

# NORTH YORKSHIRE COUNTY COUNCIL

## Health and Adult Services Executive

### Fee uplifts for Residential, Nursing, Domiciliary Care and Community Based Services 2023/24

22 March 2023

#### 1.0 PURPOSE OF THE REPORT

- 1.1 This report informs the Executive member of proposed fees for Residential, Nursing, Domiciliary Care, Supported Living and Community Based Services in 2023/24.

#### 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 April 2022, the Council implemented its Actual Cost of Care (ACOC) exercise for residential and nursing placements. It was agreed that all new placements would receive at least the relevant ACOC rate and that existing/legacy rates would be increased to ensure that they met that rate within three years
- 2.4 As a condition of receiving market sustainability funding from central government – through the Department of Health and Social Care (DHSC), all Local Authorities were expected to complete two Fair Cost of Care (FCoC) exercises in 2022 covering:
- (i) 65+ Residential and Nursing Care
  - (ii) Domiciliary Care
- 2.5 As NYCC had only begun to implement (from April 2022) its latest Actual Cost of Care Exercise for Residential and Nursing care, DHSC agreed that this could be used in place of any new work.
- 2.6 However as no previous Cost of Care exercise for Domiciliary Care had been undertaken by the Council prior to this date. North Yorkshire County Council used the DHSC-recommended FCoC model to undertake this in line with the grant conditions in May-June 2022.
- 2.7 Alongside – but separate to – this, NYCC undertook a comprehensive procurement of its Approved Provider Lists (APL) which commenced in June 2022. This included the

provision of Home-Based Support, and it was a requirement of all domiciliary care providers wanting to work with NYCC in the delivery of domiciliary care in the future.

2.8 The government has been quite clear that:

*“the outcome of the cost of care exercise is not intended to be a replacement for the fee-setting element of local authority commissioning processes or individual contract negotiation. We expect local authorities to use the insight gained from their cost of care exercises to support their commissioning and contract negotiation for the relevant services in practice.” (DHSC)*

2.9 The FCoC exercise therefore is only intended to support each LA in setting rates – it does not provide a definitive rate in itself. It is also clear that the national FCoC exercise was limited and simplistic, it provided a very short window for the exercise to be completed due to national timescales being set and only provided one median rate. The national Domiciliary FCoC was much less representative than our own separate APL exercise. (28 FCoC returns compared with 98 APL returns for home-based support). Feedback from other councils has highlighted similar concerns in that the national exercise did not enable a good understanding of local care provider markets.

2.10 The new Approved Provider lists for residential and nursing care, domiciliary care, community based support and supported living took effect from 1 November. In the calculations required to ensure the offer here is affordable, we have assumed that residential and nursing rates will refresh every three years – i.e. that one-third of legacy packages will be replaced by others in the new APL rate. For Domiciliary Care and Supported Living, the turnover is less frequent, and will normally not be higher than every five years.

2.11 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 universal inflation rates while implementing Cost of Care and APLs.

2.12 The rates below, if agreed, are within the funding agreed in the Council’s 2023/24 budget, although inflation is of course allocated on budget and not on any overspend.

2.13 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 providers in autumn 2022.

### **3.0 PROPOSED FEE LEVELS**

#### **Residential and Nursing**

3.1 As set out above, in April 2022, the Council implemented its Actual Cost of Care (ACOC) exercise for residential and nursing packages. All new packages would receive at least the relevant ACOC rate and existing/legacy rates would be increased to ensure that they met that rate within three years

- 3.2 Taking account of expected rates of inflation over the next financial year, the new rates are as set out below. This table also shows the increase over 2022/23 rates:

	2022/23	2023/24	change	
Residential	742	812	70	9.4%
Residential/Dementia	784	854	70	8.9%
Nursing	819	896	77	9.4%
Nursing/Dementia	826	903	77	9.3%

- 3.3 For those above the ACOC rate, inflation will be paid at 3% up to £1,200 per week, with no inflation above that.
- 3.4 All new placements will be paid the ACOC rate, except in exceptional circumstances and where agreed otherwise.
- 3.5 ACOC rates only apply to placements for over-65s. Therefore for placements supporting adults under the age of 65, the inflation rate will be 9.2% for those below £1,000 per week and 3% for those above.
- 3.6 Specialist residential placements for people over-65 costing less than £1,000 per week will receive 9.2%, while those above will receive 3%.

#### Non-residential

- 3.7 9.2% for Community Based Support/non-regulated services, including Day Services. The rate will be rounded up to ensure it can be sub-divisible by 4.
- 3.8 For Home Based Support, due to the limited response rate of the Fair Cost of Care exercise for Domiciliary Care, it is not appropriate to rely on the outcome of that to set an indicative rate for consideration of the uplift for that sector. Again, the council is keen to ensure that increases to domiciliary care packages will be targeted to support those currently receiving lower fee rates. Last year we linked the UKHCA rate of £23.20 to our offer and have noted that this year's rate is £25.95. We also note that the average rates submitted by providers as part of the Approved Provider Lists (APL) exercise were as below:

<u>Personal Care Hourly Rate</u>	(Generic)	(Enhanced)
Urban:	£23.55	£24.52
Rural:	£24.91	£25.73
Super Rural:	£27.30	£27.55

- 3.9 We have therefore used an indicative rate of £26 for 2023/24 for Home Based Support as set out in the proposal:

- All rates below £26 per hour will be paid 9.2% inflation. This includes APL and legacy rates

- All rates between £26 and £33 per hour will be paid 3% inflation. This includes APL and legacy rates
  - No inflation will be paid above this rate
- 3.10 Increases to supported living care packages will be 9.2%. Our calculation suggests that (assuming a turnover of 1/5th annually) only 3% will be paid at a rate lower than £20 per hour – and this is normally where providers have submitted an APL rate lower than this.
- 3.10 All future payments will continue to be made four weeks in advance with retrospective reconciliation to support cash flow within the market.
- 3.11 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.
- 3.12 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 2022 the rate was £209.19 per week but the rate from April 2023 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.

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

4.7 In North Yorkshire between April 2022 – January 2023 4 care homes closed. This compares with

2021/22: 6  
 2020/21: 8  
 2019/20: 2  
 2018/19: 2  
 2017/18: 6

4.8 As of February 2023, the care home market in North Yorkshire is slightly above the national average in terms of quality of care provided by registered care providers. The Quality Improvement Team continues to provide proactive support to providers where quality concerns have been identified or where improvements would be beneficial.

4.9 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.

4.10 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 will closely evaluate the impact of the new Approved Provider Lists.

### **Domiciliary Care**

4.11 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.

4.12 The ICG has advocated that the Council should use the HCA 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 2023 the recommended minimum rate for an hour of homecare increases to £25.95 per hour.

- 4.13 The proposal is for an 9.2 uplift to all domiciliary care packages below £26 per hour and 3% for those between £26 and £33. No inflation will be paid on hourly rates above £33.
- 4.14 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.
- 4.15 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**

- 4.16 For community-based care services we tend not to 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 9.2% is therefore in line with the other proposals in this paper.

## **5.0 CONSULTATION**

- 5.1 Consultation and negotiations have been taking place with the ICG since November 2022 and at the time of publication we are awaiting a view on the final proposals discussed with the group on 14 March.

## **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) The four ACOC rates for 2023/24 will be:

	2023/24
Residential	812
Residential/Dementia	854

Nursing	896
Nursing/Dementia	903

- b) The Cost of Care rate will be implemented for all existing placements by April 2024 where they are currently paid below that rate
  - c) For those above the ACOC rate, inflation will be paid at 3% up to £1,200 per week, with no inflation above that.
  - d) All new placements will be paid the ACOC rate, except in exceptional circumstances and where agreed otherwise.
  - e) As ACOC rates only apply to placements for over-65s, placements supporting adults under the age of 65 will be paid an inflation rate of 9.2% for those below £1,000 per week and 3% for those above.
  - f) Specialist residential placements for people over-65 costing less than £1,000 per week will receive 9.2%, while those above will receive 3%.
- (ii) An 9.2% increase for Community-Based Support/non-regulated services, including Day Services. This will be rounded up to ensure it is divisible by 4.
  - (iii) For domiciliary care:
    - An 9.2% uplift to all domiciliary care packages below £26 per hour
    - 3% for those between £26 and £33
    - No inflation will be paid on hourly rates above £33.
  - (iv) Increases to supported living care packages will be 9.2%.
  - (v) 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

Authors of report:

**Abigail Barron**

Assistant Director Prevention & Service Development – Health and Adult Services

**Anton Hodge**

Assistant Director – Strategic Resources