



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

Thursday, 14 March 2024

Report of the Executive Director - Adult Social Care and Health

Care Home Fee Proposals 2024-25

(Cabinet Member for Adult Care)

1. Divisions Affected

1.1 County-wide

2. Key Decision

2.1 This is a Key Decision because it is likely to result in the Council incurring expenditure which is significant having regard to the budget for the service or function concerned (this is currently defined as £500,000)

3. Purpose

To seek Cabinet approval to:

- increase the rate paid to independent sector residential care homes for the financial year 2024-25 by 7.9% per week.
- increase the rate paid to independent sector nursing homes for the financial year 2024-25 by 7.9% per week.
- make an inflationary payment of up to 7.9% for specialist care home placements where evidence is provided of inflationary pressures.
- set a rate of £53.18 per day (from £49.70 per day) for a day care placement in a care home.
- make an inflationary payment of up to 7.9% for day care placements on the Council's Day Care framework where they can evidence their increase in costs.

- increase the rates for in-house day care and residential care by 7.9%.
- increase the dementia fee rate by 7.9% per week.

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 2024-25.

4.2 The Council has contract arrangements in place with over 140 independent sector care homes in Derbyshire for older people that, as of 1 January 2024, provided support on behalf of the Council to approximately 2331 people as detailed below:

- 725 people in nursing placements where the person needs constant involvement of, or supervision by a qualified nurse.
- 1606 residential placements

4.3 The Care Market has experienced a challenging 12 months, with 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.

4.4 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.

This report summarises the findings from the engagement detailed in section 5.0, including 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 2024-25 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 Care Home Providers

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 care home fee rates. Appendix 2 details these

headings and the proposed inflationary increases and justification are set out below.

- The Association in their meeting with the Council on 9 February 2024 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 their view is supported by the findings of the Council's Cost of Care exercise undertaken in 2022 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 2024 is supported by Providers however they would like the Council to pay more for staffing to enable them to pay their staff above the minimum wage to assist them 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.
- 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.
- 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 the Council's 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 per person placed on its own Care Homes than it does on individual placements in the independent sector.

4.6 Council Response and Analysis of Fee Proposals

- To reflect the National Living Wage, increase the Council has decided to apply a 9.8% increase on the calculation of all staff 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 Council plan to undertake a review of actual fees paid, as in addition to the standard fee there are top-up fees charged by several Providers which the Local Authority funds, understanding this in detail would allow a deeper understanding of actual fees being paid for this service to support that comparison with the previously undertaken Cost of Care.
- Cabinet on 11 January 2024 approved consultation regarding the provision of the Council's directly provided homes for older people with potential efficiencies identified.
- The Association have asked for the Council to review in co-production with them the use of 'Quality Premium' and amend the fee model as a result, The Council is minded this is an appropriate ask and something to address in the next financial year.

4.7 Adult Social Care Reform

Providers have expressly asked that the fee analysis should also be informed by the Cost of Care (CoC) 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. The findings and analysis of this exercise is detailed at [Strategies and market shaping - Derbyshire County Council](#)

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 CoC findings and identified median costs alone are not an appropriate basis to inform Derbyshire County Council's commissioning fee rates as described in the Cabinet paper of 6 April 2023. It is therefore our intention to continue to use the Council's current fee model for identifying fees for 2024-25 and co-produce with the Association a revised fee model template which better captures the costs that contribute towards staffing costs and return on investment/profit. In the meantime, for transparency the Council will track the fee rates detailed in the CoC exercise against the actual rates.

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 residential fee rates for older people. It is also proposed to increase the base fee rates for Residential Care Home by 7.9% and Nursing Homes by 7.9% 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 7.9% can be agreed with providers in receipt of specialist placements where they can evidence their increase in costs.

4.9 Dementia Fee Rates

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.

An additional payment of £57.75 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 7.9% to give a new value of £62.31 per week from 1 April 2024

4.10 Day Care placements in care homes for older people and framework providers

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.

The standard fee rate paid by the Council for day care placements in independent sector care homes is currently £49.70 per day. It is proposed for 2024-25 that this fee level to be paid to providers is increased by 7% to provide a new daily fee of £53.18 per day. It is proposed that up to 7.9% can be agreed with providers on the Councils Day Care framework where they can evidence their increase in costs.

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, therefore 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 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 9 February 2024 to set out particular business pressures affecting the care market and their costs.
- 5.2 The views shared at this meeting have assisted the Council in detailing 2024-25 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.

6. Alternative Options Considered

- 6.1 To offer no increase in fee levels from 1st April 2024. 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 for 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 which is more than that proposed in this paper. 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

- 8.1 None identified

9. Appendices

- 9.1 Appendix 1 – Implications
- 9.2 Appendix 2 – Fee Model
- 9.3 Appendix 3 – Proposed new fee rates from 1 April 2024

10. Recommendation(s)

That Cabinet agrees to:

- increase the rate paid to independent sector residential care homes for the financial year 2024-25 by 7.9% per week.
- increase the rate paid to independent sector nursing homes for the financial year 2024-25 by 7.9% per week.
- make an inflationary payment of up to 7.9% for specialist care home placements where evidence is provided of inflationary pressures.
- an updated fee rate of £ 53.18 per day for a day care placement in a care home.
- Make an inflationary payment of up to 7.9% for day care placements on the Council's Day Care framework where they can evidence their increase in costs.
- increase the rates for in-house day care and residential care by 7.9%.
- increase the dementia rate by 7.9% per week.

11. Reasons for Recommendation(s)

- 11.1 The recommendations to increase a range of fee levels by 7.9% will support providers to pay their staff the equivalent of the National Minimum wage increase from the 1 April 2024.

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 2024 is £14.7M per annum. This additional cost will be partly funded from increased income from annual uplifts in associated financially assessed charges, contributions from health (joint funding and Better Care Fund income) and from increases in the Market Sustainability and Improvement Fund Government Grant for 2024-25. These income sources total £8.3M with the balance of the annual cost - £6.4M - being met from the service pressure growth bid for all care contract fee uplifts of £13.174M. This service pressure bid was approved as part of the 2024-25 Revenue Budget Report by Full Council on 14th February 2024.

Legal

- 2.1 Section 5(1) of the Care Act 2014 provides that LAs “must 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 wishing to access services in the market— (a) has a variety of providers ... provide a variety of services; (b) has a variety of high quality services ...; (c) has sufficient information to make an informed decision ...”.
- 2.2 Section 5(2) provides in part that “In performing that duty, a local authority must have regard to the following matters in particular— ... (b) 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 ... (d) the importance of ensuring the sustainability of the market...(e) the importance of fostering continuous improvement in the quality of such services and the efficiency and effectiveness with which such services are provided ...”
- 2.3 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.
- 2.4 The Care and Support Statutory Guidance further details the duties on local authorities to facilitate markets that offer a sufficient and 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. (paragraph 4.31, 4.35 refers). The Guidance Annex A, para 11 further stipulates LA's should not set "arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care"

- 2.5 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.
- 2.6 In R (Care England) v Essex CC [2017] EWHC 3035 (Admin) ("Care England") the Administrative Court dealt with a claim for breach of section 5 of the Care Act 2014. In ruling on that claim, the Court held that it is "appropriate to consider the context", namely that a LA has – "a number of duties in relation to the provision of residential and nursing care under the Act..... Councils such as the Defendant face many pressures on their resources." The Court held that this provision does not confer specific rights on individuals or individual care home providers. There are means other than setting fees for promoting the efficient and effective operation the market. One aspect of promoting efficient and effective operation the market can be ensuring that fees are not set too high, as well as ensuring that they are not set too low: Care England §49(1).
- 2.7 The Council must also have regard to the Market sustainability and fair cost of care fund 2022 to 2023: Guidance. Prior to and aside from this Guidance, LA's were not obliged to run cost of care exercises. Where such exercises are undertaken, LA's are still not obliged to implement the figures arrived at through that cost of care exercise. This is clearly stated in the Guidance on several occasions. Whilst LAs keep clearly in mind the precise role of a cost of care exercise and consider the data resulting from it when making decisions on the setting of fee rates to be paid to providers of residential care, it is not the case that LAs must simply adopt the figures arrived at through the same. The DHSC's Guidance is clear that LAs are not required to simply adopt the median cost lines from the CoC exercise, as the rate they pay providers. It is noted (as set out in 4.7 of the Report) that the Council has had regard to the cost of care exercise and has provided rational decisions as to its proposed fee levels. 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.

It is also noted that the Council plans to work collaboratively with the Association to co-produce a revised fee model template moving forward. The Council's actions are consistent with the Guidance.

2.8 The Council must also have regard to the matters in section 149 of the Equality Act 2010, the Public Sector Equality duty when setting rates.

2.9 This Report provides a very detailed and considered rationale to support the rates proposed for the next financial year and as such the Council is considered to have discharged its legal duties in making the decisions as to the fee levels proposed to be paid for Care Home Fees.

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.

Fee Modelling

Inflation Assumptions used by Derbyshire County Council to Identify Fee Rates for 2024-25

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 November 2023 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, 2024.

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.

Staffing

From April 2024 Providers will be required to pay all staff over 21 at least the national living wage of £11.44 per hour which is equivalent to a 9.8% increase. The Council has decided to use the 9.8% minimum wage increase for all staff costs including staff aged under 21. It is also proposed that any other costs linked to staffing eg pension are also increased by 9.8%.

Repairs and Maintenance

The average CPI value for these areas of cost is 1% which have been used for these cost lines.

Other Non-Staff Costs

Food inflation in CPI report is identified at 9.2% the Council proposes to use value. For utilities the Council has used the average overall value of standard inflation value by 1.9%. There is no direct comparison for Insurance Costs in the CPI tables; the value used in the Council's fee model is £5.30 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 9.8% as the standard inflationary value.

Registration Fees:

Neither the Care Quality Commission or Disclosure Barring Service have reported increases in fees for 2024-25 so this value will remain the same.

**CARE HOME PLACEMENT FEE
MODEL (WITHOUT NURSING)**

PERSONAL CARE ONLY FOR FRAIL OLDER PEOPLE	2023/24	inflation	2024/25
A) STAFF, INCLUDING EMPLOYERS' ON-COSTS			
TOTAL CARE ASSISTANTS (inc senior) STAFF	266.48	9.8%	
Catering, cleaning and laundry staff cost per resident	60.06	9.8%	
Other Staff Costs (excluding management and admin)	5.77	9.8%	
Management, administration, reception staff cost per resident	83.02	9.8%	
National Insurance	24.96	9.8%	
Pension Cost	13.22	9.8%	
TOTAL STAFF	<u>453.51</u>		<u>497.95</u>
 B) REPAIRS AND MAINTENANCE			
Maintenance capital expenditure	20.34		
Repairs and maintenance (revenue costs)	11.48		
Contract maintenance of equipment	2.17		
TOTAL REPAIRS AND MAINTENANCE	<u>33.99</u>	1%	<u>34.32</u>
 C) OTHER NON-STAFF CURRENT COSTS AT HOME			
Food	30.09	9.2%	32.85
Utilities (gas, oil, electricity, water, - telephone)	31.25	1.9%	31.84
Handyman and gardening (on contract)	10.68	3.9%	11.09
Insurance	4.83	9.8%	5.30
Total medical supplies and continence products	4.21	9.5%	4.60
Trade and clinical waste	3.00	3.9%	3.11
Registration fees (including DBS checks)	3.57	0	3.57
Recruitment	0.88	3.9%	0.91
Direct training expenses (fees, facilities, travel and materials)	12.19	3.9%	12.66
Other non-staff current expenses	24.89	3.9%	25.86

Equipment Costs	4.10	4.7%	4.29
TOTAL NON-STAFF CURRENT EXPENSES	129.69	4.89%	136.04
TOTAL EXCLUDING CAPITAL	617.19		668.31
Return on capital	54.49	3.9%	56.61
Summary Weekly Fee	671.68		724.92
Divisible by 7	671.65	7.9%	724.92

This rate is the base fee rate. Following a national Cost of Care exercise undertaken in 2022-23, the base rates for care homes for older people were increased by £28.10 for residential care homes and £30.21 for nursing homes (these are the 2024-25 revised weekly rates).

Appendix 3

Proposed Fee Table 2024-25 from 1 April 2024 inclusive of ongoing Cost of Care payment for Older People Care Homes

	Weekly Standard Rate	Quality Premium Rate (£26.89 per week)
	£	£
INDEPENDENT SECTOR		
Residential Placement		
Older People/ Mental Health/Drug & Alcohol	752.81	779.70
Physical Disability (>65)	724.71	751.60
Learning Disability	827.36	854.24
	747.14	774.03
Nursing Placement		
Older People	809.15	836.04
Mental Health/Drug & Alcohol	778.94	805.83
Physical Disability (>65)	822.45	849.33
Learning Disability	741.86	768.74
Nursing fees exclude Funded Nursing Care contribution.		
Dementia Care Payment		
Residential & Nursing	62.31	
Day Care (per day)		
Residential & Nursing	53.18	
IN HOUSE PROVISION		
Residential Placement		
Homes for Older People	966.48	
Homes for Older People (Preserved Right Pre 01/10/20)	751.60	
Community Support Beds / Specialist Dementia	1565.66	
Community Support Beds / Specialist Dementia (Preserved Rights 01/08/18 to 30/09/20)	1392.09	
Community Support Beds / Specialist Dementia (Preserved Rights Pre 01/08/18)	751.60	
LD Residential	1635.75	
Day Care (per day)		
Older People	52.49	
Learning Disability	68.88	

