

NORTH YORKSHIRE COUNCIL

Health and Adult Services Executive

Fee uplifts for Residential, Nursing, Home Based Support, Supported Living and Community Based Services 2024/25

22 March 2024

1.0 PURPOSE OF THE REPORT

- 1.1 This report informs the Executive member of proposed fees for Residential, Nursing, Home Based Support, Supported Living and Community Based Services in 2024/25 as part of the consultation process to enable the Corporate Director – Health and Adult Services to agree those fees.

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 seek views from 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 over 65 residential and nursing packages of care. It was agreed that all new packages 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 Alongside – but separate to – this, the Council 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 home care providers wanting to work with the Council in the delivery of home care in the future.
- 2.5 The new Approved Provider lists for residential and nursing care, home based support, community-based support and supported living took effect from 1 November 2022.
- 2.6 These rates now cover the period 2022-27, with last year's uplift acknowledging the high rates of inflation in the UK economy at that moment in time. However, with a number of packages now having converted to APL rates, the Council will not award further uplifts to these rates, as allowed for in the contract.

- 2.7 Negotiation on the offer for 2024-25 has taken place with providers through the Independent Care Group (ICG). The ICG has provided feedback to the Council on this offer. The offer (set out in section 3) 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 and focusing inflation to the lower end of the market.
- 2.8 The rates below, if agreed, are within the funding agreed in the Council's 2024/25 budget, although inflation is of course allocated on budget and not on any overspend.
- 2.9 North Yorkshire Council and its predecessor, North Yorkshire County Council, has invested heavily in local provision. This has included:
- A new Approved Provider List (APL) which allowed providers to submit sustainable rates for the period 2022-27.
 - Actual Cost of Care (ACOC) for over 65 residential and nursing packages of care – implemented in April 2022 with the agreement that 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.
 - An exceptional inflation award for 2023/24 which acknowledged the very high rates of inflation in the UK economy.
 - Various one-off grants.
 - Reviewing our sustainability processes to enable the Council to offer a range of financial and non-financial interventions to mitigate risk to provider organisations.
 - Expanding the Quality Team to provide hands-on, practical support to care providers who are experiencing quality or other sustainability challenges
 - Wrap-around COVID-19 support, including passporting through national monies
 - Support with recruitment and training
- 2.10 The rates paid by the Council reflect this investment, as confirmed by government reports.
- 2.11 In November 2023, the Homecare Association published its report: The Homecare Deficit. In that it argued that many Local Authorities were not paying its recommended minimum hourly rate of £25.95 and that the average was in fact £21.59. North Yorkshire was one of few councils above this rate.
- 2.12 Whilst a survey conducted by the ICG found that two thirds of their members expressed concerns about their financial sustainability, the number of sustainability conversations taking place with the Council has reduced significantly over the last year. Where concerns about the overall viability of organisations have been raised, these tend to stem from a high proportion of packages being on historic rates.
- 2.13 The Council has a duty to promote the efficient and effective operation of the adult care market, while also ensuring value for money in all areas of social care expenditure.

We have reviewed our sustainability processes to enable the Council to offer a range of financial and non-financial interventions to mitigate risk to provider organisations.

3.0 PROPOSED FEE LEVELS

Residential and Nursing

Rates subject to Actual Cost of Care (ACOC)

- 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. Legacy rates refer to rates that were agreed on contracts that pre-date the current 2022-2027 APL.
- 3.2 The proposal for 2024/25 is that all legacy rates will be uplifted to the 2024/25 ACOC rate from 1 April – meaning that full conversion has now been completed. Taking account of expected rates of inflation over the next financial year, the new ACOC rates are as set out below, and takes account of the significant increase in packages which have moved onto the 2022-2027 APL:

| | Legacy & ACOC contracts and increase on 2023/24 |
|---|---|
| Residential | £875 (7.8%) |
| Residential/dementia | £917 (7.4%) |
| Nursing | £973 (8.6%) |
| Nursing/dementia | £980 (8.5%) |
| CAP 1: Legacy contracts between 24/25 ACOC and £1,200 - 3% increase | |
| CAP 2: Legacy contracts above £1,200 - 0% | |

- 3.3 Contracts on the 2022-2027 APL that are at ACOC will be uplifted to the 24/25 ACOC rate.
- 3.4 Any increase will be capped at the provider's current APL rate.
- 3.5 For those contracts on the 2022-2027 APL with rates above ACOC, no inflation will be applied.

Care Homes under 65 and non-ACOC services over 65

- 3.6 ACOC rates only apply to contracts for people aged 65+. Therefore, for legacy contracts (those that pre-date the 2022-2027 APL) supporting adults under the age of 65 and Learning Disability residential services, the inflation rate will be 7.75% (residential) and 8.26% (nursing) for those below £1,500 per week and 3% for those above.
- 3.7 Any increase will be capped at the providers current APL rate.

- 3.8 Contracts supporting adults under the age of 65 and learning disability residential services which are on the 2022-2027 APL will not receive inflation.

Supported Living

- 3.9 For supported living legacy contracts that pre-date the 2022-2027 APL, the inflation rate will be 8% up to a cap which is the lesser of £28.53 or the provider’s current APL rate. Anything above this rate will not receive inflation.
- 3.10 Supported living contracts on the 2022-2027 APL will not receive inflation.

Home based support

- 3.11 For legacy home-based support contracts (not on 2022-27 APL), the inflation rate will be as follows:

| Home based support legacy contracts | | |
|--|-------------------------|-------------------------|
| Urban incl. all practical support, sitting services and live-in care | Rates up to £28.53 – 8% | Rates above £28.53 – 4% |
| Rural | Rates up to £30 – 8% | Rates above £30 – 4% |
| Super Rural | Rates up to £32 – 8% | Rates above £32 – 4% |

- 3.12 Any increase will be capped at the providers current 2022-2027 APL rates.
- 3.13 Home-based support contracts on the 2022-27 APL will not receive inflation.

Community Based Support

- 3.14 For Community Based Support legacy contracts that pre-date the current 2022-2027 APL, the inflation rate will be 8%.
- 3.15 Any increase will be capped at the provider’s current 2022-2027 APL rates.
- 3.16 Community Based Support Contracts on the current 2022-27 APL will not receive inflation.

Direct Payments

- 3.17 The direct payment rate will be uplifted by 10% to account for national living wage, the new rates will be £12.10 for the basic rate and £14.30 for the enhanced rate.

General Principles

- 3.18 All future payments will continue to be made four weeks in advance with retrospective reconciliation to support cash flow within the market. However, the Council is

embarking on a consultation with non-residential providers to understand the benefits and risks associated with reverting to payments in arrears. This is in direct response to feedback from providers about challenges associated with the reconciliation process.

- 3.19 For packages of care for people in care homes outside of North Yorkshire 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.
- 3.20 The rate for home based support 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 The proposals are based on the following principles:

- Full implementation of the Residential and Nursing Actual Cost of Care exercise from April 2024. This offer brings all remaining (non-specialist) packages of care for 65+ residential and nursing care up to the ACOC rate.
- Inflation is linked to the ACOC rates
- Home-based support uplift takes into account the Home Care Association recommended rate and rurality
- Any increase for legacy rates will be capped at the providers 2022-2027 APL rate
- Takes into account the feedback from ICG members that this year's cap was too simplistic for rural home care and for specialist care
- All future payments will continue to be made four weeks in advance with retrospective reconciliation to support cash flow (subject to the outcome of consultation with providers about reverting to payments in arrears for home based support)
- Fees will be rounded to the nearest number divisible by 7 for care homes and divisible by 4 for home care and services charged on an hourly basis.
- When the inflationary uplift brings a legacy rate in line with the current APL rate, the package of care will be transferred to the 2022-2027 APL contract.

4.2 There has continued to be much national focus in the last year about the fragility of the care market in England.

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 from 1 April 2024 the standard rate will be £235.88 per week an increase of 7.4%.

Residential and Nursing care Homes

4.4 In North Yorkshire since April 2023 one care home has closed. This compares with

2022/23: 4

2021/22: 6

2020/21: 8

2019/20: 2

2018/19: 2

2017/18: 6

4.5 As of December 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, with 84.1% rated Good or better in North Yorkshire against an England average of 81.6% between quarters. The Quality Team continues to provide proactive support to providers where quality concerns have been identified or where improvements would be beneficial.

Home-Based Support

4.6 Fees to home care providers are based on hourly rates.

4.7 The ICG has advocated that the Council should use the HCA cost model for home 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 2024 the recommended minimum rate for an hour of homecare increases to £28.53 per hour. This figure has been taken into account in setting the inflation award for legacy contracts.

4.8 The proposal is for an 8% uplift to all legacy home care packages below £28.53 per hour and 4% for those between £28.53. These rates are higher for Rural (£30) and Super Rural (£32) packages.

4.9 91.1% (-0.2% year on year) of home care providers were rated “good” or better, which remains better than national (85.9%, -0.2% between quarters) and Yorkshire and Humber Region (84.3%, -0.2% between quarters) averages.

Community-based services

4.10 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 home care. The proposed increase of 8% for legacy packages and no uplift for APL rates is therefore in line with the other proposals in this paper.

5.0 CONSULTATION AND ALTERNATIVE OPTIONS

- 5.1 Negotiations have been taking place with the ICG since November 2023. The biggest concern stated by the Group has been the Council's confirmation that it will not uplift APL Rates further at this stage, as per the contract.
- 5.2 As part of the work a number of alternative options were considered including paying a flat rate to all providers. However these would not take account of the aim to ensure that the Actual Cost of Care exercise was implemented in full. The proposed offer will prioritise those providers paid at the lowest rates, as well as honouring the terms of the APL.

6.0 IMPLICATIONS

Financial

- 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

Legal

- 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 (s.5) 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. In performing that duty, the local authority must have regard to the following matters (i) the need to ensure that it is aware of current and likely future demand for such services and to consider how providers might meet that demand (ii) the importance of ensuring the sustainability of the market (iii) the importance of fostering continuous improvement in the quality of such services and the efficiency and effectiveness with which such services are provided.

- 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. Although the CASSG recognises that individual providers may exit the market from time to time, the local authority is required to “ensure that the overall provision of services remains healthy in terms of the sufficiency of adequate provision of high quality care and support needed to meet expected needs”.
- 6.6 The CASSG further states 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”.

Equalities

- 6.7 Equality Act 2010: The 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 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.

Climate Change

- 6.8 There are no specific climate change implications identified with these proposals.

7.0 REASONS FOR RECOMMENDATIONS

- 7.1 The detailed reasons for the recommendations are set out in detail in the report above. The proposal ensures that, where appropriate, rates paid to providers will take account of cost of living increases

8.0 RECOMMENDATIONS

- 8.1 The Executive Member is asked to consider the contents of this report, including the analysis of the proposals in section 3 and the implications in section 6 and to agree

- (i) That fee increases to care homes for both **65+ residential and nursing** will be as below:
 - a) The four ACOC rates for 2024/25 will be:

| | |
|----------------------|---------|
| | 2024/25 |
| Residential | 875 |
| Residential/Dementia | 917 |
| Nursing | 973 |
| Nursing/Dementia | 980 |

- b) The Cost of Care rate will be implemented for all existing contracts in April 2024 where they are currently paid below that rate
 - c) For those legacy packages above the ACOC rate, inflation will be paid at 3% up to £1,200 per week, with no inflation above that.
 - d) As ACOC rates only apply to packages for over-65s, legacy packages supporting adults under the age of 65 and specialist residential packages for people over 65 will be paid an inflation rate of 7.75% (residential) and 8.26% (nursing) for those below £1,500 per week and 3% for those above.
- (ii) For **supported living** legacy contracts that pre-date the 2022-2027 APL, the inflation rate will be 8% up to a cap which is the lesser of £28.53 or the providers current APL rate. Anything above this rate will not receive inflation. Supported living contracts on the 2022-2027 APL will not receive inflation.
- (iii) For legacy **home-based support** contracts (not on 2022-27 APL), the inflation rate will be as follows:

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| Rural | Rates up to £30 – 8% | Rates above £30 – 4% |
| Super Rural | Rates up to £32 – 8% | Rates above £32 – 4% |

- (iv) Home based support contracts on the 2022-27 APL will not receive inflation.
- (v) For **Community Based Support** legacy contracts that pre-date the current 2022-2027 APL), the inflation rate will be 8%. Community Based Support Contracts on the current 2022-27 APL will not receive inflation.
- (vi) All legacy package uplifts will be capped at that provider’s APL rate.

- (vii) For placements of people in care homes outside of North Yorkshire 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.

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