

# NORTH YORKSHIRE COUNTY COUNCIL

## Health and Adult Services Executive Fee uplifts for Domiciliary Care and Community Based Services 2018-19 28 March 2018

### 1.0 PURPOSE OF THE REPORT

The purpose of this report is to:-

- Inform the Executive member of outcome of the application of the fees formula for residential and nursing care homes fees for 2018-19
- Seek agreement on the proposed fee levels for domiciliary care and community based services for 2018-19

### 2.0 BACKGROUND

2.1 Contractually the Council has a commitment to review fee levels on an annual basis. The Council has always had an obligation to take account of the market pressures and to consult with providers on fee levels but from April 2015 new statutory responsibilities under the Care Act 2014 require the Council to shape and sustain its markets.

2.2 In setting fees the Council has a duty to pay due regard to the costs of providing care.

2.3. In 2016 the Executive member agreed that, subject to consideration of any new issues and updates on the market conditions, fee levels for residential and nursing care homes would be uplifted for to pay annual inflationary increases for placements for 2017-2021, based on the following formula.

Residential:

45% of increase would be based on the change in Living Wage expressed as a percentage

55% of the increase will be based on the actual CPI as at the previous December

Nursing:

53% of the increase would be based on the change in Living Wage expressed as a percentage

47% of the increase will be based on the actual CPI as at the previous December

### 3.0 PROPOSED FEE LEVELS

#### Residential and Nursing care homes

3.1 Based on the formula set out in paragraph 2.3 the fee uplifts for residential and nursing care homes will be as follows:

**Residential:**

	<b>Data/calculation</b>	<b>Final</b>
45% Change in Living Wage expressed as a percentage	£7.50 to £7.83 = 4.4%, plus 1% workplace pensions = 5.4%	
55% Actual CPI as at December 2017	3%	
Therefore (45% of 5.4%) plus (55% of 3%)	<b>4.08%</b> on last year's rate of £515.76	<b>£536.76</b> (rounded)

**Nursing**

	<b>Data/calculation</b>	<b>Final</b>
53% Change in Living Wage expressed as a percentage	£7.50 to £7.83 = 4.4%, plus 1% workplace pensions = 5.4%	
47% Actual CPI as at December 2017	3%	
Therefore (45% of 5.4%) plus (55% of 3%)	<b>4.27%</b> on last year's rate of £507.43	<b>£529.06</b> (rounded)

- 3.2 For care homes where fees are already funded above this level – for example for specialist placements we will uplift fees by 4.08% for residential homes and 4.27% for nursing homes.
- 3.3 For care homes outside of North Yorkshire County Council we would honour an uplift agreed by the host authority where they have undertaken an Actual Cost of Care exercise, and will consider individual business cases where there is no Actual Cost of Care exercise in place

**Domiciliary Care Providers**

- 3.4 It is proposed that Domiciliary Care providers receive a flat rate increase of 80p per hour on current rates. This is based on a similar approach as used for care homes but with a different balance between the wage costs and general inflation in the two sectors. The rate is rounded up to 80p an hour to allow for 15 minute payments. Whilst we do not usually commission care for 15 minutes only there are times when support plans require 45 minutes of care and very occasionally for 15 minutes.

**Domiciliary Care Providers**

	<b>Data/calculation</b>	<b>Final</b>
63.1% Change in Living Wage expressed as a percentage	£7.50 to £7.83 = 4.4%, plus 1% workplace pensions = 5.4%	
36.9% Actual CPI as at December 2017	3%	
Therefore (63.1% of 5.4%) plus (36.9% of 3%)	<b>4.51%</b> on (last year's HCA Rate of £16.70 + 2017-18 increase of 64p =)	78p rounded to <b>80p</b>



4.3 In addition to the fees paid by the Local Authority Nursing care homes will receive Funded Nursing Care payments for eligible residents from health commissioners. This is set nationally by the NHS and as of February 2018 the rate is £155.05 a week.

#### **Residential and Nursing care Homes**

4.3 We know that in North Yorkshire between April 2017- February 2018 six care homes closed. This compares to four home closures in 2016-17. Overall the number of beds has not reduced, as new homes have opened, although these are not necessarily taking our standard fee rates.

4.4 There is no evidence of deteriorating quality within the care home market. Overall North Yorkshire is above the national average in terms of quality of care provided by registered care providers. Based on the publication of national CQC ratings data from January, within the Yorkshire & Humber Region, North Yorkshire is ranked:

- 1<sup>st</sup> for residential care
- 7<sup>th</sup> for nursing care

Nationally North Yorkshire is:

- Middle 20% for nursing care
- Middle 20% for residential care

4.5 We monitor on a monthly basis our ability to secure placements at NYCC standard rates. In all areas there have been times over the last year when we have had to purchase placements at a market premium. This has been when there has not been capacity at our standard rates at the time a placement is needed. Harrogate is the area where this is most notable.

4.6 We continue to monitor and will keep under review whether there is a need for any local market supplement. We are not recommending this at this time. Local fee rates were considered following the Actual Cost of Care exercise undertaken in 2016, but at the time representations from the ICG were that this was not their preferred approach.

4.7 Based on this analysis of the market we are recommending that the formula approach to fee uplifts be applied this year for care home fees.

#### **Domiciliary Care**

4.7 Fees to domiciliary care providers are based on hourly rates. The fee levels for new care packages are agreed with individual providers at the point of the individual care package being commissioned, based on the fee levels submitted by the provider in 2016, when the Approved provider list was renewed.

4.8 In two areas (Harrogate and Selby) a Framework contract agreement, signed in 2015, set out the price for care within the defined areas for the Framework.

- 4.9 The Council listened to the representations made by the Independent Care Group in 2016. The ICG asked the Council to consider offering a flat rate increase for domiciliary care, in recognition of the standard increase for all providers on wage costs and the risk that a percentage rise would not cover costs for those with lower hourly rates.
- 4.10 The ICG has advocated that the Council should use the UKHCA cost model for domiciliary care. The model sets out a national minimum fee level which they recommend. It is based on national averages for costs in defined operating areas. In January 2018 the UKHCA raised its recommended minimum fee level from £17.19 to £18.01 per hour. The UKHCA rates are indicative and UKHCA say that “ rates suggested ..... should not be used by care providers as an alternative to the accurate pricing of individual tender bids, nor by councils or other purchasers to set maximum prices in contracts.”
- 4.11 The Council’s proposal of 80p an hour fully addresses the increase in Living Wage this year of 33p an hour. It also addresses inflationary costs in respect of pensions, CPI, and other costs. We have proposed rounding up, rather than down to allow for 15 minute calls. By rounding up we will not disadvantage providers, but we have said we will need to consider rounding down in future years.
- 4.12 It will result in the average fee level across North Yorkshire of £17.77 (Urban), £18.56 (Rural) and £19.64 (Super Rural) an hour for generic domiciliary care, with a range between £17.35 and £18.39 an hour (Urban), £18.23 - £19.44 (Rural) and £19.49 - £20.00 (Super Rural). Our rural and super rural rates allow for longer travel times in these areas.
- 4.13 The 2017 CQC report indicates that North Yorkshire registered services rank 4<sup>th</sup> in Yorkshire and Humber for quality ratings and North Yorkshire is in the top 20% nationally.

### **Community based services**

- 4.13 For community-based care services we do not pay an hourly rate for a number of these services and so are unable to apply the same approach as domiciliary care. The proposed increase of 4.08 % is based on the weighted formula set out in paragraph 3.7, to include the costs of the increased National Living Wage as well as other costs associated with the provision of the service.

## **5.0 Consultation**

- 5.1 No additional consultation has been undertaken with care homes, as the use of the formula approach was subject to consultation and agreed in 2016. No changes are being proposed to this approach this year
- 5.2 Affected domiciliary care and community based care providers within the County were contacted and invited to take part in a survey regarding the proposed fee levels and

future inflationary uplifts. The survey was conducted through Survey Monkey between February and March 2018. The consultation closes on 21 March and a full analysis will be considered alongside this report at the meeting on 28 March and published in advance of that.

- 5.3 Only one direct email has been received to date in response to the consultation and this has expressed support for the proposals.

## **6.0 Implications**

### **6.1 Resource and Finance Implications/Benefits**

Budget plans have already included the cost of the increased fees proposed included in this report. In future years the Council will need to provide for the inflationary increases.

### **6.2 Human Resources**

We require our contracted providers to meet minimum wage levels and have reflected wage costs in our fees

### **6.3 Legal**

In having due regard to the actual costs of care, local authorities are not obliged to follow any particular methodology; in particular, there is no obligation to carry out an arithmetical calculation identifying the figures attributed to the constituent elements, R (Members of the Committee of Care North East Northumberland) v. Northumberland CC [2013] EWCA Civ 1740,

The Court of Appeal in Northumberland rejected the argument that a rigid distinction had to be drawn between the actual and the usual costs of care, whether at the stage of inquiring into matters relevant to their decision including the actual costs, or at the stage of making the decision as to what usual costs to set; it was not the case that, in order to rely on matters such as the usual costs set by other authorities and the state of the local market to ascertain the actual costs, the local authority had to be able to justify how they were relevant for that purpose, and

The court cannot interfere by way of judicial review simply because it appeared that a mistake of fact had been made. Errors must be found in setting the usual costs of care, but it is also clear that it was not the court's function to consider the merits of the local authority's conclusions, Mavalon [2011] EWHC 3371 (Admin) considered (see paras 8-18 of judgment),

It is evident that there has been a change in the Courts approach to challenges made against local authorities in relation to the setting of fee rates. Earlier case law shows that the Courts were prescriptive in terms of the methodology that ought to be used when determining fee levels. More recently, the Courts seem less prepared to get into the

technical detail behind the decisions made by local authorities when setting fee rates. As demonstrated in recent case law however, the Council must demonstrate that the usual costs it sets are sufficient to allow it to meet assessed care needs and to provide a reasonable level of care service without the need for top-ups. Councils are entitled to have regard to its own expertise and so place reliance upon such facts such as the absence of provider failure.

#### 6.4 Equality Act 2010

The county council is required by law to pay due regard to the Equality Act 2010 and in particular the general and specific duties of the Public Sector Equality Duty. The evidence that the county council has met its duties is contained in the attached equality impact assessments (EIAs). Draft versions of the EIAs were shared as part of the consultation and respondents asked for their views on whether all equality implications had been considered.

The feedback provided on additional implications has been considered in producing the final EIAs post-consultation. The analysis did not identify any adverse impact on people according to protected characteristic as a result of these proposals. Due regard has been paid to the actual cost of care in formulating the proposals, and it is anticipated that there will be a positive impact on both the provider market and people who receive services, by offering fee levels which support good care provision.

The feedback from the consultations will be evaluated and submitted to the meeting for review, together with updated EIAs.

### **8.0 RECOMMENDATIONS**

8.1 The Executive Member is asked to consider the results of the consultation, the officer comments at 5.4 and the legal implications in paragraph 6.3

1. Note the fee increases to care homes, based on the inflation formula agreed last year:

Residential: £536.76 per week

Nursing: £529.09 per week

Specialist placements: 4.08% Residential: 4.27%% Nursing

2. Agree a hourly increase for domiciliary care providers of 80p an hour
3. Agree a 4.08% increase for other non-regulated contracts

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February