an increased workload for assessment and care management due to added responsibilities for self-funders and carers. ECHS and Human Resources will begin planning for the workforce changes required. The key HR question for the organisation is this: do we have the right number of staff with the right skill mix including behavioural competence to manage the structural and cultural changes arising from the Act? The recruitment and retention challenges and any wider HR issues including ‘new ways of working’, hours of work, performance management etc. will be covered and addressed in partnership with other boroughs in order to manage the labour market and in particular the employment agency markets. The Director of HR is one of the two Heads of HR leads working with the Chief Executives of London Councils on the HR implications of the Care Act.
- 7.2 Training and development will be needed at all levels including senior managers, team leaders, front-line care staff and support services. Given the emphasis on ‘prevention’ and ‘integration’, it is also important to recognise the role of other Council staff in Housing, Public Health and Environmental Health Services in particular in delivering the Act. A budget for training has been set out within the financial model (see Appendix 1).

<b>Non-Applicable Sections:</b>	None
Background Documents: (Access via Contact Officer)	<p>Adult Social Care – Impact of the Care Bill and Future NHS Funding. Report CS13049 Executive 20 November 2013</p> <p>Update on Council’s Financial Strategy 2014/15 to 2017/18. Report RES13208 Executive 20 November 2013</p> <p>Care Act, May 2014</p> <p>Draft Regulations, and Draft Statutory Guidance, June 2014</p> <p>Caring for Our Future: reforming care and support (2012)</p>

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## Summary of results - all year

Social Care Reform Financial Impact Analysis		2015/16	2016/17	2017/18	2018/19
Financial Reforms	Residential Clients - Cap	£0	£0	£447	£9,454
	Non-Residential Clients - Cap	£0	£312,219	£477,310	£759,440
	Potential Income from deferred payments	-£10,668	-£23,072	-£33,899	-£46,219
	Potential Residential Self Funders	£0	£0	£0	£0
	Impact of extended means test (Negligible)	£0	£0	£0	£0
Cared-for Additional Assessment Cost	Early Assessments/Reviews/Light Touch Assessments	£598,106	£1,554,999	£1,252,566	£1,284,066
	Financial Assessments	£96,117	£276,776	£276,767	£285,562
Additional Carers Costs	Carers Assessments Costs	£428,049	£564,081	£539,466	£540,387
	Carer Financial Assessments	£31,723	£79,292	£92,506	£94,476
	Carers Package Costs	£721,505	£950,795	£909,305	£910,858
Existing Carers Cost	Carers Package Costs	£655,613	£655,613	£655,613	£655,613
	Carers Charging	-£397,890	-£458,522	-£460,753	-£461,332
Initial Contact and Short Term Support	Initial Contact	£30,009	£64,577	£63,772	£65,268
	Reablement	£122,031	£247,901	£92,650	£92,650
	Minor Equipment	£26,656	£54,150	£20,238	£20,238
Modelled Totals	<b>Financial Elements</b>	<b>-£10,668</b>	<b>£289,146</b>	<b>£444,152</b>	<b>£727,169</b>
	Additional Cared-for Assessment Cost	£694,224	£1,831,774	£1,529,333	£1,569,629
	Additional Net Carers Costs	£1,439,001	£1,791,258	£1,736,136	£1,740,002
	Other Costs	£178,696	£366,628	£176,660	£178,156
	<b>Total Cost to LA</b>	<b>£2,301,252</b>	<b>£4,278,806.92</b>	<b>£3,886,280</b>	<b>£4,214,956</b>
Provisional Items	IT System	£250,000	£20,000	£20,000	£20,000
	Advocacy	£25,000	£80,000	£100,000	£100,000
	Training	£50,000	£0	£0	£0
	Support Planning extension	£150,000	£150,000	£150,000	£150,000
	Safeguarding	£20,000	£20,000	£20,000	£20,000
	Market Shaping & Prevention	£30,000	£30,000	£0	£0
	[Sub-Total]	£525,000	£300,000	£290,000	£290,000
<b>Sub-Total</b>	<b>Total Cost to LA</b>	<b>£2,826,252</b>	<b>£4,578,807</b>	<b>£4,176,280</b>	<b>£4,504,956</b>
Funding	Formula Grant: New ASC Burdens*	£1,884,552	£3,500,000	£3,500,000	£3,500,000
	Better Care Fund*	£750,000	£750,000	£750,000	£750,000
* 2016/17, 17/18 and 18/19 are shown with presumed levels of funding which are highly uncertain at this stage					
<b>GRAND TOTAL</b>	<b>BALANCE</b>	<b>£191,700</b>	<b>£328,807</b>	<b>-£73,720</b>	<b>£254,956</b>
Risk	Service user eligibility wording	£188,716	£188,716	£188,716	£188,716
	Care Home Market Rate Equalisation	Uncosted	Uncosted	Uncosted	Uncosted
	Assessor capacity/price - market forces	Uncosted	Uncosted	Uncosted	Uncosted
	Accuracy of Financial Model	Uncosted	Uncosted	Uncosted	Uncosted

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Report No.  
CS15087

London Borough of Bromley

PART ONE - PUBLIC

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**Decision Maker:** Executive

**Date:** For Pre-Decision Scrutiny by the Care Services Policy Development and Scrutiny Committee on Thursday 2<sup>nd</sup> October 2014

**Decision Type:** Non-Urgent Executive Key

**Title:** **TEMPORARY ACCOMMODATION UPDATE – USE OF MANORFIELDS AS TEMPORARY ACCOMMODATION**

**Contact Officer:** Terry Parkin, Executive Director, Education, Care & Health Services  
Tel: 020 8313 4060 E-mail: Terry.Parkin@bromley.gov.uk

**Chief Officer:** Executive Director of Education, Care & Health Services

**Ward:** Orpington

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1. Reason for report

This report advises on the invest to save requirements for the proposed use of Manorfields, a former residential home, as temporary accommodation to enable the Council to meet its statutory housing duties and to assist towards mitigating the significant cost incurred by the Council as a result of the increased use of nightly paid accommodation to meet statutory duties.

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2. **RECOMMENDATION(S)**

2.1 **Care Services PDS are asked to comment on the proposals outlined in this report.**

2.2 **Executive is asked to approve:**

- a) **The use of Manorfields as temporary accommodation to meet the Council's statutory housing obligations under the homelessness legislation.**
- b) **Capital funding requirements for refurbishment and associated fees to bring Manorfields to a suitable standard for this purpose.**
- c) **The use of Orchard and Shipman to oversee the project through the planning and refurbishment process, and then to lease and manage Manorfields as temporary accommodation under the existing leasing and temporary accommodation management scheme agreement which was approved by the Executive in December 2010.**

## Corporate Policy

1. Policy Status: Existing Policy:
  2. BBB Priority: Children and Young People Excellent Council Quality Environment Safer Bromley Supporting Independence:
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## Financial

1. Cost of proposal: £563,437 planning, fees and refurbishment work.
  2. Ongoing costs: Non-Recurring Cost These are one off costs which would be recouped through the rental stream during the life of the project.
  3. Budget head/performance centre: Housing Needs Temporary Accommodation
  4. Total current budget for this head: £4,576,710 approved controllable budget for operational housing.
  5. Source of funding:
- 

## Staff

1. Number of staff (current and additional): N/A
  2. If from existing staff resources, number of staff hours:
- 

## Legal

1. Legal Requirement: Statutory Requirement: The Council has a number of statutory obligations in relation to homelessness including the provision of temporary accommodation. The suitability and standard of accommodation provision is also set out in statute.
  2. Call-in: Applicable: Further Details
- 

## Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Around 6,000 households approach annually at risk of homelessness. There are currently around 900 households in temporary accommodation to whom the council owes a statutory duty, of which around 480 are in costly forms of nightly paid accommodation.
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## Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Full consultation is taking place with ward councillors throughout proposals, planning and development stages. This includes visiting the current scheme at Bellegrave to gaining a detailed understanding of how the proposed unit would be managed.



### **3. COMMENTARY**

#### **Background**

- 3.1 The number of households approaching at risk of homelessness has risen dramatically during recent years. Simultaneously, the supply of suitable affordable accommodation across all tenures available to enable the Council to meet its statutory housing duties has reduced, both in terms of new build, housing association re-lets and access to the private rented sector in response to market factors and welfare reform.
- 3.2 This means that, despite the significant work undertaken by officers to prevent homelessness and access a range of alternative housing options, diverting around 90% of initial approaches, the number of statutory homeless households having to be placed in temporary accommodation has continued to rise.
- 3.3 The growing reliance on temporary accommodation to meet the increased demand until permanent housing solutions become available is reflected across London and the Southeast as a whole. Rising property and rental prices against the restrictive temporary accommodation subsidy regime and welfare reform has also resulted in an increased proportion of temporary accommodation only being able to be secured on a costly nightly paid rate basis – effectively topping up rental levels to match market rents. Currently 480 out of 898 placements have had to be secured on a nightly paid basis within an overall average cost to the Council of £6,500 per household per year.
- 3.4 This has moved the provision of temporary accommodation for statutory homeless households from a largely cost neutral position to a full year cost of around £5.23m as numbers and nightly rates continue to rise. There are also a number of associated additional workloads and resource pressures arising from the volume of invoices, visiting and accommodation charge collection associated with the increased use of nightly paid accommodation.
- 3.5 It is therefore necessary to urgently source alternative, more cost effective temporary accommodation units to reduce this overall cost pressure and meet statutory duties.
- 3.6 The Manorfields proposal forms one of a number of identified actions to secure more cost effective temporary accommodation and also a range of longer term settled housing solutions. Manorfields was identified following analysis of a number of vacant units to assess suitability in terms of potential to refurbish for this use based on the model previously developed for Bellegrave.
- 3.7 Bellegrave has successfully operated as temporary accommodation provision since November 2013, providing accommodation for on average 35 households at any one time. The scheme has been well maintained and managed, with the predicted savings now being realised against nightly paid accommodation rates.

#### **The proposal:**

- 3.8 The proposal is for the use of Manorfields as short terms reasonable quality temporary accommodation. The principle aim of the proposal is to provide a relatively speedy alternative to nightly paid placements and thus help to mitigate a level of the current cost pressures being faced in meeting the Council's statutory rehousing responsibilities.
- 3.9 It is hoped that the temporary provision of an additional 44 units at Manorfields will not only allow time for the housing market and impact of welfare reform to stabilise, but also for a number of the proposed longer term options currently being explored to be put in place to reduce the overall temporary accommodation pressure.

<b>Financial summary</b>	<b>£000</b>
<i>Total cost of refurbishment work</i>	<i>£492,515</i>
<i>Total cost of fees</i>	<i>£70,922*</i>
<i>Full year average revenue saving against NPA net costs</i>	<i>£262,959**</i>
<i>Full year lease income</i>	<i>£59,365***</i>
<p>* <i>Some costs will be incurred to get the proposal through the planning application and, for speed, due to urgency, to complete detailed specifications and tender works concurrently with planning application/decision process. Given the potential financial benefits of this proposal a sum of £40K has been agreed to cover fees including these costs on an 'at risk' basis'.</i></p> <p>**<i>The identified savings show the average annual saving from the reduced use of NPA accommodation based on current average net costs.</i></p> <p>***<i>The lease income is based on average occupancy levels and is calculated as the net income minus all management and maintenance costs including repairs, insurance, voids/bad debt risks, CCTV and staffing resources.</i></p>	

- 3.10 The above provides a financial summary of the project costs based on the current draft specification against the initial survey working on a basic five year lifespan. The refurbishment work would be kept to a minimum focusing only on statutory standards to reduce overall expenditure and to bring the scheme on line as quickly as possible.
- 3.11 The proposals include the intention to install interconnecting doors to enable flexible use to best meet statutory rehousing duties in terms of varying household size against nightly paid costs with an overall average occupancy of 44households. This may change slightly dependent upon housing needs, with the financial model showing the minimum level of anticipated return.
- 3.12 If approved the planning application process and refurbishment is likely to take between 5 and 6 months.
- 3.13 As ownership would be retained by the Council, this would allow for disposal or alternative use at a future stage.
- 3.14 Manorfields Care Home occupies a site of 1.5 acres. It was offered for sale in 2013 and the offers received were reported to the Resources Portfolio Holder following pre-decision scrutiny by the Executive and Resources PDS Committee in July 2013. Following further investigation of various issues relating to the offers the Portfolio Holder decided in January 2014 that Manorfields should be retained to allow consideration of whether it should be used to meet service needs.
- 3.15 It is estimated that the value of this site for residential development would be in the region of £2.9million.

### **Use of Orchard & Shipman**

- 3.16 In light of welfare reform, the number of providers working within temporary accommodation provision has reduced significantly. In addition, extreme difficulty is being experienced in securing temporary accommodation units within temporary accommodation subsidy levels in the private rented market resulting not only in a shortfall in units but also increased pressure on the Council to make up the difference between subsidy levels and market rents.

- 3.17 In preparation for developing alternative temporary accommodation provision models all registered providers involved in providing temporary accommodation for Bromley were approached and asked if they would be prepared to work with the Council on such schemes. Orchard and Shipman were the only partnership agency that responded positively.
- 3.18 There is an existing contract in place with Orchard & Shipman for the procurement and management of temporary accommodation on behalf of the Council. The management of Manorfields as temporary accommodation provision would therefore fall within the scope of the existing contract, with the only variation being the need to cover the fees incurred by Orchard & Shipman to undertake the work specification, planning application and oversee the refurbishment work in the same way as operated previously for the refurbishment of Bellegrave.
- 3.19 The use of Orchard and Shipman is therefore proposed due to the urgency with which the project needs to advance due to the current budget pressures. In addition this proposal provides a level of efficiencies gained as Orchard and Shipman will be able to spread the management and staffing costs across both Manorfields and Bellegrave offering a level of savings against overall management costs across the 2 schemes whilst maintaining the required level of management and security for this type of scheme.
- 3.20 As Orchard and Shipman are able to proceed with immediate effect and already have a contract in place with the Council, this offers both the most cost effective and expedient way forward.

#### **4. POLICY IMPLICATIONS**

- 4.1 The Council has a published homelessness strategy which sets out the approved strategic policy in terms of homelessness. This includes temporary accommodation provision and reducing any reliance on nightly paid accommodation. The Council already works with a number of providers for the provision of temporary accommodation including a current leasing scheme contract with Orchard & Shipman.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 Paragraphs 3.8 – 3.15 of this report provide a summary of the project costs, together with the projected savings of reduced NPA use against the overall current temporary accommodation budget pressures. This project forms one of a number of key actions identified to reduce the overall cost pressure being faced.
- 5.2 The annual revenue savings to the Council based on the latest average costs are shown in the table below

## Manorfields

### Saving of B & B Placements

	<u>No. of units</u>	<u>Weekly cost</u> <u>(net of subsidy)</u>	<u>Annual</u> <u>Cost</u>
		<u>£</u>	<u>£</u>
Studio	9	584.19	30,378
1 bed	11	1187.34	61,742
2 Bed	19	2397.42	124,666
3 Bed	5	887.95	46,173
	<u>44</u>		<u>262,959</u>

### Alternative Accommodation at Manorfields

#### Costs

Management fee	93,600
Staffing	56,643
Arrears/bad debts	37,496
Maintenance/utilities, etc	131,166
	<u>318,905</u>
Income generated from Housing Benefit and other minor income	378,270
	<u>59,365</u>
<b><u>Revenue saving to LBB per annum</u></b>	<b><u>322,324</u></b>

- 5.3 As set out in the table above the revenue savings that will be generated from using Manorfields for temporary accommodation is estimated to be in the region of £322k per annum
- 5.4 The use of the asset for temporary accommodation means that the council will have forgone the opportunity of generating a capital receipt which is estimated to be in the region of £2.9m. This money invested at 2% would generate income of £58,000 p.a., therefore the net revenue saving after the loss of interest earnings will be £264k
- 5.5 There will be one off costs required for the refurbishment of Manorfields which will be around £563k. This funding will cover the costs of the refurbishment works required to bring the property to a suitable letting standard and also the costs of the associated legal, planning, surveyors fees and project management costs
- 5.6 The report proposes that the funding of the Manorfields project is met from the Councils 2014/15 central contingency sum on the basis that future savings will be reflected in updated financial forecasts. There may be further calls on the cost of homelessness in 2014/15 and the position will be closely monitored.
- 5.7 The latest forecast for this area tabled below. Since the last forecast it is assumed that the homelessness increase continues beyond 2016/17.

## HOMELESSNESS BUDGET PROJECTION

	<u>2014/15</u>	<u>2015/16</u>	<u>2016/17</u>	<u>2017/18</u>
	<u>£'000</u>	<u>£'000</u>	<u>£'000</u>	<u>£'000</u>
PROJECTED OVERSPEND 2014/15 (INCLUDING FULL YEAR EFFECT IN 2015/16)	653	1,122	1,122	1,122
16 NEW B&B PLACEMENTS (APRIL 2015 TO MARCH 2016) BASED ON AN AVERAGE OF £8,000 PER PLACEMENT BASED ON LATEST PROJECTIONS WHICH CAN BE VOLATILE		768	1,536	1,536
16 NEW B&B PLACEMENTS (APRIL 2016 TO MARCH 2017) BASED ON AN AVERAGE OF £8,000 PER PLACEMENT BASED ON LATEST PROJECTIONS WHICH CAN BE VOLATILE			768	1,536
16 NEW B&B PLACEMENTS (APRIL 2017 TO MARCH 2018) BASED ON AN AVERAGE OF £8,000 PER PLACEMENT BASED ON LATEST PROJECTIONS WHICH CAN BE VOLATILE				768
ESTIMATED OVERSPENDS	<u>653</u>	<u>1,890</u>	<u>3,426</u>	<u>4,962</u>
COST OF MANORFIELDS PROJECT *	563			
POTENTIAL SAVINGS FROM MANORFIELDS **		- 295	- 322	- 322
INCOME FOREGONE FROM DISPOSAL OF ASSET (£2.9M X 2% P.A.)		53	58	58
CONTINGENCY AVAILABLE	- 1,200	- 2,800	- 3,800	- 4,800
<b>DEFICIT/(SURPLUS)</b>	<b><u>16</u></b>	<b><u>- 1,152</u></b>	<b><u>- 638</u></b>	<b><u>- 102</u></b>

\* THE SAVINGS FROM THE MANORFIELD SCHEME WILL EFFECTIVELY 'PAY BACK' THE COST OF THE PROJECT IN 2 YEARS

\*\* ASSUMES THAT IT WILL BE OPERATIONAL FROM MAY 2015

## 6. LEGAL IMPLICATIONS

- 6.1 The council has a statutory responsibility to offer advice and assistance to prevent homelessness, or to assist in securing alternative accommodation wherever possible. Where this is not possible, the Council has a range of statutory rehousing responsibilities to a number of prescribed groups. This includes the provision of temporary accommodation.
- 6.2 Failure to meet these statutory duties due to lack of, or inappropriate temporary accommodation presents significantly increased risk of costly legal challenge and Judicial Review, involving powers not only to order the acquisition of accommodation, but also compensation and so on.

<b>Non-Applicable Sections:</b>	Personnel
Background Documents: (Access via Contact Officer)	<p>LB Bromley Homelessness Strategy 2012 – 2017  LB Bromley Unitary Development Plan 2006  LB Bromley Affordable Housing Supplementary Planning Document 2008</p> <p>Renewal &amp; Recreation Portfolio 2014-15 Business Plan  EC&amp;HS Department 2014-15 Portfolio Plan  Allocation of Affordable Housing PIL Funds – Care Services Committee, 4<sup>th</sup> September 2012  Payment in Lieu: Framework and Allocation Process (6<sup>th</sup> February 2013, Executive Committee)  Affordable Housing PIL Fund: Capital Funding Bid- 13<sup>th</sup> March 2013, Executive Committee  Residential Property Acquisitions: Capital Funding Proposal- 24<sup>th</sup> July 2013, Executive Committee Addressing Rising Homelessness and Housing Need and Associated Budgetary Pressures (ACS11053)  EC&amp;HS PDS and Executive report October 2013 &amp; 2014 – Homelessness pressures and contingency draw down.</p>

Report No.  
CS14073

## London Borough of Bromley

### PART 1 - PUBLIC

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**Decision Maker:** Education Portfolio Holder

**Date:** For Pre-Decision Scrutiny by the Education Policy Development and Scrutiny Committee on 30<sup>th</sup> September 2014 and the Care Services Policy Development and Scrutiny Committee on 2<sup>nd</sup> October 2014

**Decision Type:** Non-Urgent Executive Non-Key

**Title:** DAY NURSERY PROVISION: PROPOSAL TO MARKET TEST

**Contact Officer:** Nina Newell, Head of Schools and Early Years Commissioning and Quality Assurance  
Tel: 020 8313 4038 E-mail: nina.newell@bromley.gov.uk

**Chief Officer:** Terry Parkin Director: Education and Care Services

**Ward:** Penge and Cator; Orpington

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1. Reason for report

- 1.1 The Education Policy & Development Scrutiny Committee considered a report in January 2014 (Report ED14009) in relation to nursery provision directly run by the Council, located within the Blenheim and Community Vision Children & Family Centres. The report outlined options for the future delivery of the service. It was agreed by the Portfolio Holder for Education that further work to establish the business case for the preferred option of market testing nursery provision should be conducted. This report provides further detail on the preferred option for the future delivery of nursery provision and seeks a decision as to whether to proceed with market testing the service.
- 

2. **RECOMMENDATIONS**

- 2.1 **Subject to the views of Education Policy and Development Scrutiny Committee, the Education Portfolio Holder is asked to:**
- i. **Note the content of the report;**
  - ii. **Approve the recommendation in paragraph 3.40 to proceed with the market testing of day nursery provision on a concession basis;**
  - iii. **Note that a further report detailing the outcome of market testing and recommendations arising be reported to a future meeting of the Education Policy and Development Scrutiny Committee and Executive as appropriate for Portfolio Holder / Executive decision.**

### Corporate Policy

1. Policy Status: Existing policy. Childcare Act 2006
  2. BBB Priority: Children and Young People. Excellent Council.
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### Financial

1. Cost of proposal: Estimated cost To be Confirmed
  2. Ongoing costs: N/A. Ongoing staffing costs, and associated long-term expenditure such as pension liabilities, are likely to be reduced in the event of staff transferring to another organisation
  3. Budget head/performance centre:

Community Vision Nursery	121602
Blenheim Nursery	121601
  4. Total current budget for this head: £0 (controllable)/ £187k (total cost of service)
  5. Source of funding: Revenue Support Grant
- 

### Staff

1. Number of staff (current and additional):

Blenheim	9.15 FTE
Community Vision	14.55 FTE
  2. If from existing staff resources, number of staff hours: n/a
- 

### Legal

1. Legal Requirement: N/A
  2. Call-in: Call in is applicable
- 

### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):  
Registered places available per day total 75 across both nurseries (42 at Community Vision and 33 at Blenheim).  
Around 130 children currently attend, of whom around 50 are funded through social care purchased places.
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes.
2. Summary of Ward Councillors comments:



### 3. COMMENTARY

#### Background

- 3.1 A paper was considered (Report ED14009) by the Education Policy & Development Scrutiny Committee on 30 January 2014 on the options for future delivery of day nursery provision directly run by the Council, located within the Blenheim and Community Vision Children & Family Centres. It was agreed that the preferred option was the market testing of the day nursery provision, subject to a further report (this report) providing further detail on the business case for market testing.
- 3.2 Duties on the Local Authority in relation to nursery and early years provision are as follows:
- Duty to provide sufficient childcare for working parents (Childcare Act 2006);
  - Duty to secure prescribed early years provision free of charge (Childcare Act 2006, amended by Education Act 2011);
  - Duty to assess childcare provision (Childcare Act 2006);
  - General duties to improve the well-being of children under 5 and reduce inequalities (Childcare Act 2006), ensuring early years' services are accessible to all families.
- 3.3 Specifically, the Childcare Act 2006, Section 8 states that the local authority may not provide childcare unless satisfied 'that no other person is willing to provide childcare' or that 'in the circumstances it is considered appropriate for the local authority to provide childcare'. However, this clause does not apply for children in need who are covered by the Children Act 1989, Section 18, which states that 'the local authority shall provide day care for children in need...aged five and under...as is appropriate'. However, this does not mean that the local authority must directly provide such provision.
- 3.4 The two nurseries provide full day care for children aged 0-5 and are open for 51 weeks a year. They are located in Orpington (Blenheim) and Penge (Community Vision), with the majority of users residing in wards considered areas of deprivation on national measures. They are situated within the Blenheim and Community Vision Children and Family Centres – many of the families using the nurseries also access provision offered by the Centres. Places are funded through a combination of the Department of Education Free Early Education (FEE) grant which funds 15 hours per week during term time for all three and four year olds and eligible two year olds, together with income generation from fees charged to families for the balance of their childcare needs. From September 2014, the eligibility criteria for free early years education for two year olds will increase with 40% of the cohort estimated to be eligible, up from the current 20%.
- 3.5 In addition, the two nurseries provide an estimated equivalent of 20 full time (or 48 part time) places for children referred, and funded, by Children's Social Care. The Children's Social Care Team provide early intervention support to prevent family breakdown (and the risk of children entering care) by arranging and funding nursery places primarily through the Blenheim and Community Vision nurseries. Children's Social Care fund the additional cost of hours required above the 15 hours free entitlement and provision outside of term time.
- 3.6 The places provided by the nurseries for Children's Social Care referrals are, essentially, a block contract arrangement. Children's Social Care has an annual budget of £254k against which the nurseries recharge. The basis of the budget allocation is historical and, as a result, it has not been necessary to date to ensure correlation between the budget amount, the

volume of actual referrals made and the actual cost of the provision. The nurseries accommodate all referrals as flexibly as possible. A higher level of support is provided for Social Care referrals, including breakfast or lunches, hands on family support and involvement in Social Work case work meetings.

- 3.7 The nurseries currently provide an overall total of 75 full time places (baby places, two year olds places and three/four year old places). The capacity is based on staffing ratios (based on Ofsted guidelines) with the capacity affected by the relative volumes of the different age ranges that access the nurseries. Capacity could therefore be increased through staffing adjustments although this will still be limited by physical space at the nurseries. Under the previous guidelines for capacity, based on floor space, Blenheim had capacity for 33 and Community Vision had capacity for 55. Both nurseries are rated as Good by Ofsted with the Blenheim nursery graded as having outstanding elements.

### **Sufficiency**

- 3.8 There are around 850 Ofsted Registered Childcare providers in Bromley, of which the two nurseries are the only settings directly run by LBB as full time day care nurseries (the Local Authority also provides nursery provision attached to the Bromley Adult Education College, but these are primarily for the use of students, acting more in a crèche capacity, and do not operate on a full time basis). The Private, Voluntary and Independent (PVI) childcare market in Bromley is of a good standard with 83% of PVI providers rated as outstanding or good at their most recent Ofsted inspection. Funding for Free Early Years Education for two year olds is only available to providers rated as Good or above.
- 3.9 The Bromley Childcare Sufficiency Assessment (2011) states that there is only one day nursery available in Orpington – the Blenheim Centre itself. Other childcare options are mainly through child minders and pre-schools – child minder options are likely to be limited as only child minders rated good or outstanding are eligible for FEE contributions for two year olds; and there are no places for babies or two years olds at pre-schools. There are no other day nurseries within a mile and the closest day nurseries rated as good are located some distance away. While the nearest day nurseries have (currently) available places to accommodate the occupancy at the Blenheim, access to those places is likely to be restricted due to travelling distance. The Blenheim nursery currently operates a waiting list indicating demand for this provision.
- 3.10 There were 8 day care nurseries, including Community Vision, identified within the Sufficiency Assessment available in Penge. However only five others are currently rated as Good by OfSTED and therefore eligible for free early years funding. The other five nurseries do not have sufficient capacity to accommodate the volumes currently accessing the Community Vision nursery (each nursery was contacted to confirm their current occupancy and capacity). There is demand for provision at Community Vision with a waiting list for places.

### **2013/14 Final Out-Turn Position**

- 3.11 The previous report offered an estimated out turn for the two nurseries, forecasting that an overall surplus of £109,570 would be delivered against the budget for controllable costs. This reduced the overall cost of the provision from the budgeted figure of £155,700 (once apportioned non-controllable costs had been taken into account) to an actual cost of £46,130. It should be noted that the non-controllable costs are a generally fixed cost to the Council which would only see significant reductions in the longer term once reductions or alternative delivery models have been made in other council services.

3.12 The final out-turn for 2013/14 has reduced from the forecast position, as follows:

**Table 1: Final Trading Account Position 2013/14 Across Both Nurseries**

	2013/14 Budget	2013/14 Outturn	Variation
	£	£	£
<b>Direct Costs</b>			
Employees	538,450	459,820	-78,630
Running expenses	117,030	110,634	-6,396
	<b>655,480</b>	<b>570,454</b>	<b>-85,026</b>
<b>Income</b>			
FEE & Private	-407,410	-416,904	-9,494
<b>Recharge Social Care Purchasing Budget</b>			
Children's Social Care	-248,070	-217,609	30,461
	<b>-655,480</b>	<b>-634,513</b>	<b>20,967</b>
<b>Total Controllable</b>	<b>0</b>	<b>-64,059</b>	<b>-64,059</b>
Non-controllable	580	24,439	23,859
Recharges	155,700	146,752	-8,948
<b>Total Cost of Service</b>	<b>156,280</b>	<b>107,132</b>	<b>-49,148</b>

3.13 Most of the operating surplus is linked to underspend against budgeted employee and running costs. It is not expected that these costs will rise if maintaining current level of delivery and therefore it is a reasonable indication of profitability. However, overall profitability is reduced when taking non-controllable costs into account.

### Options Considered - Recap

3.14 Three options were considered in the previous report:

- Option 1: Do Nothing
- Option 2: Closure of Nursery Provision
- Option 3: Market Testing of Nursery Provision

3.15 Option 1: Do Nothing was recognised as a potentially viable option for the future delivery of nursery provision. The confirmed out-turn for 2013/14 improves upon the budgeted position. However, it was not the preferred option for the following reasons:

- The out-turn data, while positive, is based on one year of data only. Should income decrease or costs increase, to an extent that an operating surplus is not achieved, the Council would need to subsidise the delivery of day care provision from within its own budgets. The Council is also subject to other costs relating to staffing, such as pensions and related on-costs. Although the current trading data is positive, it cannot be said with certainty that the position is sustainable in the long term.
- The Council is not necessarily the best provider of such provision. The responsiveness of the provision, to increased demand for example, and its ability to maximise income may be limited by Council in relation to staffing and budget controls.

- The overriding factor is that the policy is clear. The Council is not expected to provide such provision unless it is satisfied that no other person or body is willing to do so. There is no evidence that another body would not be willing to provide such provision and therefore the Local Authority is obliged to test the market to establish whether there are other willing providers.

3.16 However, the out-turn position provides a robust baseline against which, in the event of market testing, alternative delivery models can be assessed; and it provides a valid future delivery option if proposals arising from market testing do not demonstrate best value.

3.17 Option 2: Close of Nursery Provision was rejected as an option because of the negative financial and sufficiency implications.

3.18 Option 3: Market Testing of Nursery Provision was the preferred option as it will establish whether alternative organisations are willing to provide the provision and whether they can demonstrate best value.

### **Soft Market Testing**

3.19 A range of early years providers were invited to participate in soft market testing, via informal discussion with the Head of Schools & Early Years Commissioning, supported by the ECHS Commissioning Team. The purpose of soft market testing was to seek feedback from a variety of early years providers as to their potential interest in a market testing opportunity for the nursery provision, their experience of different market testing approaches and different models of contracting.

3.20 Meetings with four early years providers took place, comprising of one national private nursery chain, one local private nursery provider and two national voluntary sector nursery providers.

3.21 The majority of feedback was common across all providers:

- All providers stated that they would be interested in tendering for the provision in the event of market testing, based on the overview of information supplied. All providers gave the caveat that this would be subject to due diligence based on a detailed tender process;
- All providers indicated that the key considerations in their due diligence would be TUPE and pension arrangements together with assessment of profitability of the provision;
- All providers stated that they would be seeking maximum flexibility in the operation of the provision, marketing, branding and managing the provision as per their corporate procedures;
- All providers would be willing to accommodate a block contract for Social Care referrals;
- All providers stated that they would be willing to work flexibly with the Council, where possible, in order to meet local needs and address the sufficiency agenda in the borough.

3.22 The major difference in feedback was between the private and voluntary sectors on the nature of the potential contract arrangement. The interest for the voluntary sector providers would be in a contract for services arrangement, effectively managing the provision on behalf of the Council on a fixed term contract arrangement, with a preference that the property would continue to be maintained by the Council with provider occupancy on a peppercorn rent arrangement. Private sector providers were not interested in a contract for services arrangement, although they did not rule it out altogether. Their strongly stated preference was

for a concession arrangement or outright purchase of the provision, supported by a lease arrangement with the Council for the use of the property.

3.23 This in turn affected the providers view of the length of arrangement they would enter into. In the context of a contract for services, voluntary sector providers were looking at a three to five year arrangement as a minimum. In the context of a concession and property lease arrangement, private providers would be seeking a minimum period of 10 to 15 years in order for it be considered viable to invest time and resource in developing the business.

### Social Care Block Funding

3.24 As indicated in paragraph 3.6, the block funding budget of £254k per annum for social care referrals has been set on a historical basis only with no correlation to the actual volume and cost of referrals made. It was unclear therefore whether the budget was funding places at a disproportionately higher rate to other referrals, effectively subsidising the nursery provision, or whether the budget was funding places at a disproportionately lower rate to other referrals, effectively being subsidised by the income generation of the nursery provision.

3.25 Through analysis of the available information, the total number of hours funded through Social Care Funding was estimated (hours delivered over and above the FEE funded 15 hours per week). The total funding for social care places was divided by the estimated number of hours to derive an average cost per hour. This was then compared to the equivalent calculation for hours funded through FEE or on a charged basis. Table 2 provides an overview.

**Table 2: Cost per Hour of Nursery Provision**

	Hours	
	Income / FEE	Social Care
Babies	21714	6274
2 Yr Olds	20158	14155
3 & 4 Yr Olds	19441	28935
FEE 2 Yr Olds	14861	0
FEE 3 & 4 Yr Olds	33739	0
<b>Total</b>	<b>109913</b>	<b>49364</b>
<b>Income</b>	<b>£507,372.00</b>	<b>£248,070.00</b>
<b>Average Cost Per Hour</b>	<b>£4.62</b>	<b>£5.03</b>

3.26 Although the estimated average cost per hour for social care funded places is higher than the average for other places, the service has confirmed that it would expect to be funded at a higher rate due to the higher level of support provided, such as breakfast and lunches, hands on family support and involvement and attendance in social work case reviews.

3.27 Therefore it is considered that social care funded places are charged at an appropriate comparable rate and the analysis provides a baseline for the commissioning of a continued block contract arrangement in the event of market testing of the provision. In negotiating any future block contract arrangement, further discussions and analysis of referrals will be made in conjunction with Social Care in order to ensure an appropriate volume is established, minimising the risk of funding unoccupied places.

3.28 The analysis of social care placements from April 2013-March 2014 indicates that only 40% of referrals were directly referred by Social Care, with the other 60% being referrals from other agencies, such as health visitors and Bromley Children Project. Any future block contract arrangement will ensure that referral and eligibility processes are firmly established and documented as part of the arrangement.

### **Recommended Option: Market Testing of Nursery Provision on a Concession Basis**

3.29 The local market of private, voluntary and independent providers of day care is well developed and of a good standard. Given that the day nursery provision at Blenheim and Community Vision is well established and indications are that it is operating above full cost recovery, it is feasible that alternative providers will be willing and capable to take over the operation and management of this provision. The soft market testing also indicates that there is potential interest from the market. This could be established by inviting providers to submit bids for the delivery of the provision through a tendering process. This would meet the requirements of the legislation in relation to childcare by ensuring that the Local Authority is not the provider of childcare if it is established that there are other willing parties to meet the service need.

3.30 The proposed outcome of a tendering process would be to enter into a concession agreement for the delivery of services, supported by a lease agreement for the use of the premises. Concession agreements mean that:

- The contractor must bear the cost of service provision;
- The contractor must receive fees paid by third parties for using the service; and
- The contractor must bear a level of market risk for use of the service.

3.31 The characteristics of a concession agreement apply to the day nursery provision. As a concession agreement it would be subject to a 'lighter' procurement process. A concession agreement would typically be a long-term contract arrangement and therefore it is recommended that any such arrangement should be entered into for a minimum of ten years, with an extension option of five years. A lease agreement should be for the same period of time, with appropriate break clauses.

3.32 A tendering process to enter into a contract for services to deliver the provision is not recommended as this would mean that the Local Authority remains as the direct provider of the provision, albeit through a third party, based on a contract price (with additional third party overheads) for the delivery of the service. Such an arrangement would defeat the main purpose of exploring alternative models of delivery, which is to address the relevant legislation which states that a local authority may not deliver childcare unless it is satisfied that no other provider is willing to do so. A contract for services arrangement does not meet this aim. A concession arrangement may mean, based on the feedback from the soft market testing, that voluntary sector providers may be less interested in pursuing this opportunity. However, there is nothing to prevent voluntary sector organisations, or any other type of organisation, in competing for a concession contract if they so wished.

3.33 In entering into a concession agreement, the Local Authority will be inviting providers to submit a price for awarding the concession to the third party. In addition, arrangements for the lease of the premises would need to be finalised including agreed rental charges. At present utilities at the premises are shared between the nurseries and the Children and Family Centres inside which they sit. A decision about the equitable division of these costs and setting rent charges for the nurseries will need to be established as part of the market testing process. The estimated

total rental value for the two nurseries is £40k pa (Community Vision £22,500, Blenheim £17,800).

- 3.34 In transferring the operation of the service via a concession agreement, TUPE may apply to staff currently employed by the Local Authority in the delivery of this service. In the event of the transfer of staff, the Local Authority may also transfer the associated liabilities and risks, such as pension liabilities, subject to negotiation.
- 3.35 The Children's Social Care team recommend that arrangements for a block contract, or appropriate equivalent arrangement, to accommodate Social Care referrals is included within any option for the future delivery of the day care provision at the two nurseries, funded from the Children's Social Care Purchasing Budget. The price for a block contract arrangement can be included within the concession price for the delivery of the nursery provision. As indicated in 3.15, detailed modelling on the level of service, the cost of the provision and the volume (to minimise vacancies) will be undertaken as part of the market testing process.
- 3.36 The current data on the trading account for the nursery provision shows that it is operating at an estimated surplus of £87k for 2014/15. The financial risk to the Local Authority is whether the income generated from a concession agreement will be sufficient to match the current surplus currently made by income generation from the nurseries.
- 3.37 The potential net price of the concession agreement will include the price received for the operation of the concession (i.e. based on the ability to generate income), the price paid for the delivery of a block arrangement for Social Care referrals and the rental charge. This is illustrated in Table 3 below based on like for like assumptions against the current trading account data.
- 3.38 The current nursery rates charged compare favourably with other local provision, and charges are reviewed annually in April. There is potential to increase charges to make the provision more profitable, this would need to be considered in line with the local market and the balance to be achieved regarding offering affordable places to local families.
- 3.39 There may also be scope for the nurseries to offer additional places for 2 year olds eligible for FEE if minimal capital investment was made to reconfigure the layout of each nursery. Capital funds are available for the increase of places, and this will be a consideration regardless of the outcome of market testing.
- 3.40 This option is recommended to the Portfolio Holder for Education as it meets the requirement of the Local Authority to satisfy itself as to whether there are alternative providers of this provision. Market testing will demonstrate the ability and interest of the marketplace to deliver nursery provision at these locations and whether it demonstrates best value compared to the current position.

#### **4. POLICY IMPLICATIONS**

- 4.1 The proposed plan reflects the Building a Better Bromley 2020 vision, and both the local and national policy direction for Education Services.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 The nurseries moved on to a Trading Account from 2013/14. The costs of running the nurseries have been separated out from those of running the Children and Family Centres. Since April, occupancy has increased, and income has increased accordingly. The trading account budgets and final outturn for 2013/14 are shown in Table 1 above.

- 5.2 The budgets were not set up as full cost recovery trading accounts, so the recharges (overheads) are not covered by the income. The final outturn figures reflect that before recharges the nurseries generated a total surplus of £64k, and a deficit of £107k once overheads are taken into account.
- 5.3 At present utilities are shared between the nurseries and the Children and Family Centres inside which they sit. A decision about the equitable division of these costs and setting rent charges for the nurseries will be taken as part of the market testing process. The estimated total rental value for the two nurseries is £40k pa (Community Vision £22,500, Blenheim £17,800).
- 5.4 Table 3 below compares the 2014/15 budget to an equivalent concession arrangement per 3.36 above.

**Table 3: Final implications of a concession arrangement**

	2014/15 Budget £	Equivalent Concession Position £	Notes
<b>Direct Costs</b>			
Employees	563,870	0	The provider will bear employee costs
Running expenses	136,430	0	The provider will bear running costs, and will be recharged for premises costs
	<b>700,300</b>	<b>0</b>	
<b>Income</b>			
FEE & Private	-446,250	0	The provider would receive the income
Rental income	0	-40,000	Estimated rental income from the provider
Concession Fee	0	<b>tbc</b>	
<b>Recharge Social Care Purchasing Budget</b>			
Children's Social Care	-254,050	0	The provider will receive the income directly through a block contract
	<b>-700,300</b>	<b>-40,000</b>	
<b>Total Controllable</b>	<b>0</b>	<b>-40,000</b>	

- 5.5 This shows that there would be a £40k saving plus any concession fee income if the service was delivered by an external provider, assuming the full rental value can be realised and social care costs remain unchanged.
- 5.6 However, current estimates project that a surplus of £87k will be delivered in 2014/15, which is currently helping to mitigate the total ECHS department overspend. Taking this into account, there would be a potential loss of £47k of the surplus income currently being generated. This would be expected to reduce dependent upon the price agreed for the delivery of the concession based upon its potential to increase income above current levels. The confirmed surplus in 2013/14 of £64k and the projected surplus in 2014/15 of £87k provides a reasonably robust range to be considered when receiving proposals for rental and concession fees.
- 5.7 The recharge from Children's Social Care totalling £254k provides for 48 part-time nursery places per year. If the service was provided externally then the budget would be available to purchase these places in the wider external market. It is expected that Social Care would continue to purchase places in advance at the two nurseries for the most vulnerable children, with the option to spot purchase additional places according to demand, either at the two nurseries or elsewhere. This increased flexibility may result in savings for Social Care, depending on the pricing of places. At the same time, spot purchasing places with other providers may prove more expensive. Further modelling needs to take place to establish the appropriate price and arrangements for a block contract as part of a concession agreement.



5.8 There are restrictions on the use of the Children and Family sites in which both nurseries are based, as they were built using funding from the Department for Education’s Sure Start programme. Use of these sites for anything other than the provision of services for children aged 0-5 and their parents and carers could result in a potential liability to repay some or all of the Sure Start grant used to build the centres (approximately £910k for Blenheim and £1,075k for Community Vision).

## 6. LEGAL IMPLICATIONS

6.1 The provision of nurseries are currently Part B Services for the purpose of Schedule 1 to the Public Contract Regulations 2006 (as amended). The 2014 EU Procurement Directives were approved by the European Parliament on 15 January 2014 and by the EU Council on 11 February 2014. These Directives were published in the Official Journal of the EU on 28 March 2014 and came into force on 17 April 2014. EU member states have 2 years to implement them in national legislation.

6.2 One of main reforms in the new Directives is the removal of the distinction between Part A (“priority”) and Part B (“non-priority”) Services. This means that the services currently listed in the Part B Services category will be subject to the full procurement regime under the new Directives. There will, however, remain a list of social, health, cultural and assimilated services which will be subject to a lighter touch regime under what has been described as a new simplified procedure. This new simplified regime will have a higher threshold of €750,000 and the only obligations, apart from general EU principles, which apply are the rules in relation to non-discriminatory, transparency and publicity.

6.3 The Council are also required to comply with its own Financial Regulations and Contract Procedure Rules

## 7. PERSONNEL IMPLICATIONS

7.1 If Members agree the recommendation to market test, staff and their representatives will be engaged and consulted as early as practical at each stage of the process going forward, subject of course to any commercially sensitive information. The potential implications of this proposal were communicated to staff via an early warning letter on October 15<sup>th</sup> 2013. There will also be engagement with service users and representatives who might be affected by the proposals.

7.2 Any subsequent tendering process will consider whether or not the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 would apply and the consequential legal and financial implications arising from this. Any staffing implications, arising from the recommendations in this report will need to be carefully planned for and managed in accordance with Council policies and procedures and with due regard for the existing framework of employment law.

<b>Non-Applicable Sections:</b>	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	Day Nursery Provision (ED14009), 30th January 2014

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