

**18 April 2016**

**Agenda Item: 4**

**REPORT OF THE SERVICE DIRECTOR, STRATEGIC COMMISSIONING,  
ACCESS AND SAFEGUARDING**

**NATIONAL LIVING WAGE COST PRESSURES – PROPOSED FEE  
INCREASES FOR INDEPENDENT SECTOR SOCIAL CARE PROVIDERS**

**Purpose of the Report**

1. To advise Members of the historical context of setting fees and applying inflationary increases for care and support services purchased from independent sector providers.
2. To seek Committee approval for the proposed distribution of £9.5m of fee increases to independent sector care and support providers across the different adult social care services, approved by Full Council on 25 February 2016, related to the implementation of the National Living Wage.
3. To seek Committee approval for the proposed distribution of £3.8m to increase the payment rates for sleep-in provision in supported living services and for sleep-in services commissioned through Direct Payments, as approved by Full Council on 25 February 2016.
4. To seek Committee approval for the fee increases to be backdated to 6 April 2016 to align with the payment cycle for the new financial year.

**Information and Advice**

**The Care Act 2014**

5. Members will be aware of the new and extended statutory duties placed on councils through the Care Act 2014. This includes the provision of comprehensive, accessible and equitable services for council funded service users, carers and self-funders, in order to deliver improved outcomes for all people who require care and support services. The national eligibility criteria, the wellbeing principle and the continued emphasis on personalised care, extending access to preventative services, place further responsibilities on councils not only to ensure there are sufficient care and support services to meet current and future demand but also to ensure there is sufficient diversity to enable service users and carers to have a choice of services.
6. In response to the major failure of the country's largest residential and nursing care home provider, Southern Cross Healthcare, in 2011, the Care Act also places new duties on councils to ensure provider sustainability and viability. Councils are required

to ensure that there is continuity of care for service users and carers, including people who fund their own care, during times of business failure.

7. The Care Act places new statutory duties on councils to facilitate and shape their local market to ensure there is a diverse range of services available to meet the needs of all people in the area who need care and support. This includes services for people who arrange and manage their own care and support services, through the use of Direct Payments, and people who fund their own care and support.
8. The market shaping duties include the role of councils in ensuring that fees paid to providers are sufficient to enable them to meet their employer duties and responsibilities, as detailed in section 4.31 of the Care and Support statutory guidance:

*“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 of care and agreed quality of care. This should support and promote the wellbeing of people who receive care and support, and allow for the service provider ability to meet the statutory obligations to pay at least the national minimum wage and provide effective training and development of staff. It should also allow for retention of staff commensurate with delivering services to the agreed quality, and encourage innovation and improvement. Local authorities should have regard to guidance on minimum fee levels necessary to provide this assurance, taking account of the local economic environment.” p48.*

### **Care and support services in Nottinghamshire**

9. Care and support services are provided for people who meet the national eligibility threshold as set out in the Care and Support (Eligibility Criteria) Regulations 2014. The Council funds 3,156 (as at end of February 2016) people in total in long term residential and nursing care home placements. This includes those individuals who are residents of the County but who have chosen to live in a care home in another part of the country.
10. The Council commissions a range of care and support services such as home care, supported living and day care services from independent sector providers to help people to remain living independently in their own homes. Currently, there are approximately 9,750 (as at end of February 2016) people who meet the eligibility criteria, under the Care Act, who are receiving community based care and support services across all service user groups. People accessing care and support services are required to contribute to the cost of these services in accordance with their financial circumstances and based on a financial assessment. Some service users will be meeting the full cost of their care.
11. The Council also commissions a range of carers’ support services which aim to help carers to continue with their caring duties. These services include information and advice and one-off support or on-going services, including short breaks provision, to approximately 4,130 carers. Many of these services are delivered through a Direct Payment.

## The budget

12. The Council's net budget for adult social care is £219.8m for 2016/17 with a gross budget of £333.2m. The vast majority of this is spent on care and support services that are commissioned externally from both private and voluntary sector providers through contractual arrangements. The Council's gross budget allocations for externally provided care and support services for 2016/17 are broken down as follows:

Area of service	Budget
Care Home placements - Older Adults	£70.0m
Care Home placements - Younger Adults	£38.4m
Home care services	£17.9m
Supported Living services	£40.2m
Direct Payments*	£48.2m

\*Direct Payments are used by service users and carers to purchase all types of community based services including home care, supported living, day time activities and carers' breaks. This includes one-off Direct Payments.

## Application of fee increases in recent years

### Older adults' residential and nursing care home provision

13. During 2012, the Council completed a comprehensive review of its 'Fair Price for Care' framework and fee levels for independent sector older persons' care homes. This included the application of an index related inflation formula which had been agreed in consultation with the Nottinghamshire Care Association. The proposed new fee structure and fee levels were approved by Policy Committee on 13 February 2013 and at the same time Members approved the application of an annual inflation-linked fee increase to be applied annually to independent sector older persons' care home fees with effect from April 2014.
14. In accordance with the above, financial provisions have been built into the Medium Term Financial Strategy for an annual inflation linked increase. Based on the agreed index, the inflation increase applied for older people's care homes was 0.616% in 2014/15 and 0.6% in 2015/16.

### Younger adults' residential and nursing care home provision

15. Fee levels for younger adults' residential and nursing care home provision are negotiated with the care home providers on an individual basis. Specialist care home placements, for example, for adults with physical and/or learning disabilities, head injuries, or challenging behaviour, have entailed individual negotiations through the application of the 'Care Cost Calculator' for high cost placements. This tool is used by

many health and social care commissioners when determining and reviewing fees in order to ensure value for money and to enable benchmarking across the region for the cost of complex care. The tool also provides a robust framework for agreeing a fair and transparent price for each placement based on the needs of the individual service user.

16. Alongside the implementation of the Care Funding Calculator, in 2014/15 the Council completed an accreditation process and has a contract in place for specialist services with those providers that are able to meet defined quality indicators and which meet the Council's specific commissioning objectives.
17. Due to the financial pressures experienced by the Council in recent years, the specialist care home providers have not been allocated an annual inflationary increase whilst the Care Funding Calculator has been implemented. However, it is recognised that care providers have had cost pressures during this period, arising from increases in the National Minimum Wage and other staffing costs such as requirements to put in place and contribute to pensions for their employees. To counter these additional cost pressures, the Council has been working with the providers to support them to make further efficiencies in their operating costs wherever possible.
18. The Council continues to fund placements in a small number of homes where the providers have retained their provision at lower than average costs and in these instances, the Council has undertaken negotiations on an individual basis with these providers where required, so as to ensure they are able to sustain their services and fully meet the needs of the residents.

### **Home Care, Extra Care and supported living services**

19. Home Care, Extra Care and supported living services are subject to market testing through competitive tender processes on a regular basis, usually every 3 – 5 years. Tendering provides the Council with the opportunity to test the market through an open and transparent competitive process in order to seek best value from providers.
20. Following the completion of the tender for home based care and support services in 2013/14, new contracts were awarded to four core providers for home based care and support services (home care), each covering a large geographical area based on district council boundaries. Implementation of the contracts commenced in April 2014 but since this time, the providers have experienced difficulties in recruiting and retaining adequate levels of staff which has impacted on their ability to deliver sufficient home care capacity.
21. During 2013/14, a tender was also undertaken to commission new Care, Support and Enablement Services (supported living) for adults with learning disabilities and for people with mental health needs. The contract was awarded to four core providers and the services commenced in October 2014. The contract only covers new packages of care and support commissioned from October 2014. Service users already receiving supported living services prior to that date were able to retain their existing care and support provider. This was in order to ensure continuity of care, given the specific needs of people receiving supported living services. In order to ensure equity of provision, the legacy providers were required to deliver services to the same service specification and the terms of the contract as that of the four core providers. In addition,

the Council retained contracts with a small number of providers who deliver an enhanced supported living service for people who require more specialist services due to complex health and social care needs and challenging behaviour.

22. The above contracts do not require the Council to apply an annual inflationary increase and there are no provisions within the Medium Term Financial Strategy for inflationary increases to be applied on an annual basis to any adult social care services other than older persons' residential and nursing care home provision. However, recently there have been a number of factors, including legislative changes, which have resulted in increased cost pressures for care and support providers.
23. Members will recall that in November 2015, Adult Social Care and Health Committee took the exceptional measure to allocate a 10% fee increase, to be applied from 1 December 2015, for the core providers of the Home Care and Extra Care services and specifically for the outreach and enhanced supported living services delivered through the Care, Support and Enablement contract.
24. This increase was applied following the completion of an open book exercise which was undertaken during summer 2015 with the four core home care providers and the four supported living providers as a result of significant concerns about the providers' inability to recruit and retain sufficient care staff to deliver the volumes of services required to meet needs. The fee increase was allocated in recognition of the increased cost pressures experienced by the providers relating to staffing costs and in order to ensure their continued sustainability.
25. The allocation of permanent extra funding of £2.15m to cover the full year cost of the above 10% increase was considered by Members as part of the annual budget setting process and was approved by Full Council on 25 February 2016 and has subsequently been built into the Council's Medium Term Financial Strategy.

### **Day Care Services**

26. During 2012/13, the Council completed an accreditation of independent sector day care providers. One element of the accreditation considered the providers' compliance with the day service rates set by the Council and which are aligned to the Council's own day services. Due to continued financial pressures, the Council has applied 0% inflation to external day services over the past three years.

### **Shared Lives Services**

27. As the Council has developed and expanded its Shared Lives scheme, the fee rates payable to Shared Lives carers were reviewed during 2013/14 and the new fee structure implemented at this time involved aligning fee levels with individual needs. As such, a flat rate increase was not applied across all the services but fees have been taken into account when undertaking individual reviews of service users as and where required.

## Direct Payments

28. The current recommended rates for paying Personal Assistants have been in effect since April 2010 and are as follows:

Day Time Hours	Monday to Saturday	£9.10 per hour
Day Time Hours	Sunday	£13.30 per hour
Night Time Hours	Monday to Saturday	£45.00 per night
Night Time Hours	Sunday	£56.80 per night

29. Many service users have chosen to arrange their own care and support, through a Direct Payment, from a range of different home care agencies. There have been no flat rate inflationary increases applied to services provided by agencies to Direct Payment recipients, however the Council has had to agree to pay agency rates at a higher level than the rates allocated to the core providers for managed services. Whilst the agencies provide similar services to people through Direct Payments arrangements as they do for managed services, the agencies do not have the same levels of overhead costs as they are not required to comply with the Council's electronic monitoring requirements and quality assurance processes. However, they are able to command higher hourly rates where the Council is not able to secure more cost effective services from the core providers.

## Sleep-in provision

30. The County Council commissions sleep-in provision for a significant number of service users who are in supported living arrangements and who, due to their specific needs, require care to be available on-site during the night time. The supported living providers who deliver these services are paid a flat rate of £35 for sleep-in provision. Some of the providers are able to meet the previous national minimum wage requirements by averaging out the hours paid to staff for their waking and sleep-in duties but this has been dependent on the ratio of sleep-in nights undertaken by each employee compared to waking hours they work each week, as well as the hourly rate paid to staff for waking hours. Some detailed analysis has been undertaken with providers relating to sleep-in services and from this, it is evident that where providers are delivering high numbers of sleep-ins, the current £35 flat rate per sleep-in does not enable them to cover the full cost of the packages and as such these services are not currently sustainable. This is exacerbated by the introduction of the NLW.
31. Sleep-in provision is also purchased by some service users who, through the use of Direct Payments, commission their care and support services directly from an agency, or who employ Personal Assistants to meet their care needs. The rate paid for this element of the service varies from case to case, depending on the size and cost of the full package and in many cases on the availability of Personal Assistants.

## Financial pressures arising from the implementation of the National Living Wage

32. Following the announcement by the Chancellor of the Exchequer, in July 2015, of the introduction of the National Living Wage to be implemented from April 2016, the Council has undertaken some detailed analysis of the financial implications across the range of externally commissioned services. By far the largest impact relates to the provision of

adult care services because large proportions of care workforce are employed at or just above National Minimum Wage levels. The analysis undertaken by the Council has considered and been informed by the work completed previously in ascertaining provider costs through the Fair Price for Care fee setting process completed in 2012 and the open book exercise undertaken in summer 2015 with core providers of home care and support living services.

33. At Full Council on 25 February 2016, Members approved an allocation of £9.5m to be applied across the range of adult care services which take into account costs arising from the implementation of the National Living Wage (NLW) from April 2016. It is proposed that differential fee increases are applied across different service areas, and for different providers, based on current fee levels, in order to ensure that the fees are set at realistic levels to enable providers to comply with their requirement to pay their care staff at or above the NLW.

### **Proposed Fee increases from April 2016**

#### **Older adults' residential and nursing care home provision**

34. Based on the current care home fee bandings, and the analysis of provider costs undertaken during the 'Fair Price for Care' fee review in 2012, it is proposed that a 6% fee increase is applied to all older adults' residential and nursing care homes which are at Bands 1, 2 and 3. It is proposed that a 3% fee increase is applied to all care homes that are at Band 4 and a 1% fee increase is applied to all care homes that are at Band 5.
35. The application of differential percentage increases is proposed because current fee levels for Bands 4 and 5 do enable the providers to pay their care staff at or above the new NLW. However, an increase in fees is proposed to enable providers to sustain a differential across the bandings and to continue to incentivise providers to sustain and further improve the quality of their services. The table below outlines the current weekly fee levels and the proposed weekly fee levels to be applied from April 2016:

Care Home Banding	Current Fee Residential care	Current Fee *Nursing care	Proposed Fee 2016/17 Residential care	Proposed Fee 2016/17 *Nursing care
Band 1	£405	£440	<b>£429</b>	<b>£466</b>
Band 2	£449	£504	<b>£476</b>	<b>£534</b>
Band 3	£476	£530	<b>£505</b>	<b>£562</b>
Band 4	£502	£556	<b>£517</b>	<b>£573</b>
Band 5	£528	£583	<b>£533</b>	<b>£589</b>

\*The above fee levels are net of Funded Nursing Care Contribution which is set at £112 per person per week.

## **Younger adults' residential and nursing care home provision**

36. As outlined above, fee levels for younger adults' care homes have evolved historically and tend to reflect the complexity of the care and support needs of the individual residents. In many cases, the fees have been set using the Care Funding Calculator and have taken into account actual costs for delivering specific services including where one to one support, or higher ratios of staffing, are required for people with complex care needs. It is proposed that differential rates are applied for these homes as follows:
- 6% increase for care homes where the current fee level is at or below £850 per person per week
  - 3% increase for care homes where the current fee level is between £851 and £1,600 per person per week
  - 0% increase for care homes where the fee is above £1,600.
37. It is possible that where fees are at or above £1,600 per person per week and they have been set in accordance with the Care Funding Calculator but where staffing costs have been based on the national minimum wage, as opposed to higher wage levels, then the Council may be required to negotiate a percentage increase to account for the impact of the NLW. It is proposed that in such circumstances officers are able to negotiate an increase with a care home provider where the provider is able to demonstrate transparency in their staff costs as part of the application of the Care Funding Calculator.

## **Home Care and Extra Care services**

38. Following the analysis of provider cost pressures through the open book exercise undertaken in 2015, it is evident that the four core providers of home care and extra care services are only paying their care staff at or just above the NMW. The 10% fee increase allocation approved by Members in November and allocated from 1 December 2015 related to the costs pressures before the implementation of the NLW. Analysis of the impact of the NLW has identified the need for a further 6% increase to be applied to the hourly rate of the core providers to enable them to meet NLW cost pressures. In order to further support the core providers to deliver the required volumes of home care services it is proposed that a 6% increase is applied for these services.
39. Due to the limited capacity available for the core providers, the Council has had to commission home care services from a number of home care agencies on a spot contracting basis. It is hoped that the 10% fee increase applied in December 2015 and a further 6% to be applied from April should help the core providers to recruit and retain sufficient levels of care workers so that they can meet the demand for these services. This will in turn reduce the need for the Council to commission managed services from other home care agencies on a spot contracting basis.

## **Supported living services**

40. As outlined above, a 10% fee increase was applied for some supported living services in December 2015 to meet the cost of the minimum wage, such as outreach support which, like home care services, have proved difficult for providers to deliver at the volumes required. The 10% increase has also been applied to the enhanced supported living



services which require an experienced, stable and consistent workforce for the delivery of services to people who have multiple and complex needs.

41. It is proposed that a 6% increase is allocated to the accommodation based supported living services which did not receive a fee increase in December 2015, and a 3% increase allocated for the outreach support. It is proposed that this increase is applied for services commissioned from the core providers and the legacy providers as their fee rates are the same.

### Day services

42. The Council has in place matrix rates for day services based on the levels of need of the people who access the services. The current fee levels are:

- Complex Needs - £65.28 per day or £32.64 per session
- High level needs - £33.66 per day or £16.83 per session
- Medium level needs - £22.44 per day or £11.22 per session
- Low level needs - £15.30 per day or £7.65 per session
- 1:1 support - £9.69 per hour

43. The matrix looks at both physical disabilities and cognitive impairment and the effect it will have on a person engaging with the service and the score indicates the level of staff supervision likely to be required. Therefore people with complex needs may need one member of staff to every two service users whereas low needs may be one member of staff to 10 service users depending on the activity being undertaken and size of the service.

44. It is proposed that differential fees are applied as the low and medium rates are currently disproportionately lower than the high and complex rates which already allow a higher level of staff pay or profit margin. Therefore it is proposed that increases are applied to the low, medium and 1:1 rate only to enable the NLW to be implemented (based on 80p per staff hour as with care, support and enablement services and home care) giving the rates detailed in the table below:

Matrix Band	Current Fees		Proposed Fees		% increase
	Per day	Per session	Per Day	Per Session	
Complex needs	£65.28	£32.64	<b>£65.28</b>	<b>£32.64</b>	<b>0%</b>
High level needs	£33.66	£16.83	<b>£33.66</b>	<b>£16.83</b>	<b>0%</b>
Medium level needs	£22.44	£11.22	<b>£23.84</b>	<b>£11.92</b>	<b>6%</b>
Low level needs	£15.30	£7.65	<b>£16.42</b>	<b>£8.21</b>	<b>7%</b>
1:1 Support	£9.69 per hour		<b>£10.49 per hour</b>		<b>8.3%</b>

## **Direct Payments**

45. As outlined above, the rate currently paid for Personal Assistants is £9.10 per hour. This rate includes overhead costs such as National Insurance and pension contributions as well as the hourly rate paid to the PAs. It is proposed that a 6% increase is applied to the Direct Payment rate applied for PAs.
46. In many cases, the hourly rate paid for services delivered by agencies through Direct Payments is above the hourly rate paid to the contracted home care providers. As a result, it is proposed that a flat rate increase is not applied to Direct Payments packages where the service is delivered by a home care agency.
47. It is possible however that some Direct Payments packages delivered by home care agencies may not be at a rate which enables the agency to cover the cost of the NLW. This may particularly be the case in rural and other hard to reach areas where the agency is not able to recruit or retain the staff that are required to deliver the service. Where this is the case, and the provider is able to evidence their costs, then the Council may be required to negotiate an increase in order for the service to be sustainable. It is proposed that Members enable the fee levels to be negotiated by officers where agency rates do not enable the provider to meet the costs of delivering the services.

## **Shared Lives services**

48. In order to support the Council to develop and expand its Shared Lives scheme, it is proposed that a flat rate 6% increase is applied across these services.

## **Sleep-in payments**

49. At Full Council in February 2016, Members approved the allocation of £3.8m to enable an increase to be applied to the rate paid for sleep-in provision. This was based on detailed analysis of the numbers of sleep-ins being commissioned during late 2014 and the rates paid for the sleep-in provision.
50. It is proposed that for supported living services, a flat rate increase is applied to the sleep-in rate from the current £35 per night to a rate of £70 per night. It is proposed that the application of this increase is backdated to 6 April 2016 in line with the other proposed fee increases.
51. Due to the different pay rates for services commissioned through Direct Payments, it is proposed that the amount of increase to be applied is negotiated on a case by case basis and is completed as part of each individual service user's annual review which will be undertaken during the course of 2016. The Council's two reviewing teams and the district based assessment teams will prioritise reviews if and where there is an indication either from service users or carers or from Personal Assistants that the sleep-in rate needs to be urgently reviewed in order to maintain continuity of service.

## **Other Options Considered**

52. Members have already approved the allocation of £9.5m to meet provider cost pressures arising from the impact of the NLW, and a further £3.8m for sleep-ins, and

provisions have been made in the Medium Term Financial Strategy to fund this pressure. The purpose of this report is to propose to Members the most appropriate way of allocating this funding based on the fees already allocated across the different services and based on information about provider costs.

### **Reason/s for Recommendation/s**

53. The Council has a statutory duty to have in place a range of care and support services for people who meet national eligibility criteria, either directly through its internal services or through commissioned services from external providers. This statutory duty extends to ensuring that there is a viable and sustainable market of social care providers who are able to deliver the required services.
54. Consideration has been given to the current fee levels paid to care and support providers within the context of the increasing cost pressures arising from the impact of the NLW. The proposed fees increases should help providers to continue to deliver care and support services at a time when they are facing substantial increases in their costs, most of which relate to staff pay and terms and conditions of employment. The targeted allocation of the fee increases will mean that the providers who have the lowest fee levels will be allocated higher increases as their current fee levels would not enable them to pay their staff at or above the NLW.

### **Statutory and Policy Implications**

55. This report has been compiled after consideration of implications in respect of finance, public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Implications for Service Users**

56. The Council has a statutory duty to ensure there is sufficient provision of a diverse range of services to meet people's social care and support needs. An increase in fees paid by the Council to independent sector care and support providers will help to ensure that there are sufficient and viable services within the local market to meet current and future needs.

### **Financial Implications**

57. It is anticipated that the full-year cost implications of the above fee increases will be approximately £9.5m with a further cost of £3.8m for sleep-in provision. This funding will provide some scope for the Council to negotiate a moderate increase for some of the high cost services where no flat rate increase is proposed to costs but where the providers are able to demonstrate additional cost pressures attributed to the NLW.
58. The cost pressures arising from the impact of the NLW, including for sleep-in provision, have been built into the Council's Medium Term Financial Strategy as approved by Council on 25 February 2016.

## **Human Resources Implications**

59. The information and proposals contained in this report relate to externally provided care and support services and do not have a direct impact on internal staffing. Any increases in staff pay across the social care sector will help to ensure that the Council is able to commission appropriate levels of care and support services from independent sector care and support providers.

## **Public Sector Equality Duty Implications**

60. An Equalities Impact Assessment has been completed to ensure that people with protected characteristics are not disadvantaged as a result of the proposed fee increases. The fee increases will be targeted to ensure that the highest increases are applied to providers who currently have the lowest fees levels. This should help ensure that these specific services continue to be sustainable and that providers remain financially viable following the application of the NLW.

## **RECOMMENDATION/S**

That the Committee:

- 1) notes the historical context of setting fees and applying inflationary increases for care and support services purchased from independent sector providers.
- 2) approves the proposed distribution of £9.5m of fee increases to independent sector care and support providers across the different adult social care services, as approved by Council on 25 February 2016, related to the implementation of the National Living Wage.
- 3) approves the proposed distribution of £3.8m to increase the payment rates for sleep-in provision in supported living services and for sleep-in services commissioned through Direct Payments, as approved by Full Council on 25 February 2016.
- 4) approves the fee increases to be backdated to 6 April 2016 to align with the payment cycle for the new financial year.

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## **Constitutional Comments (LM 06/04/16)**

61. The recommendations in the report fall within the Terms of Reference of the Adult Social Care and Health Committee.

### **Financial Comments (KAS 06/04/16)**

62. The financial implications are contained within paragraphs 57 and 58 of the report.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Fair Price for Care – Older Persons' Care Home Fees – report to Policy Committee on 13 February 2013

Annual budget 2016/17 – report to Full Council on 25 February 2016

Equalities Impact Assessment

### **Electoral Division(s) and Member(s) Affected**

All.

ASCH389