

WEST NORTHAMPTONSHIRE COUNCIL CABINET

14 JUNE 2022

CABINET MEMBER RESPONSIBLE FOR ADULT CARE, WELLBEING, AND HEALTH INTEGRATION: COUNCILLOR MATT GOLBY

Report Title	Commissioning residential and nursing care services for older people
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Appendix A - older peoples residential and nursing care home market profile

1. Purpose of Report

- 1.1. To inform Cabinet of ongoing activity to commission and procure long-term contractual arrangements for the sustainable supply of residential and nursing care services for older people aged 65 and over in response to social care reforms and additional requirements being placed on local authorities to develop the local care market as set out by the Market Sustainability and Fair Cost of Care Fund (The Fund).

- 1.2. To seek Cabinet approval for the Executive Director of Adults, Communities and Wellbeing to have delegated authority to extend current contractual arrangements for up to 8-months to maintain current service supply whilst responding to legislative reforms and additional requirements. This will allow time to undertake a market-wide engagement and consultation on the findings of the recently completed cost review for residential and nursing care and develop the Council's draft Market Sustainability Plan. A further report will be presented to Cabinet in September 2022 on the outcome of the provider consultation and intentions to commission and procure a new contractual framework.

2. Executive Summary

- 2.1 West Northamptonshire Council currently operates an interim Care Home Services Dynamic Purchasing System (DPS) Framework to purchase residential and nursing care services to meet the needs of older people aged 65 and over. The DPS is due to expire on 31 August 2022 and the Council has undertaken substantial work throughout the pandemic to shape a new model of care within a revised outcome-based delivery specification to recommission provision supply for the long-term future.
- 2.2 In September 2021 Government set out plans to introduce a lifetime cap on the amount anyone in England will need to spend on their care along with a more generous means-test for local authority financial assessment and greater support for people that fund their own care. This has led to publication of the adult social care White Paper in December 2021 signalling reforms to social care charging along with further policy requirements to shape care markets and commission services within existing statutory responsibilities outlined in the Care Act 2014.
- 2.3 Government has created the Market Sustainability and Fair Cost of Care Fund to drive immediate change in the way local authorities shape a stable and sustainable care home market for older people aged 65+ along with the home care market for all adults aged 18+. Full guidance covering the Fund was issued in March 2022 and will require local authorities to review and report on local care costs and publish a draft market sustainability plan by 14 October 2022 to prepare for introduction of the social care reforms in 2023.
- 2.4 Existing activity has already produced a detailed review of local market costs, directly informed by provider information, with the purpose of commissioning new arrangements based on affordable and sustainable fee rates. However, to meet requirements for the Market Sustainability and Fair Cost of Care Fund additional work is required now to engage with care home providers on the findings of the cost review and seek further input and information so that the Council can develop a market sustainability plan in tandem with commissioning and procurement steps.
- 2.5 It is not practical for the Council to progress service commissioning without first completing work to meet requirements for the Market Sustainability and Fair Cost of Care Fund. Setting fee rates within a market sustainability plan is vital to meet the social care reforms including the ability to measure how people will reach the care cost cap and how to manage potential demand to arrange care services for people that self-fund their care. A market-wide engagement and consultation will offer opportunity for all providers of regulated care home services to further inform an understanding of local care costs, which will underpin the development of sustainability plans and directly inform commissioning and procurement strategy so that the Council can secure a new supplier framework to access sufficient provision to meet need and demand.

3. Recommendations

- 3.1 It is recommended that the Cabinet:
- a) Note legislative and policy requirements introduced by Government in relation to the Social Care Charging Reforms and Market Sustainability and Fair Cost of Care Fund.
 - b) Delegate to the Executive Director for Adults Communities and Wellbeing the decision (subject to the Contract Procedure Rules) to extend the current Care Home Service DPS framework for a period of 8-months.
 - c) Note that a formal engagement and consultation exercise will be conducted with the provider market on the findings of the care home cost review.
 - d) Note that a further report will come to Cabinet in September 2022, which will set out the proposed commissioning intentions for securing future residential and nursing care service supply.

4. Reason for Recommendations

- 4.1 The recommendations seek to:
- To enable West Northamptonshire Council's to meet the latest changes to the statutory requirements originally set out in the Care Act 2014.
 - To support the development of a sustainable care market as required by the Market Sustainability and Fair Cost of Care Fund.
 - To maintain purchasing arrangements for the supply of residential and nursing care services for older people.
 - To meet the needs and demands of residents in relation to care and support including people who self-fund their care.

5. Report Background

Statutory duties

- 5.1 Section 5 of the Care Act 2014 places a statutory duty on local authorities to facilitate a diverse, sustainable and high-quality market for the whole local population, including those who pay for their own care, and to promote efficient and effective operation of the adult social care market.
- 5.2 Section 4.6 of the Care and Support Statutory Guidance states:

Market shaping means the local authority collaborating closely with other relevant partners, including people with care and support needs, carers and families, to encourage and facilitate the whole market in its area for care, support and related services. This includes services arranged and paid for by the state through the authority itself, those services paid by the state through direct payments, and those services arranged and paid for by individuals from whatever sources (sometimes called 'self-funders'), and services paid for by a combination of these sources. Market shaping activity should stimulate a diverse range of appropriate high-quality services (both in terms of the types of services and the types of provider organisation) and ensure the market, as a whole, remains vibrant and sustainable.

The core activities of market shaping are to engage with stakeholders to develop understanding of supply and demand and articulate likely trends that reflect people's evolving needs and aspirations, and based on evidence, to signal to the market the types of

services needed now and, in the future, to meet them, encourage innovation, investment and continuous improvement. It also includes working to ensure that those who purchase their own services are empowered to be effective consumers, for example by helping people who want to take direct payments make informed decisions about employing personal assistants. A local authority's own commissioning practices are likely to have a significant influence on the market to achieve the desired outcomes, but other interventions may be needed, for example, incentivising innovation by user-led or third sector providers, possibly through grant funding.

Legislative reform

- 5.3 During late 2021 and early 2022 Government published a series of policy documents and guidance that signalled wide-ranging changes to the way health and social care is funded alongside reform to social care charging and associated requirements for local areas to prepare for the change. This includes:
- [Build Back Better: Our Plan for Health and Social Care](#), 7 September 2021 – outlines new funding plans for health and social care and a commitment to introduce a lifetime cap on the amount anyone in England will need to spend on their care.
 - [People at the Heart of Care: adult social care reform white paper](#), 1 December 2021 – sets out a 10-year vision for adult social care alongside greater detail on the care cost cap to enable greater fairness, choice and quality of care.
 - [Market Sustainability and Fair Cost of Care Fund: purpose and conditions](#), 16 December 2021 – introduces a funding vehicle for local authorities to prepare for implementation of the care cost cap based on stable and sustainable market costs and market shaping.
 - [Adult social care charging reform: further details](#), 8 March 2022 – sets out the workings of the new charging reform framework and confirms key policy details for implementing the future care cost cap.
 - [Market Sustainability and Fair Cost of Care Fund 2022 to 2023: guidance](#), 24 March 2022 – provides guidance and conditions for local authorities to access and administer the Fund in preparation for meeting the social care charging reforms.
- 5.4 At the centre of intentions to reform social care charging is the policy commitment, originally consulted on in 2015 and due for implementation in 2016, to limit the amount anyone pays towards meeting their care needs during their lifetime. The wide-ranging legislative change seeks to deliver on this commitment by introducing a cap on care costs by October 2023 to any person who has eligible needs. The cap will be initially setting it at £86,000 with the intention that a person who has eligible needs will not pay more than this amount towards their care.
- 5.5 The care cost cap will be combined with additional measures to offer people greater choice and control over their care along with improved quality and accessibility. Other measures include making the financial means test more beneficial for those people with lower capital assets and enabling more people who fund their own care (self-funders) in care homes to ask their local authority to arrange care on their behalf to secure better value.
- 5.6 Ensuring a sustainable care market is fundamental to achieving the social care reforms. The Government recognises that greater support is needed for local authorities to meet responsibilities for facilitating the efficient and effective operation of local care markets including the ability to address structural issues within the market to improve stable supply and delivery.

There are two key elements related to the social care reforms driving the need for long-term sustainability:

- Allowing people who fund their own care (in a care home) to ask their local authority to arrange care on their behalf to secure better value will affect the current fee rate differential charged to some self-funders and therefore will require sustainable rates particularly for parts of the market that are overly reliant on self-funded placements.
- Long-term uncertainty about care funding has led to different fees paid by local authorities when purchasing care, including lower fees in some areas, which has resulted in under-investment in care markets, including accommodation standards, and poorer quality care for people.

5.7 The Market Sustainability and Fair Cost of Care Fund has been created by Government as the principal funding mechanism to support local authorities in preparing for reforms and changes to the care market. This covers the care home market for older people aged 65 and over and the home care market for adults aged 18 and over; the latter likely to also cover extra care housing as a hybrid home care service. The Fund, underpinned by the Health and Care Levy, will provide £1.4bn for England local authorities over the next 3 years with an initial £162m in 2022-23 and a further £600m in both 2023 and 2024. The West Northamptonshire Council's allocation from the Fund in 2022-23 is £0.982m.

5.8 Allocation of the Fund in 2022-23 is largely aimed at enabling local authorities to develop the local care market ready for the social care charging reforms, including paying providers a fair cost of care, and sets out requirements for undertaking a market-wide cost of care exercise underpinned by provider engagement on operational costs and information about self-funders. There are also requirements to strengthen local market management and oversight functions and bring forward increases fee rates, where identified and appropriate, to ensure local investment in care services.

5.9 To meet the requirements of the Fund, including the ability to receive further allocation in 2023 and 2024, local authorities are required to deliver the following returns by 14 October 2022:

- A cost of care exercise covering both 65+ older peoples residential and nursing care along with adult 18+ home care services to determine sustainable fee rates
- A draft market sustainability plan, utilising findings from the cost of care exercise, to identify and respond to delivery risks
- A report on how allocated funding for 2023 and 2024 will be spent in line with the purpose of the Fund

Local commissioning and market profile

5.10 The Director of Adults, Communities and Wellbeing previously reported to Cabinet in June 2021 on the commissioning intentions for older peoples residential and nursing care services. Procurement of a Phase 1 DPS framework for 12-months from 1 September 2021 was completed as an interim measure securing bed supply from 51 care home across Northamptonshire while further service development work is undertaken to procure a Phase 2 framework ready for 1 September 2022.

- 5.11 Commissioning activity to develop a new care home service delivery model has progressed during the COVID-19 pandemic, although at a slower pace due to moving resource to focus on operational and market oversight in respond to delivery challenges. The priority remains on creating a service model and delivery requirements that enable older people to live well for longer in a care home setting within better outcomes along with ensuring service providers have access to effective primary and enhanced healthcare support to better manage long-term complex needs such as frailty and dementia. Service design has also sought to strengthen practice and performance in relation to infection prevention and control, falls management, oral health, use of assistive technology and end of life care.
- 5.12 A key component needed to commission new arrangements is an affordable and sustainable fee rate model. In April 2022 a full review of care home market costs was completed following a market-wide survey of providers. This covers a wide range of elements including placement needs and occupancy, accommodation facilities and standards, staffing levels and pay, operating costs and return on capital. For residential care homes, the survey sample provides excellent coverage accounting for 71% of standard-rated placements in West Northamptonshire. While slightly lower, the survey also provided good coverage for nursing care home accounting for 57% of standard-rated placements in the area.
- 5.13 In March 2022 the Council confirmed its decision to award a 6.26% inflationary uplift to contracted fee rates for the financial year 2022-23. The uplift aims to support providers that supply residential and nursing care services at contracted fee rates with ongoing cost pressures principally related to statutory National Living Wage increases along with an element to reflect non-staffing delivery costs. This raised the per bed, per week rate for standard residential care to £511, residential dementia to £617, standard nursing to £565 and nursing dementia to £620.
- 5.14 Across West Northamptonshire as of January 2022 there was a total supply of 2,570 residential and nursing care beds for older people aged 65 and over across 61 Care Quality Commission (CQC) registered care homes. 33 services are registered with CQC solely for residential care with a further 28 registered with nursing care; a status that enables nursing care providers to accept placements for both residential and nursing care needs. Of total supply, 6 care homes are owned and operated by the Council under Olympus Care Services providing 262 residential care beds.
- 5.15 Bed supply has remained broadly stable in the local market with a slight net reduction of 48 (1.8%) from the 2,618 beds registered in 2014. However, there has been a higher degree of turnover since 2014 reflected by 20.2% of beds leaving the market (13.6% for England) and being replaced by 17.5% of beds in newly built services (11.3% for England). This change largely reflects the closure of independent nursing care homes that have been replaced by new purpose-built services by group or corporate providers. The older peoples care home bed composition in West Northamptonshire is majority independent providers at 54% market share with small groups (2-4 services) at 6%, medium groups (5-24 services) at 22% and large corporates (25+ services) at 18%.
- 5.16 Quality assurance and performance monitoring continues to take place using national and local data to proactively identify and respond to emerging delivery challenges and sustainability pressures, which could give rise to reduced quality of care and in some circumstances provider failure. During the COVID-19 pandemic commissioning implemented additional quality improvement support, guidance and advice to care homes identified as falling below standards through assurance activities so that they can quickly plan and realise change to re-establish effective and stable care delivery. The initiative has been very positive with 20 care homes supported to make sustained improvement to care practice and standards.

5.17 Further information covering care home service supply and quality is included in Appendix A - older peoples residential and nursing care home market profile.

6. Issues and Choices

Social care reforms and market sustainability Fair Cost of Care

- 6.1 In April 2022, the Government introduced the first requirement as part of social care reform relating to the Minimum Income Guarantee, which is the minimum amount of income a person must be left with before they can be asked to contribute towards the cost of care. This amount has remained static for 7 years, and the Council introduced a 3% uplift to the Minimum Income Guarantee in April 2022.
- 6.2 One of the key changes to the charging legislation will be the change to the self-funder (or full cost) means test amount. Currently, a person who has more than £23,250 in capital will be liable to pay the full cost of their care. In October 2023, this threshold will increase to £100,000 meaning that anyone who has capital below that amount, and has eligible needs, will be able to apply for Council support towards the cost of their care. This is likely to mean that a large cohort of self-funding service users will ask the Council for support with their care costs and therefore, the Council must ensure that they have adequate contracted provision in place at sustainable fee rates to be able to suitably meet their needs.
- 6.3 The headline change relates to the proposed £86,000 cap on care costs. The amount of fees paid that will count towards the metering will be capped by the outcome of the Fair Cost of Care exercise. Any amount paid above the Council's Fair Cost of Care rate will not count towards the care cap. While it is very unlikely that a person will reach the care cap within 2 years of its introduction, the Council's commissioned approach needs to factor in additional available market capacity to support the increase in people requesting support once they have reached the cap.
- 6.4 There are several important elements that the Council will need to consider and prepare for when implementing the care cap, which include:
- Further design and development of the existing care management IT solution including options for an integrated finance function to create individual care accounts and meter care costs
 - Development of sufficient assessment and enablement resources by 1 April 2023 to ensure timely Care Act Assessment and care accounts for self-funders that will be able to approach the Council for early assessment
 - Additional budget provision within the Medium-Term Financial Plan to respond to greater demand for Council funded care particularly for people that reach the care cap threshold
 - Clear information and guidance so that people planning their care understand the complex and potentially confusing methodology for counting costs toward the care cap
 - Sustainable fee rates for purchasing care that enable the Council to consistently measure the proportion of care costs that will count toward the care cap
- 6.5 There is also a requirement within the legislative changes that will mean that any person with eligible needs, whether self-funding or not, will be able to obtain support from the Council in requesting arrangement of a care home placement at the local authority contracted rates, which are typically below the rates that people funding their own care would be charged directly by

private care providers. The Council must ensure that sufficient service provision is available to meet the additional demand for packages of care and this would therefore need to be considered within the draft market sustainability plan for October 2014, which will determine the commissioning approach.

- 6.6 Lastly, restrictions around first party top ups will be removed from October 2023. A first party top up is where a person chooses more expensive care than the Council is willing to fund and will use available assets to top up. This means that a person will be able use capital to top up their care contributions and as a result, assets would deplete faster and eligibility for Council assistance would happen sooner than under current legislation.
- 6.7 The above legislative changes will mean that there will be a profound impact on the local care home market as there is likely to be a significant reduction in the pool of self-funders available. This must be considered when calculating the fair cost of care rate and when completing the market sustainability plan.
- 6.8 Evidence from the detailed care home cost review is already informing service development priorities and commissioning strategy, and the intention is to undertake market engagement and consultation to seek views on the findings and seek further input. While this will create a strong foundation to commission new services, the Council must firstly undertake this engagement to meet the requirements of the Market Sustainability and Fair Cost of Care Fund by October 2022. Because this additional activity must be added to the commissioning timeline it is not practical for the Council to procure new contractual arrangements by September 2022 and therefore the proposal to extend current arrangements will allow more time to meet Government requirements and local commissioning priorities.

Options

- 6.9 **Option 1 (recommended)** – Extend the current contract to enable alignment of commissioning strategy and activity with requirements of the Market Sustainability and Fair Cost of Care Fund including market-wide engagement and consultation on how to develop the care market in response to the social care reforms.
- 6.10 **Option 2 (Not recommended)** – Proceed with commissioning and procurement activity to put new contract arrangements in place by September 2022 and respond separately to the social care reforms including assessment of care costs and sustainability planning through existing provider engagement activities.

7. Implications (including financial implications)

7.1 Resources and Financial

- 7.1.1 Additional expenditure related to the contract extension is within agreed budget parameters for 2022-23, which has factored in both inflation and acuity growth for all existing funded residential and nursing care services.
- 7.1.2 Following completion of further financial analysis to inform planning for social care reforms and return submissions to comply with the Market Sustainability and Fair Cost of Care Fund, the approach will be to present a full analysis to Cabinet in September 2022 of the financial implications related to the legislative reforms.

7.2 Legal

7.2.1 The Council has a statutory duty to provide care and support for people who meet the eligibility criteria and develop a diverse and sustainable care market as set out in the Care Act 2014 along with supporting legislative framework. The legislation anticipates that needs for care and support can be met in a variety of ways, including the provision of residential and nursing care.

7.2.2 It is anticipated that the proposed contract extension will enable the Council to maintain provision supply and access to meet needs along with compliance against Market Sustainability and Fair Cost of Care Fund requirements.

7.3 Risk

7.3.1 Should approval of the recommendations not be given the Council would risk being unable to meet requirements to prepare for social care reforms including non-compliance with funding requirements to evidence local costs and develop sustainability plans.

7.3.2 Risk(s) associated with the proposal:

Risk	Mitigation	Residual Risk
Non-contracted providers within the market raise concern/challenge about the decision to extend the current DPS Framework.	The interim framework can be opened to new applications and managed effectively to ensure non-contracted providers have opportunity to apply and join the DPS framework.	Green

7.3.3 Risk(s) associated with not undertaking the proposal

Risk	Mitigation	Residual Risk
Expiry of the Framework and DPS on 31 August 2022 results in no access to contracted service supply and therefore solely spot purchasing services at potentially higher fee rates because of market price dynamics and demands.	Plan for spot-purchasing arrangements using preferred provider agreements on an individual basis to secure supply under an assumption that vacancies across the market create price stability through negotiation.	Red
Failure to undertake a market-wide engagement and consultation is likely to be non-compliant with Market Sustainability and Fair Cost of Care Fund conditions, which could result in not being able to secure Fund payments in 2023	Utilise existing provider engagement forums to share evidence from the cost of care review and stimulate discussion and feedback alongside providing information on market sustainability and commissioning	Red

and 2024. This could also give rise to potential legal challenge from local providers and association groups.	activities through regular provider communication channels.	
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7.4 **Consultation**

7.4.1 The Council intendeds to formally engage and consult with the provider market on the findings of the care home market and cost of care review to further inform the evidence for setting sustainable fee rates for the long-term future. The outcome of the consultation will be reported to Cabinet in September 2022.

7.5 The Council are exploring options for undertaking an effective engagement and consultation with the provider market using a format and system that ensures meaning and accessible involvement along with opportunity for providers to raise clarification and share further information that can inform the development of both a market sustainability plan and commissioning approach for residential and nursing care for older people aged 65 and over.

7.6 **Consideration by Overview and Scrutiny**

7.6.1 There are no comments made by the Overview and Scrutiny Committee in relation to this report and its recommendations.

7.7 **Climate Impact**

7.7.1 There are no climate/environmental implications.

7.8 **Community Impact**

7.8.1 There are no community or community safety implications.

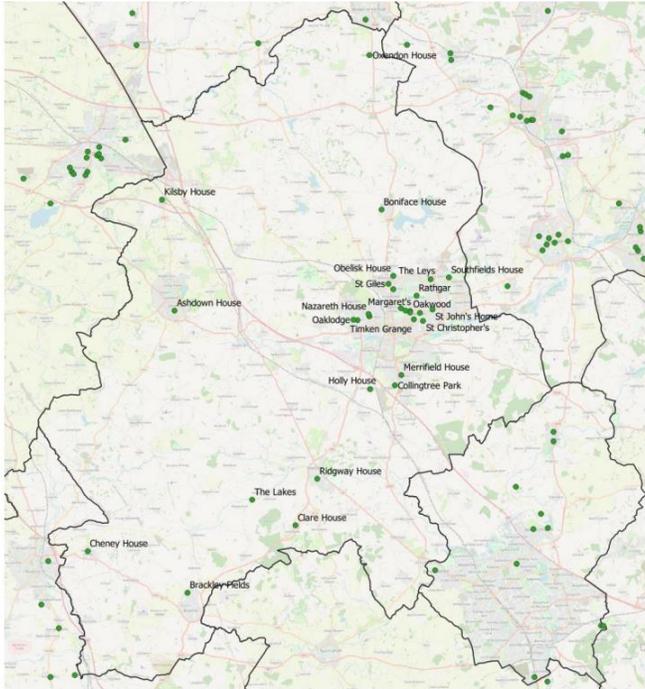
7.9 **Communications**

7.9.1 The Council will communicate the various stages of the consultation to ensure relevant stakeholders are kept informed and updated on shaping the commissioning process. This will also form part of a wider communications approach to raise public awareness of how the council is preparing for the future social care reform.

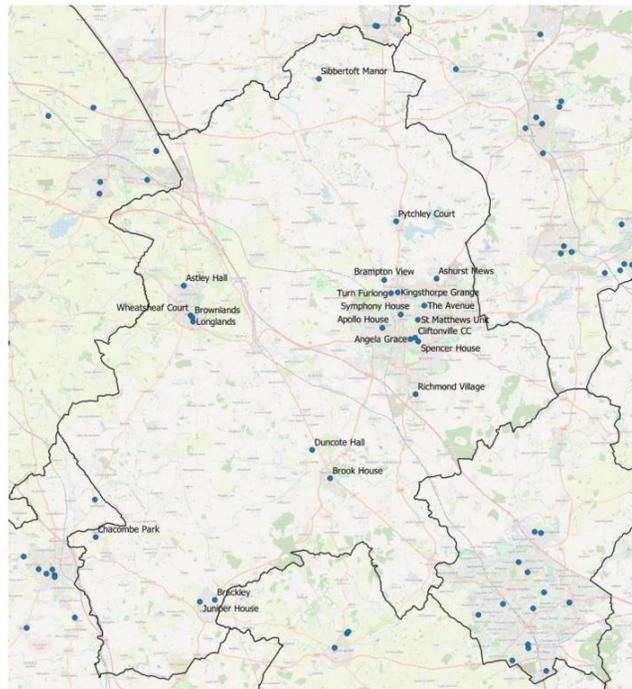
8. **Background Papers**

8.1 [West Northamptonshire Council Cabinet report, Residential and nursing care services for older people – interim commissioning intentions](#), 8 June 2021

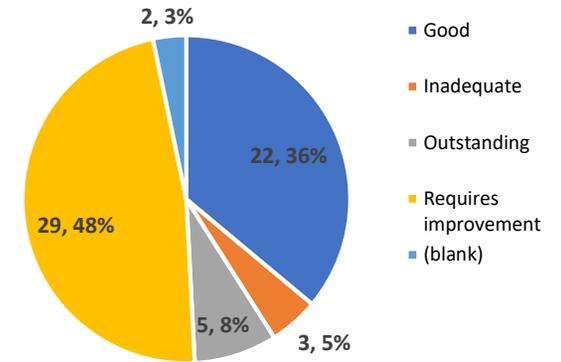
APPENDIX A – Older peoples residential and nursing care home market profile



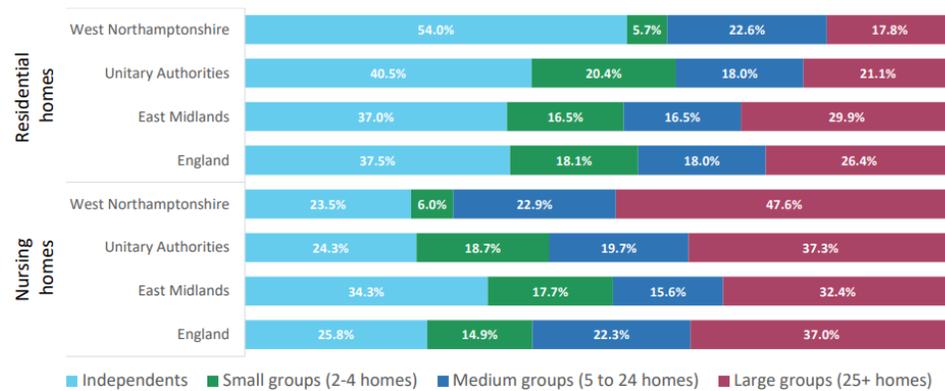
Residential care home services by location, January 2022



Nursing care home services by location, January 2022



Older peoples residential and nursing care services by CQC rating, April 2022



Older peoples care homes by group profile and percentage of beds, January 2022

Group size	Residential homes	Nursing homes
Independents	684	306
Small groups (2-4 homes)	72	78
Medium groups (5 to 24 homes)	286	299
Large groups (25+ homes)	225	620
Total	1,267	1,303

Beds in older peoples care homes by group profile, January 2022