



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

Thursday, 16 March 2023

Report of the Executive Director - Adult Social Care and Health

Care Home Fee Proposals 2023 -24
(Cabinet Member for Adult Care)

1. Divisions Affected

County-wide

2. Key Decision

Yes this is a key decision because it will

(a) result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates;

3. Purpose

To seek Cabinet approval to:

- increase the rate paid to independent sector residential care homes for the financial year 2023-24 by 9.53% per week;
- increase the rate paid to independent sector nursing homes for the financial year 2023-24 by 9.53 % per week
- make an inflationary payment of up to 9% for specialist care home placements where evidence is provided of inflationary pressures;
- set a rate of £49.70 per day (from £45.38 per day) for a day care placement in a care home;
- increase the rates for in-house day care and residential care by 9.53%;
- increase the dementia fee rate to £55.58 per week (from £50.75)
- make an inflationary payment of up to 6% for well-performing block contracts in specific circumstances.

4. Information and Analysis

- 4.1 The focus of this paper is to consider the inflationary pressures experienced by Care Homes and to make recommendations about future funding arrangements for the financial year 2023-24.

The Council has contract arrangements in place with over 174 independent sector care homes for older people that, as of 1 January 2023, provided support on behalf of the Council to approximately 2,336 people as detailed below:

- 668 people in nursing placements where the person needs constant involvement of, or supervision by a qualified nurse.
- 1,457 residential placements.

A further 211 people are supported in Council run Care Homes.

- 4.2 The Care Market has experienced a challenging 12 months, with COVID 19 still impacting local care homes, inflationary increases on business costs and the demands from the health and social care system to respond at pace to assist with Hospital Discharge. Locally providers and their staff have continued to respond positively to these and other challenges to support people in their care.

4.3 Fee Levels

The Care Act 2014 places a duty on Councils to ensure that there is a sustainable and affordable social care market. This includes establishing fee levels that providers will receive for commissioned care.

A comprehensive review of fee levels for independent sector care services is undertaken annually. To assist with this review representatives of the Derbyshire Care Providers Association (“the Association”) were invited to meet with Councillor Hoy Cabinet Member for Adult Social Care and Colin Selbie, Assistant Director for Adult Social Care and Health on the 16 February 2023 to set out particular business pressures affecting the care market and their costs.

The views shared at this meeting have assisted the Council in detailing 2023-24 fee proposals described in this paper. The Council has also received additional requests from other Care Home providers not represented by the Association for a fee increase and these views have also been considered when setting fee proposals.

4.4 This report summarises the engagement findings, the reported cost pressures and feedback from providers. The report sets out details of the funding model used by the Council and the proposed rates for 2023/24 for residential care home placements. The findings from this exercise are then used to inform fee modelling for nursing care and specialist care.

4.5 Costs Highlighted by Home Care Providers

The Association met with Council officers on 19 January 2023 to discuss the sector's views about current market conditions and inflationary pressures. The views shared at this meeting and in further written submissions made to the Council have informed the fee proposals detailed in this paper.

In responding to the providers' request for an inflationary fee increase, the Council has identified the main budget headings that need to be considered when setting home care fee rates. Appendix 1 details these headings and the proposed inflationary increases and justification are set out below.

4.6 Adult Social Care Reform

Providers have expressly asked that the fee analysis should also be informed by the Fair Cost of Care exercise that the Council undertook during the summer of 2022 as part of the Department of Health and Social Care's (DHSC) adult social care reform agenda.

As part of the adult social care reform agenda, local authorities were required to complete a cost of care exercise to better understand the local cost of providing care. The home care market was surveyed using a fee tool to better understand their costs. The DHSC requirement of this exercise was to identify the Median Cost and compare against the current fees paid by the Council. In the original DHSC guidance the Median Value is described as a 'Fair' Cost (FCoC) value. The findings and analysis of this exercise is detailed at [Strategies and market shaping - Derbyshire County Council](#)

The Council Response

The Council notes the intentions of the DHSC cost of care exercise and the potential benefits in terms of greater understanding of the market. However, the Council cannot stress strongly enough that the FCoC median costs alone are not an appropriate basis to inform Derbyshire County Council's commissioning fee rates.

Whilst it is fair to say that the median is less skewed by high outlier values (as opposed to mathematical averages), the median values themselves can be skewed if the dataset does not comprise an appropriate and representative sample of the existing make-up of providers in the local market. It is also vitally important to recognise (and ensure) that it was not possible via this process to be assured that the data that has been obtained reflects an overall

pool of efficient providers as referenced in the requirements of Section 4.31 of the Care and Support Statutory Guidance.

For this reason, we must be clear that the FCoC median costs obtained through this exercise do not have sufficient robustness to provide an absolute basis sufficient to inform any finalised sustainable fee rates for future Council commissioning of home care. The data collected through this process will provide rich intelligence on which to base further work to support future Council commissioning and market shaping. There are significant concerns as to the quality and completeness, relevance and reliability of the data received from Providers.

It is our intention to continue to use the Council's current fee model for identifying fees for 2023-24 and will undertake further detailed analysis of the data obtained through the FCoC exercise with Providers. The focus of this activity will be on better understanding the costs that contribute towards staffing costs and return on investment/profit. The results of this further work to be undertaken with Providers and will inform the Council's usual fee rates and commissioning arrangements for care homes and will be part of the Council's Market Sustainability Plan.

4.7 Council Response and Analysis of Fee Proposals

Staff Costs

The Association in their meeting with the Council on the 16xx February 2023 and in previous correspondence argue that the Council's fee model does not reflect the true costs of staffing and in their view the funds allocated in the fee model means they are unable to pay above the minimum wage. Providers have stated that the Council's fee model is flawed and that this is supported by the findings of the FCoC exercise which showed a difference of approximately £50 staffing costs per week. They have also questioned why the Council's model does not include a budget line for use of agency staffing to cover costs of absent staff.

The increase in national minimum wage on the 1 April 2023 is supported by Providers however they would like the Council to pay more for staffing to enable them to pay their staff more than the minimum wage to be able to recruit and retain staff and maintain differentials between staff groups. Providers have consistently reported to the Council on-going difficulties with recruitment and retention of staff. They report that they are competing with other services that are increasing wage levels and offering better terms than they can offer.

Council response

To reflect the National Living Wage, increase the Council has decided to apply a 9.7% increase on the calculation of all staff costs. The previously increased contribution made in 2022-23 fee setting towards National

Insurance costs, which were not fully implemented will remain within the fee model and Providers will be encouraged to ensure any surplus is used to contribute to staff wages.

The Council was able to make an increased payment of £26.04 per week for all care home placements from 1 October 2022 utilising the DHSC Market Sustainability and Fair Cost of Care Fund. This additional funding is aimed at assisting Council's to respond to the FCoC exercise and to make additional on-going payments to providers. This payment will continue but it will be additional to the inflationary modelling and in the future this value will be added to the staffing in the fee model.

Nursing provision

The Association has requested that the Council respond in the fee setting exercise to concerns in respect of sustainability of Care Homes with Nursing. It has been highlighted that people are often very unwell when they attend a nursing home and their stay is short so there is greater movement of residents impacting on continuity of occupancy rates.

The Association have noted that the Council has previously signalled that there is likely to be an increased need for nursing beds in the next 10 years and have questioned how the Council is going to encourage investment. The Association have asserted that the current level of funding does not allow for any new investment into Derbyshire and in their view any failure to increase the Council's contribution will contribute to further de-registration of nursing homes.

Council Response

The sustainability of the Nursing Care Home market is of great importance to the Council as it assists with ensuring that there are suitable places for people to live following a period of admission in hospital.

NHS-funded nursing care was first introduced in England by the Health and Social Care Act 2001. Since its introduction, the NHS has funded a contribution towards the costs of nursing care, known as NHS-funded nursing care (NHS FNC) at nationally set standard rates for those individuals who are assessed as eligible for NHS FNC. The NHS at a national level determine the reasonable costs of providing the nursing element of care in a registered nursing home for FNC eligible residents. Reasonable costs are those which should allow care homes to provide sufficient numbers of suitably qualified, competent, skilled and experienced persons to provide NHS FNC. The NHS FNC rate for 2022-23 is £209.19. The Council contributes a further £45.92 per placement per week additional to the standard residential fee to assist with nursing costs.

The Council accepts that any new investment into increasing the availability of nursing beds will need to be part of a broader funding strategy with the local

NHS. The planning for such investment will need to be affordable for the Council and be informed by the findings of the FCoC exercise.

Additional Cost Pressures

Providers have expressed concern about the rising inflationary pressures and have asked that the Council respond to these in the fee setting exercise. They particularly highlighted the uncertainty of inflationary increases associated with gas and electricity.

Food costs have also been highlighted by providers with evidence from food suppliers with inflation currently being as high as 16.9%.

The Association also highlighted that in their view the Council has undervalued a number of the costs in the fee model. They have particularly highlighted that obtaining/renewing care home insurance has been especially difficult with some insurance providers leaving the market and others increasing their premiums.

They also asked that the costs for provision of agency staffing and recruitment costs are also reconsidered as some providers have needed to use agency staffing to cover for staff needing to self-isolate.

Council Response

The Council notes the average insurance costs provided by an Insurance Broker and shared with the Council by the Association. The Council has decided to use a standard inflationary value of 7.5% noting that we are not sighted on costs of all providers and they will all have different insurance values. The proposed new fair price for care analysis due to be undertaken later this year will canvass all providers and better understand the average market cost.

The Council welcomes the Government's recent guidance that it will continue to offer free PPE until March 2024 or until stocks are exhausted.

4.7 Direct Care Provision

The Association has also expressed concern about the level of funding of the Council's own Care Home provision and especially the fees paid for the beds in the Community Care Centres which are above those paid to privately run care homes. They have argued that the fee rates and capital costs paid for Direct Care provision are greater than the Council is prepared to pay for equivalent provision in the independent sector. The Association believes that the Independent Sector provides "Best Value" for the local taxpayer and that the Council spends more on its own Care Homes than it does on individual placements in the independent sector.

Council Response:

The Council notes their concerns.

4.8 Care Home Fees for other Client Groups and Specialist Placements

The proposals made in this report, and summarised in Appendix 2, focus on the basic Care Home fee rates for older people. It is proposed to also increase the base fee rates for Residential Care Home by 9.53% and Nursing Homes by 9.53% for other client group placements. This includes care home provision for people with a physical disability, people with learning disabilities and people with mental ill health- see Appendix 3.

The changes proposed to the basic fee rates for other client groups will not change the level of funding already paid against specialist care home placements where fee rates have been individually negotiated to ensure that the needs of people who require complex support/care arrangements are met. The fees for specialist placements are often substantially more than the standard care home fees.

The additional funding (top-up) paid for a specialist placement reflects the greater investment in staff and training to meet an individual's needs. It is proposed that up to 9% can be agreed with providers in receipt of specialist placements where they can evidence their increase in costs.

4.10 Dementia Fee Rate

An additional payment of £50.75 per week is currently paid towards supporting people with a diagnosis of dementia which is payable to homes that meet set criteria of dementia-friendly provision. It is proposed this payment is increased by 9.53% to give a new value of £55.58 per week from 1 April 2023.

The Dementia fee was introduced to encourage homes to demonstrate that they have the skills, experience, environment and organisational culture in place to provide high quality dementia care. The Council presented this criterion as many providers describe their service as being able to meet the needs of people with dementia but are unable to evidence that staff have adequate training, that the culture of the service is dementia friendly or that the environment has been adapted to be suitable for someone with a diagnosis of dementia. The importance of this award will continue to be promoted with care home providers to increase the take up.

4.11 Day Care Placements in Care Homes for Older People

Some people who are supported to live in their own homes can use day care places in care homes for older people. The care home is often situated close to where an individual resides and the homes frequently help with transport to and from the home, as well as providing meals. In some cases, homes will

also provide a bathing service and are very flexible with places being made available at weekends and evenings, which can help Carers to get a break. This arrangement has been underutilised over the past couple of years as it was difficult to sustain during the pandemic as Care Homes were recommended to restrict visitors into their homes.

The standard fee rate paid by the Council for day care placements in independent sector care homes is currently £45.38 per day. It is proposed for 2023-24 that this fee level to be paid to providers is increased by 9.53% to provide a new daily fee of £49.70 per day.

4.12 Block Contracts

Adult Care has a small number of block contracts with independent sector profit and not for profit organisations. A number of these agreements were established before the updated National Living Wage rate and National Insurance contributions due on the 1 April 2022. A number of these providers have requested an inflationary increase to assist them with meeting these and other additional unforeseen costs. It is proposed that payments of up to 6% can be agreed by the Executive Director of Adult Social Care and Health where Providers submit detailed evidence via open book accounting of their increase in costs. The decision making will include evidence showing that they are currently meeting their agreed targets for activity and performance and that they are unable to make efficiencies without impacting on the quality of provision.

5 Consultation

- 5.1 The Council is required as part of Care Act 2014 duties to undertake a fee setting exercise each year to ensure that fees allow for a sustainable market.

The local Care Home Provider Association have been requested to detail their member's concerns about current inflationary pressures so that the Council can ensure fee increases respond to these pressures. The outcome of these fee discussions will be further shared with Providers for their comments and are specifically addressed above.

6 Alternative Options Considered

- 6.1 To offer no increase in fee levels from 1st April 2023. This would severely impact the market as providers would be unable to pay their staff the national minimum wage increase. The Council has a responsibility of ensuring the sustainability of the market and ensuring that fees take account of inflationary increases to support a range of providers across the County to provide choice. Any failure to pay increased fees would destabilise what is already a fragile market that is struggling to recruit and retain staff.

- 6.2 Alternatively, the Council could increase the fees to match the requests being submitted by the Association and other Care Home Providers. The Council believes that the fee modelling described in this paper is fair and affordable.

7 Implications

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

8 Background Papers

9 Appendices

- 9.1 Appendix 1 – Implications
- 9.2 Appendix 2 – Fee Modelling
- 9.3 Appendix 3 – Usual Cost of Care Fee Rates – From 1 April 2023
- 9.4 Appendix 4 – 2023 -24 fee rates with additional interim Market Sustainability payment

10 Recommendation(s)

That Cabinet agrees to:

- increase the rate paid to independent sector residential care homes for the financial year 2023-24 by 9.53% per week;
- increase the rate paid to independent sector nursing homes for the financial year 2023-24 by 9.53% per week
- make an inflationary payment of up to 9% for specialist care home placements where evidence is provided of inflationary pressures;
- an updated fee rate of £49.70 per day (from £45.38 per day) for a day care placement in a care home;
- increase the rates for in-house day care and residential care by 9.53%;
- an updated dementia rate of £55.58 per week (from £50.75)
- make an inflationary payment of up to 6% for well-performing block contracts in specific circumstances.

11 Reasons for Recommendation(s)

- 11.1 The recommendations to increase a range of fee levels by 9.53% will support providers to pay their staff the equivalent of the National Minimum wage increase from the 1 April 2023.

The proposed increases are in line with the duty placed on the Council by the Care Act 2014 to promote a sustainable market.

Failure to increase fees in line with inflationary pressures will undermine the Council's ability to secure services for people with an assessed social care need.

12 Is it necessary to waive the call in period?

12.1 No

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Implications

Financial

- 1.1 The estimated annual cost of this proposal to increase fee rates from 1 April 2023 is £11.2M per annum. This will be funded from the service pressure growth bid for Adult Care fee increases which was approved as part of the Revenue Budget Report 2023-24 by Full Council on 15th February 2023. The Contingency Budget includes £22.8M to fund fee uplifts for the full range of Adult Care contracts.

Legal

- 2.1 Section 5 of the Care Act 2014 places a duty on the Council to promote an efficient and effective market, with a view to ensuring that any person in its area wishing to access services in the market:
- a) has a variety of providers to choose from who (taken together) provide a variety of services;
 - b) has a variety of high-quality services to choose from; and
 - c) has sufficient information to make an informed decision about how to meet the needs in question.

In performing that duty, the Council must have regard to the importance of ensuring the sustainability of the market. Sufficient inquiries should be undertaken, to ensure the Council is properly informed of the local market conditions.

The Care and Support Statutory Guidance further details the duties on local authorities to facilitate markets that offer a diverse range of high-quality and appropriate services. The Council must assure itself that the fee levels do not compromise the provider's ability to (1) support and promote the wellbeing of people receiving care and support; (2) meet the statutory obligations to pay at least the national minimum wage; and (3) provide effective training and development of staff.

Case law is clear that the Council should take steps to ensure that fee levels reflect the actual cost of care. The rates should also take into account the legitimate current and future costs, and the potential for improved performance and most cost-effective ways of working.

The Council is under a duty to promote diversity and quality in the market of care and support provision. The Association has put forward an argument that the Council is in breach of this statutory duty, as the current rates are below the actual cost of care. The Council is satisfied that the methodology used in calculating the proposed fee increase is equitable and properly reflects the increased cost pressures highlighted by the providers.

Human Resources

3.1 There are no human resources considerations associated with this report.

Information Technology

4.1 There are no Information Technology considerations associated with this report.

Equalities Impact

5.1 Providers are required to adhere to Derbyshire County Council's Equal Opportunities policies.

Corporate objectives and priorities for change

6.1 This proposal will support local business to recruit and retain staff to provide support to people so that they may continue to live in their own homes to control their personal circumstances and aspirations.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 In preparing this report the relevance of the following factors has been considered: human resources, health, environmental, transport, and crime and disorder considerations.

Appendix 2

Fee Modelling

Inflation Assumptions used by Derbyshire County Council to Identify Fee Rates for 2023-24

In considering the budget lines in the fee cost model below the Council utilised the Office of National Statistics' Consumer Price Inflation (CPI) reference tables Tab 8 for December 2022 as a proxy for understanding the costs in the care industry. The following calculation is based on the fee levels agreed for payment from April 1, 2022. The interim additional weekly fee payment made of £26.04 effective from 1st October 2022 via the Market Sustainability Grant will be added on to staffing costs to be considered in future inflationary models.

Some of the budget lines used in Appendix 2 do not have a direct corresponding goods or services division in the CPI report in such cases individual judgements have been made about how inflation may contribute to the costs of running a care home. The CPI report noted that standard inflation for care home provision is 7.5% which is used as default in this fee modelling tool.

Staffing

From April 2023 Providers will be required to pay all staff over 25 at least the national living wage of £10.42 per hour which is equivalent to a 9.7% increase on the national living wage.

The Council has decided to use the 9.7% minimum wage increase for all staff costs including staff aged under 25. It is also proposed that any other costs linked to staffing eg pension are also increased by 9.7%.

Repairs and Maintenance

The average CPI value for these areas of cost is 7.3% which have been used for these cost lines.

Other Non-Staff Costs

Food inflation in CPI report is identified at 16.9% the Council proposes to use value.

For utilities the Council has used the average overall value of standard inflation value by 11.7%.

There is no direct comparison for Insurance Costs in the CPI tables; the value used in the Council's fee model is £4.16 per person per week. Noting that all care homes are different sizes and undertake different activity and at different stages of renewal of their insurance it is proposed to use 16.1% as the standard inflationary value.

Registration Fees:

Neither the Care Quality Commission or Disclosure Barring Service have reported increases in fees for 2023-24 so this value will remain the same.

Additional Contribution to Staffing Costs

The Council was able to make an increased payment of £26.04 per week for all residential care home placements from 1 October 2022 utilising the DHSC Market Sustainability and Fair Cost of Care Fund. This additional funding is aimed at assisting Council's to respond to the FCoC exercise and to make additional on-going payments to providers. This payment will continue to be paid but it will be additional to the inflationary modelling and in the future this value will be added to the staffing costs in the fee model.

CARE HOME PLACEMENT FEE MODEL (WITHOUT NURSING)

PERSONAL CARE ONLY FOR FRAIL OLDER PEOPLE	2022/23	inflation	2023/24
A) STAFF, INCLUDING EMPLOYERS' ON- COSTS			
TOTAL CARE ASSISTANTS (inc senior) STAFF	242.92	9.7%	266.48
Catering, cleaning and laundry staff cost per resident	54.75	9.7%	60.06
Other Staff Costs (excluding management and admin)	5.26	9.7%	5.77
Management, administration, reception staff cost per resident	75.68	9.7%	83.02
National Insurance	22.75	9.7%	24.96
Pension Cost	12.05	9.7%	13.22
TOTAL STAFF	<u>413.41</u>		<u>453.51</u>
B) REPAIRS AND MAINTENANCE			
Maintenance capital expenditure	18.96		20.34
Repairs and maintenance (revenue costs)	10.70		11.48
Contract maintenance of equipment	2.02		2.17
TOTAL REPAIRS AND MAINTENANCE	<u>31.68</u>	7.3%	<u>33.99</u>

C) OTHER NON-STAFF CURRENT COSTS AT HOME

Food	25.74	16.9	30.09
Utilities (gas, oil, electricity, water, -telephone)	27.98	11.7	31.25
Handyman and gardening (on contract)	9.94	7.5	10.68
Insurance	4.16	16.07	4.83
Total medical supplies and continence products	4.02	4.7	4.21
Trade and clinical waste	2.79	7.5	3.00
Registration fees (including DBS checks)	3.57	0	3.57
Recruitment	0.82	7.5	0.88
Direct training expenses (fees, facilities, travel and materials)	11.34	7.5	12.19
Other non-staff current expenses	23.15	7.5	24.89
Equipment Costs	3.92	4.7	4.10
TOTAL NON-STAFF CURRENT EXPENSES	117.43		129.69
TOTAL EXCLUDING CAPITAL	562.52		617.19
Return on capital	50.69	7.5%	54.49
Summary Weekly Fee	613.21		671.68
Divisible by 7	613.20	9.53%	671.65

Appendix 3

Usual Cost of Care Fee Rates – From 1 April 2023 Before Market Sustainability Contribution of £26.04 on older people residential and nursing fee rates

	Weekly Standard Rate	Quality Premium Rate (Additional £24.92 per week)
	£	£
INDEPENDENT SECTOR		
Residential Placement		
Older People/Mental Health/Drug & Alcohol	671.65	696.57
Physical Disability (>65)	766.78	791.70
Learning Disability	692.44	717.36
Nursing Placement		
Older People/Mental Health/Drug & Alcohol	721.91	746.83
Physical Disability (>65)	762.23	787.15
Learning Disability	687.54	712.46
Nursing fees exclude Funded Nursing Care contribution.		
Dementia Care Payment		
Residential & Nursing	55.58	
Day Care (per day)		
Residential & Nursing	49.70	
IN HOUSE PROVISION		
Residential Placement		
Homes for Older People	895.72	
Homes for Older People (Preserved Right Pre 01/10/20)	696.57	
Community Support Beds / Specialist Dementia	1,451.03	
Community Support Beds / Specialist Dementia (Preserved Rights 01/08/18 to 30/09/20)	1,290.17	
Community Support Beds / Specialist Dementia (Preserved Rights Pre 01/08/18)	696.57	
LD Residential	1,515.99	
Day Care (per day)		
Older People	48.65	
Learning Disability	63.84	

