

Finance and Resources Committee

10am, Thursday 21 September 2023

Castlegreen and North Merchiston Care Homes – Financial Update

Executive/routine
Wards

1. Recommendations

It is recommended that the Finance and Resources Committee:

- 1.1 Note the contents of the report and the latest financial position of the Castlegreen and North Merchiston Care Homes, which were transferred from Four Seasons Healthcare to the City of Edinburgh Council on 22 May 2023, and are being managed through the Edinburgh Health and Social Care Partnership.

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Report

Castlegreen and North Merchiston Care Homes – Transfer Update

2. Executive Summary

- 2.1 This report provides an update on the transfer of care and employees from Castlegreen and North Merchiston Care Homes which were transferred from Four Seasons Healthcare (FSHC) to the City of Edinburgh Council on the 22 May 2023. The care homes are registered with the Council, and managed by Edinburgh Health and Social Care Partnership.
- 2.2 This report focusses on the financial update on the on-boarding requirements; employee and ongoing running costs; capital works requirements, the dilapidations and consequent legal action being taken to recover costs of £1.167m. An addendum accepted at policy and Sustainability on the over and underpayment was requested, and this is included, with council receiving final £87k payment.
- 2.3 There remains pressure on the running of the two care homes, with the gap ranging between c£0.2m - £1.7m, with the optimum capacity of 120 places across the care homes being unaffordable. Urgent capital works are underway, costing c£380k.

3. Background

- 3.1 The care and business across the two care homes successfully transferred on 22 May 2023. The buildings are part of the Council's stock. The key aim of transfer was to ensure continuity of care and safety for the residents, who are frail and vulnerable, many with dementia, and to provide assurance for families and employees.
- 3.2 The EIJB financial plan included £2m investment prior to the transfer, which was the assumed additional cost, with this report setting out the updated position.

4. Main report

On-Boarding Costs

- 4.1 As part of the planning and implementation of transfer, a number of aspects required investment. The key considerations were to ensure the appropriate infrastructure was in place to support the employees, to provide good care, and running of the business. The overall cost of this phase is c£0.277m at time of reporting, with ongoing assessment of requirements being considered.
- 4.2 The Core Group were appraised on requirements, with the Senior Responsible Officer seeking authorisation through the Edinburgh Health and Social Carer Partnership (EHSCP), Executive Management Team for this essential spend. Key on-boarding aspects included:
- Information and communications technologies (ICT)
 - Human Resource practical on-boarding to the council and NHS systems
 - Uniforms
 - Estates and Facilities Managements surveys and immediate works
 - Legal costs associated with employment law advice on TUPE and sponsorship, and corporate legal fees associated with pursuing dilapidations
 - Essential sundries and equipment, such as bedding, cash boxes and trolleys

Transfer of Employees and Care

- 4.3 The transfer of Castlegreen and North Merchiston Care Homes successfully took place on 22 May 2023, with EHSCP taking on the management of care for the 88 residents across the two care homes.
- 4.4 Overall, the two care homes have the capacity for 120 residents, with Castlegreen currently being registered for 60 places, and North Merchiston being registered for 50 places, with the ability to apply for registration for the additional 10 places there in the future. There is insufficient budget to operate the beds at current capacity. In August 2023 a total of 78 residents were being cared for. The homes remain closed to new admissions until staff are inducted, capital works are complete, and a decision is made about closing the financial gap.
- 4.5 The transfer of 142 staff from FSHC was managed; 117 transferring to the Council and 25 transferring to NHS Lothian. All employees secured better terms and conditions, although this has come at a significant cost. A key aspiration is to align with the staffing model in other Council run care homes.
- 4.6 A key consideration of the transfer of employees was that a number were supported with visa sponsorship transferring through the Home Office to the Council. The Council laid out the approach in the Frequently Asked Questions, and in discussions with team members on transfer.
- 4.7 It has become apparent that this matter is fairly complex, with many more Council employees in other departments potentially affected. To this end, the Corporate Leadership Team prepared a Confidential Briefing for Elected

Members for the Full Council meeting 31 August 2023, where it was agreed that a position statement would be prepared, and presented to Policy and Sustainability committee October 2023, taking into consideration the key points raised in the associated Addendum at that Full Council.

- 4.8 Care quality is measured in a variety of ways locally and nationally. Locally there are recognised EHSCP mechanisms to report and investigate concerns, through complaints and visiting professionals' concerns, through the Multi Agency Quality Assurance Group, as well as through the Adult Support and Protection mechanism.
- 4.9 As part of the response to the pandemic, the Scottish Government set out new arrangements for NHS Boards and local authorities in providing enhanced clinical and care support for care homes. This provides guiding principles and a framework which recommends that health and social care professionals continue to work together to identify ways to improve the health and wellbeing of people living in care homes, as described in [My Health, My Care, My Home - healthcare framework for adults living in care homes - gov.scot \(www.gov.scot\)](http://www.gov.scot) included in the Health and Social Care Standards in Scotland.
- 4.10 Nationally, the Care Inspectorate undertakes inspections on a regular basis, and also investigates complaints made. There is connection between the Care Inspectorate and EHSCP in taking continuous improvements forward.

Ongoing Operating Costs

- 4.11 The forecasted cost for the service from the date of transfer to March 2024, across the two care homes is £5.8m, shown in Table 1 below, and is based on staffing transferred; non-staffing costs; expenditure on the contract up to 22 May 2023, and is offset by income. The in-year pressure is £0.3m.
- 4.12 A key consideration is aligning the staffing model, to that of the current Council care homes, for the current 80 places across the two care homes, the full year effect of this is indicated below in Table1 at £5.7m, and although this is slightly less cost than the current year, as on-boarding will have been completed, the staffing configuration is more expensive with an ongoing £0.2m pressure to operate the 80 places, against the available budget:

Table 1: Forecast FYE 2023-24, and Council Care Home FYE

Cost to operate Castlegreen and North Merchiston	2023-24 FYE Based on transferred staff	80 Places across two Care Homes based on CEC alignment
Element	c£m	c£m
Staffing	4.8	5.8
Non-Staffing utilities, operational materials, repairs and maintenance, food and drink etc)	1.1	1.1

Onboarding Costs	0.28	-
Four Seasons Block Contract up to 21 May 2023	0.79	-
Income	-1.2	-1.2
Net Cost	5.8	5.7
Available Net Budget	5.5	5.5
In-Year Pressure	-0.3m	-0.2m
Notes		
- £170k Repairs and Maintenance annual costs is included		
- Additional costs to meet environmental improvements associated with Registrations requirements and compliance is not included		

Source: CEC Finance Team Based on Period 5 Forecast

4.13 If the optimum capacity of 120 places were to operate, at the current Council safe staffing levels, this would have a full year effect net cost of around c£7.2m, creating a total gap of £1.7m against the available £5.5m budget.

4.14 The net budget associated with the contracted services is £3.5m. The EIJB financial plan has allocated a further £2m, providing a total of £5.5m to operate both care homes. The estimated additional operating costs are indicated below in Table 2:

Table 2 – Estimated additional Operating Costs

Element	Estimated Cost for Planning Purposes £m
TUPE Harmonise Up	0.5
Sponsorship	0.16
Additional Recruitment	0.1
Non Staff	0.17
On boarding	0.277
Other	0.1
Income	1.0
Total	2.3

Source: CEC Finance Team

4.15 Key consideration will be given through the ongoing financial planning process across the EHSCP to determine if there is potential for this pressure to be managed. In the meantime, EHSCP will require to continue to operate at reduced levels to minimise financial pressure, whilst maintaining as much capacity as possible to enable the whole system to operate effectively. This position will inform the EIJB strategic commissioning exercise as it gets underway.

Urgent Capital Requirements

- 4.16 Additional works are required to meet current building regulations and standards, and to address the improvement plan required for ongoing Registration with Care Inspectorate, following their environmental audit, associated with change of Registration. Previous environmental audits undertaken by the Care Inspectorate did not have the same detailed focus as this environmental audit associated with change of Registration.
- 4.17 A decision was made by Corporate Leadership Team, under urgency, to allow the Red and Amber capital requirements to be instructed at the earliest opportunity. The urgency decision, and associated detail of the capital works, was ratified at Full Council 31 August 2023 through [Item 7.3 - Castlegreen and North Merchiston Urgency Update.pdf \(edinburgh.gov.uk\)](#)
- 4.18 The value of the works is c£244k for the assessed red aspects, 94% of which relate to the Care Inspectorate improvement plan. The amber aspects cost c£136k, with 24% of this relating to the Care Inspectorate requirements, giving a total cost of c£380k for the Red and Amber works.

Dilapidations

- 4.19 Castlegreen and North Merchiston buildings are owned by the Council, and leased out on a full repairing and insuring basis, which is the most usual type of lease for properties leased out by the Council. Under such leases, tenants are responsible for all repairs, statutory compliance, including compliance with all associated regulations and regulatory bodies.
- 4.20 It is not usually until the end of the lease that the tenant's compliance with the lease terms is assessed by the Council, which is the purpose of the dilapidations clauses in the lease. Whilst inspections through the lease term would be useful for the c1,100 buildings the Council lease, additional resources would be required to do this.
- 4.21 Tamaris Scotland Ltd is the subsidiary of Four Seasons Healthcare, and previous provider of the services across the two care homes. The dilapidations sum totalled £1,167k across the two care homes. A dilapidations claim against Tamaris Scotland Ltd (TSL) has been made. Dilapidations notices were served by the Council to TSL on 29 June 2023. The 10 day deadline for response passed without any receipt of any payment from TSL.
- 4.22 The Corporate Leadership Team carefully considered the position on 26 July 2023, and authorised the Council Corporate Legal Team to proceed to court action, for each care home. This was based on the requirement in the commercial lease that the tenant (TSL) must comply with the repair obligation. If it does not do so, the landlord (the Council), has the option of certifying the cost of carrying out the necessary work, and that sum then falls due as a debt. The case for each care home is being prepared to be presented to the courts.

Over and Under Payment

- 4.23 The issue of the over and under payment has also progressed. It was originally reported, through B Agenda, in May 2023, that the worst-case scenario was that the Council was due repayment of the total sum of c£1.5m.
- 4.24 An addendum was accepted at Policy and Sustainability committee 22 August 2023, which was referred to full Council 31 August 2023, seeking additional information on this matter, and that the explanation would be indicated in this Finance and Resources committee paper.
- 4.25 Additional information has been provided to elected members in August, highlighting that the original figure of c£1.5m was based on historical contract calculations being brought forward associated with the Consumer Price Index, (CPI) and Scottish Living Wage, (SLW), considerations.
- 4.26 During more detailed examination of the position, it was determined that the contract basis did shift from the Consumer Price Index to the more standardised National Care Home Contract rate, which is more favourable for providers.
- 4.27 The calculations were updated, with the current position being that the Council overpaid by c£161k and had underpaid by c£73k over the course of the contracts. Accordingly, the balance due to the Council was c£87k, which has now been received by the end of August 2023. The Council considered this matter closed, however Four Season, have recently re-engaged on this matter, and corporate legal colleagues are managing this.
- 4.26 A key lesson learned whilst undertaking this exercise, was that improved systems and processes are developed to allow finance colleagues to be alerted in good time, to changes in contract terms.

5. Next Steps

- 5.1 Work will continue to ensure that residents receive good care and services, and to enable that, staff will continue to undertake necessary training, education, awareness and supervision, and be supported wherever possible.
- 5.2 Further consideration will be given to align the workforce model to current Council care homes, and the potential to reopen the care homes to admissions. As highlighted above, current Registration is for 110 places, with optimum capacity for 120 places, will increase the financial gap by c£1.7m.

- 5.3 The urgent capital programme of works for the Red and Amber schedule of works is underway, and the Care Inspectorate are appraised. The expectation is a follow up inspection will occur before the end of 2023.
- 5.4 The EIJB strategic commissioning exercise will progress, and will make recommendations relating to the longer term utilisation and required function of the two care homes, which may provide opportunities overall going forward. This will also inform any associated business cases to be developed to optimise capacity across all care home capacity.
- 5.5 The reflective 'lessons learned' session will take place October 2023, and will consider what has gone well, and what could be improved through learning from this experience, and will make recommendations for ongoing development and improvement for consideration.

6. Financial impact

- 6.1 The key detailed financial considerations are detailed in the main report above.
- 6.2 As highlighted, the EIJB financial plan includes £2m across the two care homes, however, as highlighted above, this is insufficient to operate at Council aligned establishments, or full capacity.

7. Equality and Poverty Impact

- 7.1 There are no direct implications on equality and poverty impact associated with this report.

8. Climate and Nature Emergency Implications

- 8.1 Any work undertaken across the care homes, will have environmental and sustainable aspects considered. The approach will be to recycle and reuse as many materials as possible, if safe to do so. Additionally, a key plan is to assess the solar panels fitted to both care homes and have them operational to contribute to producing clean energy.
- 8.2 All works will be subject to the Councils approach to identify any positive or negative environmental impacts, as well as the steps taken (or planned) to mitigate any adverse impacts. This includes impacts on greenhouse gas emissions, air quality, biodiversity, and adaptation to climate change.

9. Risk, policy, compliance, governance and community impact

- 9.1 The risk of not maintaining Registration is mitigated, as the capital works have been approved. This will also see compliance with current building standards and regulations.
- 9.2 The risk of retaining as many staff as possible remains, with the Council progressing their position on sponsorship.
- 9.3 The financial risk remains with the gap being indicated above, with the highest gap of c£1.7m to be able to operate at full capacity of 120 places.
- 9.4 The risk of not operating at full capacity will be felt across the whole system, and, may lead to delays for people requiring this type of care in both communities and hospitals.
- 9.5 Although the legal case associated with dilapidations is considered to be strong, there is a risk of this not being paid by Tamaris Scotland Ltd.

10. Background reading/external references

- 10.1 Policy and Sustainability Committee 22 August 2023 – Update on Transfer [7.7 North Merchiston and Castlegreen Update.pdf \(edinburgh.gov.uk\)](#)
- 10.2 Full Council Meeting 31 August 2023 – Capital Works Urgency Decision [Item 7.3 - Castlegreen and North Merchiston Urgency Update.pdf \(edinburgh.gov.uk\)](#)

11. Appendices - Nil
