

NORTH YORKSHIRE COUNTY COUNCIL

Health and Adult Services Executive

Fee uplifts for Residential, Nursing, Domiciliary Care and Community Based Services 2020-21

14 February 2020

1.0 PURPOSE OF THE REPORT

- 1.1 This report informs the Executive member of proposed fees for Residential, Nursing, Domiciliary Care and Community Based Services in 2020-21

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 Since 2016 and subject to consideration of any new issues and updates on the market conditions, fee levels for residential and nursing care homes have been uplifted for pay annual inflationary increases for placements for 2017-2021, based on the a formula which took into account:
- Changes in Living Wage
 - General Inflation (CPI)
- 2.4 This formula approach has been based on the Actual Cost of Care exercise undertaken prior to 2016 and which is due to end in the coming year. Work has already begun on a new exercise and it is envisaged that a new approach will be developed to cover the years after 2020-21.
- 2.5 The current approach has set standard rates across the county for placements in residential and nursing care, but as time has progressed, this uniform rate is not being used. 54% of new admissions have been placed above NYCC rates, and in particular the figures in some areas are higher than this average, as below.
- Harrogate (90%),
 - Craven (63%),
 - Selby (62%)

- 2.6 Therefore in the final year before the recommendations from the new Actual Cost of Care exercise are expected to take effect, consultation has taken place with providers through the Independent Care Group (ICG) and an agreed way forward is set out in section 3 below which moves away from a universal rate.
- 2.7 The rates below, if agreed, are within the funding agreed in the Council's 2020/21 budget, although inflation is of course allocated on budget and not on any overspend.

3.0 PROPOSED FEE LEVELS

- 3.1 The proposed rates are:
- 4% inflation for all residential/ nursing placements less than £750.01 per week and 1.5% inflation for all residential / nursing placements in excess of £750 per week.
 - 3% inflation (double current inflation levels) for all non-residential services. This would include day opportunities
 - A flat rate £0.60 per hour uplift to all domiciliary care packages and supported living
- 3.2 In addition, the Council will make available up to £500k for providers to invest in technology with a view to enabling efficiencies in the future.
- 3.3 To support cash flow for organisations, all future payments will be made four weeks in advance with retrospective reconciliation where necessary.
- 3.4 For placements of older people in 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.
- 3.5 For placements of working age adults in care homes outside of North Yorkshire County Council 4% would be applied to all residential/ nursing placements less than £750.01 per week and 1.5% inflation for all residential/nursing placements in excess of £750 per week.
- 3.6 The rate for Domiciliary Care providers allows 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.

4.0 ANALYSIS OF THE PROPOSALS

- 4.1 There has continued to be much national focus in the last year about the frailty of the care market in England.
- 4.2 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 1 April 2019 the rate is £165.56 a week.

Residential and Nursing care Homes

- 4.3 In North Yorkshire between April 2019 – February 2020 two care homes closed. This compares to two home closures in 2018-19 and six in 2017-18. 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 As of January 2020, the care home market in North Yorkshire is broadly in line with the national average in terms of quality of care provided by registered care providers.
- 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 but discussions as part of the new Actual Cost of Care exercise will look at the impact of differential rates across the county.

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 from an Approved Provider list which runs from 2016 to 2021. This is an open list and providers can apply to be included at any time between these dates. A tender process has been recently undertaken and 5 providers available for the provision of domiciliary care in Harrogate & Selby, The new Framework commenced in February 2020 and can run for 7 years. An initial term of 3 years with 2 separate extensions of 2 years each totalling a 7 year contract. Prices are set within the contract.
- 4.8 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. From April 2020 the recommended minimum rate for an hour of homecare increases to £20.69 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.”

- 4.9 The Council’s proposal of 60p an hour fully addresses the increase in Living Wage this year of 51p an hour.
- 4.10 It will result in the average fee level across North Yorkshire of £18.77 (Urban), £19.83 (Rural) and £22.03 (Super Rural) an hour for generic domiciliary care, with a range between £14.24 and £34.80 an hour (Urban), £14.24 - £37.24 (Rural) and £14.24 - £39.00 (Super Rural). Our rural and super rural rates allow for longer travel times in these areas.
- 4.11 As of January 2020 CQC identifies North Yorkshire registered services as being ranked 5th in Yorkshire and Humber for quality ratings. North Yorkshire has a higher average of good and outstanding rated registered services when tracked against the national average.

Community based services

- 4.12 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 3% is therefore in line with the other proposals in this paper.

5.0 CONSULTATION

- 5.1 Consultation has taken place with the ICG as referred above and this group has accepted the proposals in this paper.

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 previously published equality impact assessments (EIAs). 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.

7.0 RECOMMENDATIONS

- 7.1 The Executive Member is asked to consider the contents of this report, including the analysis of the proposals in section 4 and the implications in section 6.
- 7.2 Note the fee increases to care homes for both residential and nursing would be 4% for all weekly charges less than £750 per week and 1.5% for those above that. Fees for specialist placements would also be at these rates. This would take the “NYCC rates” to:
- £579.04
 - £572.39

- 7.3 Agree a hourly increase for domiciliary care providers of 60p an hour
- 7.4 Agree a 3% increase for other non-regulated contracts

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