

NORTH YORKSHIRE COUNTY COUNCIL

Health and Adult Services Executive Fee uplifts for Residential, Nursing, Domiciliary Care and Community Based Services 2022/23

11 March 2022

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 2022/23.

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, based on 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 has now run its intended course. Work has been undertaken over the past year on a new Actual Cost of Care exercise and findings have been shared with representatives of the care sector.
- 2.5 Delays in the intended roll-out have been caused due to the concentration of the sector on dealing with the Coronavirus pandemic and, it has been agreed that the work undertaken will inform a roll out of the review during 2022/23. Meanwhile, and as per 2021/22, the proposal is to agree an inflationary financial settlement for 2022/23 that will complement the work on the Actual Cost of Care (ACOC) exercise and this is set out below.
- 2.6 Consultation has taken place with providers through the Independent Care Group (ICG) and an agreed way forward is set out in section 3 below. This continues the

process agreed for the current financial year whereby we have moved away from a universal rate while beginning the implementation of ACOC.

- 2.7 The rates below, if agreed, are within the funding agreed in the Council's 2022/23 budget, although inflation is of course allocated on budget and not on any overspend.
- 2.8 The inflationary award is separate from additional support given to providers this year to assist with the costs of the pandemic, including additional payments made to staff to cover the period December 2021 to March 2022.

3.0 PROPOSED FEE LEVELS

Residential and Nursing

- 3.1 The rates are as set out below:

There will be four ACOC rates and these include an amount for Return on Investment. These reflect an inflationary increase of 5% on the 2021/22 ACOC level, using the methodology set out in the ACOC which takes account of increases to national Living/Minimum Wage and general inflation (CPI).

	With ROI
Nursing	819
Nursing with Dementia	826
Residential	742
Residential with Dementia	784

- 3.2 The Cost of Care rate will be implemented for existing packages over three years. In essence that means that each package would receive 1/3rd of the difference between the current rate and the ACOC rate, reaching full ACOC by April 2024. However we will commit to reviewing this position and subject to funding, look to move remaining packages to ACOC levels in 2023/24. This review will look at funding available, including any unspent grants, plus the amount of packages still above ACOC level.
- 3.3 Each year the ACOC rate will be inflated.
- 3.4 For those below the ACOC rate, inflation will be applied at the full level.
- 3.5 For those above the ACOC rate, no inflation will be applied.
- 3.6 For those already above ACOC and not receiving inflation, a safeguard will be put in place to ensure they do not drop below the ACOC rate (as this is inflated each year).

- 3.7 All new packages will be paid the ACOC rate, *except in exceptional circumstances and where agreed otherwise*.
- 3.8 ACOC rates only apply to packages of care for over-65s.
- 3.9 This is a significant increase in care rates to be paid to providers in North Yorkshire as we move to full implementation of ACOC, but it is necessary to ensure continued provision for people with care needs in the county and to support providers. For those packages currently receiving the county rates of £592 (nursing) and £599 (residential), they will see an increase in the rate of up to 16% in April 2022. The affordability of this is reliant on new packages being agreed at the ACOC rate and not above it, and this risk will be monitored by officers during 2022/23.

Non-residential

- 3.10 3.1% for all non-residential services and learning disability residential services. This will include day opportunities.
- 3.11 Increases to domiciliary care packages will be targeted to support those currently receiving lower fee rates. This is ahead of an expected ACOC exercise for this sector in readiness for changes to care charges from next year. The offer for 2022/23 is linked to the UKHCA rate (£23.20 from April 2022) and can be summarised below:
- (i) A flat rate increase of £1.68 to contracts currently at or below £21.52 (with increases up to 17% and an average increase of 7.3%)
 - (ii) This will reduce by 1p for every 1p currently above £21.52. In effect every package currently between £21.52 and £23.20 will now be at UKHCA rate of £23.20
 - (iii) A flat rate increase of 36p (average increase of 1.5%) for rates currently between £23.20 and £25
 - (iv) A flat rate increase of 20p (average around 0.8%), for rates currently between £25 and £25.40, up to maximum of £25.40
 - (v) Any rates above this to have 0% inflation, pending the domiciliary care ACOC
- 3.12 Increases to supported living care packages will also be targeted to support those currently receiving lower fee rates. The offer for 2022/23 is summarised below:
- 5% to those packages currently paid below £19 per hour
 - 3.1% to those above that rate
- 3.13 All future payments will continue to be made four weeks in advance with retrospective reconciliation to support cash flow within the market.
- 3.14 For placements of people in care homes outside of North Yorkshire County Council we will 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.

- 3.15 For placements of working age adults in care homes within North Yorkshire County Council area 3.1% will be applied to all residential/nursing placements.
- 3.16 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.
- 3.17 We also intend to undertake a review with the ICG to begin no later than 30 September 2022 to look at the impact of this award on providers and, subject to grant conditions, the distribution of any additional funding from government. This review will also look at those packages receiving the inflation award of 3.1%, such as Supported Living.

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 2021 the rate was £187.60 per week but the rate from April 2022 has not been set as yet.
- 4.3 Residential and nursing occupancy rates have reduced overall during the pandemic, however some areas of the county are seeing high occupancy rates particularly for nursing care.
- 4.4 A range of national and local support mechanisms have been in place since early in the pandemic to reduce the financial impact of the pandemic on the care market and, where possible, prevent provider failure. This includes support from central government, including:
 - Infection Prevention Control funding;
 - A national Personal Protective Equipment portal; and,
 - The block purchasing of discharge beds.
- 4.5 At a more local level, the county council has implemented:
 - Compensatory payments;
 - Supplier relief and hardship processes;
 - Payment on planned activity; and,
 - Payments in advance for the annual inflation settlement

- 4.6 The Strategic Market Development Board is in place to address the wide range of challenges in the social care market, and to provide a strategic focus on the implementation of solutions.
- 4.7 The Board has a multi-agency membership, and has set key priorities for its development work. One of the key areas of work relates to the £167 Million spent each year via three approved provider lists (APLs), covering care homes and extra care, day services, and domiciliary care.
- 4.8 The process has included a workshop for the System Leadership Executive, involving people from a range of organisations, including local authorities, CCGs, NHS provider trusts, the Independent Care group and voluntary sector organisations.
- 4.9 It is anticipated that new contracts will start later in 2022.
- 4.10 The procurement will also take into account the extensive Actual Cost of Care work which has been carried out in the past two years. This will aim to ensure that providers have sustainable funding going forward while also seeking to limit where costs have exceeded council rates.

Residential and Nursing care Homes

- 4.11 In North Yorkshire between April 2021 – January 2022 six care homes closed. This compares to eight home closures in 2020-21, two in both 2019-20 and 2018-19, and six in 2017-18.
- 4.12 As of January 2022, 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.
- 4.13 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.
- 4.14 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 Approved provider Lists will look at the impact of differential rates across the county.

Domiciliary Care

- 4.15 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.

- 4.16 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 2022 the recommended minimum rate for an hour of homecare increases to £23.20 per hour.
- 4.17 The proposal is for a 5% uplift to all domiciliary care packages below UKHCA minimum rate and 3.1% above.
- 4.18 Across North Yorkshire the average fee levels are currently £20.37 (Urban), £21.46 (Rural) and £23.82 (Super Rural) an hour for generic domiciliary care, with a range between £15.24 and £36.00 an hour (Urban), £15.24 - £37.00 (Rural) and £15.36 - £41.20 (Super Rural). Our rural and super rural rates allow for longer travel times in these areas.
- 4.19 79.2% (-2.5%) of residential care providers were rated “good” or better, which remains better than national (82.0%, -0.2%) and Yorkshire and Humber Region (77.9%, -0.7%) averages. 89.2% (-0.3%) of domiciliary care providers were rated “good” or better, which remains better than national (87.4%, -0.2%) and Yorkshire and Humber Region (84.5%, +0.3%) averages.

Community based services

- 4.20 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 3.1% 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: When setting fee levels, 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.

- 6.4 The Care Act 2014 places duties on local authorities to facilitate and shape the care and support market. The Act also requires local authorities to provide choice that delivers intended outcomes and improves wellbeing. Unlike previous case law, the Care Act strengthens the general duties of councils when setting fees. Relevant features of the Act include: (i) An obligation on councils to: ...promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishes to access services in the market. ...(and) has a variety of providers to choose from who (taken together) provide a variety of services. ...(and) has a variety of high-quality services to choose from ...(and) has sufficient information to make informed decision about how to meet the needs in question.
- 6.5 The Care and Support Statutory Guidance (CASSG) states that a local authority should have evidence that the fee levels they pay for care and support services enable the delivery of agreed care packages and support a sustainable market. When commissioning services, local authorities should assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care. This should support and promote the wellbeing of people who receive care and support and allow for the service provider to meet statutory obligations to pay at least the national minimum wage and provide effective training and development of staff. It should also allow retention of staff commensurate with delivering services to the agreed quality and encourage innovation and improvement. Local authorities should understand the business environment of providers offering services in their area and seek to work with providers facing challenges and understand their risks.
- 6.6 The CASSG states however that in fulfilling this duty “Local authorities should commission services having regard to the cost effectiveness and value for money that the services offer for public funds”.
- 6.7 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 and to agree
- (i) That fee increases to care homes for both residential and nursing will be as below:

- a) There will be four ACOC rates and these include an amount for Return on Investment.

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- b) The Cost of Care rate will be implemented for existing packages over three years. In essence that means that each package would receive 1/3rd of the difference between the current rate and the ACOC rate, reaching full ACOC by April 2024. However we will commit to reviewing this position and subject to funding, look to move remaining packages to ACOC levels in 2023/24. This review will look at funding available, including any unspent grants, plus the amount of packages still above ACOC level.
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- f) For those already above ACOC and not receiving inflation, a safeguard will be put in place to ensure they do not drop below the ACOC rate (as this is inflated each year).
- g) All new packages will be paid the ACOC rate, *except in exceptional circumstances and where agreed otherwise*.
- (ii) A 3.1% increase for all non-residential services and learning disability residential services. This will include day opportunities.
- (iii) For domiciliary care:
- A flat rate increase of £1.68 to contracts currently at or below £21.52
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- (vi) For placements of working age adults in care homes within North Yorkshire County Council area 3.1% will be applied to all residential/nursing placements.
- (vii) That a review with the ICG to begin no later than 30 September 2022 to look at the impact of this award on providers and, subject to grant conditions, the distribution of any additional funding from government. This review will also look at those packages receiving the inflation award of 3.1%, such as Supported Living.

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