



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**14 March 2024**

**Report of the Executive Director - Adult Social Care and Health**

**Home Care 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.

**3. Purpose**

To seek Cabinet approval to make inflationary increases on fee rates for 2024-25 from 1st April 2024 as follows;

- To increase independent sector home care provision hourly face to face fee rates by 8.1%
- to increase travel/visit rates for independent sector home care provision by an average of 6.1%
- this represents a combined increase of 7.4% on the overall independent sector homecare budget.
- to increase the fee rate for in-house home care and extra care provision by 7.4%

- to make an inflationary increase of up to 7.4% for specialist independent sector home care placements where evidence is provided of inflationary pressures

#### **4. Information and Analysis**

4.1 The Council must publish its intended fees for care taking into account market conditions and cost pressures. Under the Care Act 2014, Councils have a duty to ensure that there is a sustainable and affordable social care market. This includes establishing fee levels that providers will receive for commissioned care that is delivered to meet a person's assessed needs. To ensure that the Council is aware of and take account of the cost pressures affecting local providers of care, engagement and consultation with local independent sector homecare providers has been undertaken.

4.2 This report summarises the engagement findings, the reported cost pressures and feedback from providers. The report sets out details of the funding model and the proposed rates for 2024-25 for standard homecare services. The findings from this exercise are then used to inform fee modelling for specialist homecare and day care.

Demand for home care services from people who are aged 65 and over, has been increasing steadily over recent years. An average of 4119 people were supported to live at home with home care every month during 2015. This has increased by 24.5% to 5275 during 2023. This support is currently commissioned from 55 independent sector home care providers as of 16 February 2024, this number will increase from 1 April 2024 when the Council's new Framework for Home Care Services commences.

4.3 Costs Highlighted by Home Care Providers:

The Derbyshire Home Care Association (DHCA) met with Council officers on 11 January 2024 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.

DHCA have reported again they "do not feel that the current approach correctly reflects the costs involved in running a care business and presents an unrealistic expectation of the pay levels that DCC's care rate can support for our care team." They stated, "we do recognise that historically there has been a concern around changing the model due to the different approach that Derbyshire takes to travel" and propose that the total fee (including the amount for travel) is identified to support

benchmarking and moves to be in line with the National Homecare Association recommendations.

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 2 details these headings and the proposed inflationary increases and justification are set out below. The Derbyshire Home Care Association have asked that the Council reviews the model to be more comparable with other Local Authorities and more accurate in demonstrating the costs to Providers. The Council will continue to work with local Providers over the next twelve months to review the current fee model used and to consider where affordable to adopt a different methodology if it is shown that it would have a positive impact on service availability and quality of provision.

#### 4.4.1 National Living Wage

The National Living Wage (NLW) is due to increase by 9.8% for staff aged 25 and over from 1 April 2024 (from £10.42 per hour to £11.44 per hour a £1.02 increase). In addition, from April 2024, the NLW will be extended to 21 and 22 year olds. This increase in minimum wage is supported by Providers however they would want to pay more than this to be able to recruit and retain staff and maintain differentials between staff groups.

##### Council response

To reflect the National Living Wage, increase the Council has decided to increase on the calculation of hourly home care wages by the standard national living wage increase of £1.02 per hour within the current fee model for all staff including those aged 21 and 22.

#### 4.4.2 Travel time

The DHCA have highlighted that when His Majesty's Revenue and Customs (HMRC) undertake checks of payment of wages by home care providers they are focused on ensuring that providers pay their home care staff at least the minimum wage for their travel time between calls. The DHCA would like the Council to ensure that the travel rates paid reflect journey time and allow them to meet their national minimum wage obligations.

In discussions the DCHA have also noted that urban calls are often challenging to pick up due to the current rate paid by the Council and

have asked if any inflationary increase could be positively weighted to this fee rate.

#### Council response

The Council makes an additional payment per home care visit to assist providers in paying staff travel time and to meet the costs incurred by staff.

There are currently four values as shown in the table below:

| <b>Value is per Home Care Visit</b> | <b>2023-24</b> | <b>Proposed 2024-25</b> |
|-------------------------------------|----------------|-------------------------|
| Urban                               | £3.19          | £3.50                   |
| Semi-Rural                          | £3.76          | £4.00                   |
| Rural                               | £4.66          | £4.85                   |
| Extra Rural                         | £6.61          | £6.80                   |

The overall impact of these changes is 6.1% on the overall travel budget.

The travel payment represents an element of staff time and a contribution towards the cost of using their vehicle. The DHCA have asked that the increase in travel payments is weighted towards the lowest rate of travel which is reflected in the new rates.

#### 4.6 Council Fee Proposal

The approach taken by the Council to pay a standard hourly face to face time for home care with an additional travel payment which is sensitive to the potential length and time of a journey is unlike many other local authorities. The National Homecare Association (NHCA) and other national bodies always quote an average hourly rate which is inclusive of travel time and contribution to travel costs. The DHCA have stated that the NHCA believe the minimum value for home care should be £28.52 per hour for 2024-25.

The Council's average homecare payment inclusive of travel payments during 2023-24 was £25.89, the Council proposes as per this paper to increase fees inclusive of travel rates by 7.4%. The impact of this increase on last year's average value would bring the rate inclusive of travel costs to £27.80, which demonstrates that the Council's fees are close to the this suggested national fee model submitted by the DHCA.

The home care fee rate proposals for 2024-25 have taken account of the feedback received from Home Care providers about inflationary pressures as detailed earlier in this report. Appendix 2 details how these inflationary pressures impact on the standard cost headings used in Derbyshire County Council Home Care fee model to give a proposed inflationary combined uplift (including separate travel rates) of 7.4% for 2024-25.

The proposed inflationary value of 8.1% on the hourly rate, excluding travel, for the provision of Independent Sector Home Care is also used as a standard inflationary value for most other service types as shown in the table below:

| <b>Service Type</b>                    | <b>Rate 2023-24</b> | <b>Proposed Rate 2024-25</b> |
|--|---------------------|------------------------------|
| Independent Sector Home Care Hours     | £18.60 per hour     | £20.12 per hour              |
| Off Framework Home Care Hours          | £17.52 per hour     | £18.82 per hour              |
| Independent Sector Sleep In (10pm-7am) | £96.93 per night    | £104.85 per night            |
| Independent Sector Live- In Carer      | £1,649.16 per week  | £1783.93 per week            |
| In-House Home Care Hours               | £27.60 per hour     | £29.64 per hour              |
| In-House Extracare (Day)               | £18.24 per hour     | £19.73 per hour              |
| In-House Extracare (Night)             | £22.56 per hour     | £24.40 per hour              |
| Well Being                             | £16.56 per week     | £17.90 per week              |
| Shared Lives Medium Rate               | £391.07 per week    | £421.96per week              |
| Shared Lives High Rate                 | £400.85 per week    | £432.52 per week             |

#### 4.7 Impact of the Proposals on Independent Sector Specialist Fees

The proposals made in this report, and summarised in Appendix 2, focus on the basic fee rates for the provision of home care. The Council also funds specialist home care services for people who live in supported living care settings.

Supported living is an alternative to residential care, providing home care support and accommodation to people who are assessed as eligible for adult care services. In a supported living service, the housing provider and support provider are separate, and the client is a tenant with their accommodation costs being met by Housing Benefits.

It is proposed that an increase in payments of up to 7.4% can be agreed with providers that provide specialist home care provision in supported living care settings where they can evidence that their costs have increased.

## **5. Consultation**

- 5.1 The Council engages regularly with DHCA to understand how the market can be supported to meet the local demand for homecare services. DHCA represents many of the local independent home care providers and they are consulted each year on determining sustainable fee levels for the following financial year.
- 5.2 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 Home Care 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 has been further shared with Providers for their comments and are specifically addressed above.
- 5.3 The Council has recently completed a procurement exercise to refresh the homecare provider list to promote a sustainable high-quality market. This new framework will help establish new commissioning arrangements to reflect local service demands and offer providers greater assurance about allocation of work to assist them with recruitment and retention of home care workers.

Adult Social Care are working in partnership with other Local Authorities in the East Midlands to develop support and guidance for Providers looking to further expand their workforce via International Recruitment of home care workers. These planned support arrangements and toolkits for recruitment of overseas workers are a clear priority to safeguard workers and potentially grow the workforce. Few of the Providers commissioned to work on behalf of the Council have experience of this approach and are asking for support.

## **6. Alternative Options Considered**

- 6.1 Not to increase the fees from 1 April 2024. This would severely impact the market as providers would be unable to pay their staff the national minimum wage increase. Any failure to pay increased fees would destabilise what is already a fragile market that is struggling to recruit and retain staff. This would also further reduce Providers' ability to pick up new home care packages which would result in further delaying hospital discharges and failure to support people to live safely at home. As noted above it is a requirement of the Care Act 2014 that the Council undertakes a fee setting exercise each year to support a sustainable market. Failure to do so will leave the Council open to legal challenge.
- 6.2 The Council could award an inflationary increase to providers more than has been proposed in this paper. The Council believes that the fee modelling within this report is fair and affordable, and the fees are comparable to those paid by other Local Authorities in the East Midlands.

## **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 Modelling (Council Approach)

## **10. Recommendation(s)**

That Cabinet agrees to make an inflationary increase as from 1 April 2024 as follows:

- a) To increase independent sector home care hourly rates by 8.1%
- b) To increase independent sector home care travel rates by an average of 6.1%;
- c) To increase the fee rate for in-house home care and extra care provision by 7.4%;

d) To increase up to 7.4% for specialist home care where evidence is provided by them of inflationary pressures;

## **11. Reasons for Recommendation(s)**

- 11.1 The recommendations to increase a range of hourly fee levels by up to 8.1% will enable providers to pay their staff the equivalent of the National Minimum wage increase which commences on 1 April 2024.
- 11.2 The proposed increases are in line with the duty placed on the Council by the Care Act 2014 to promote a sustainable market.
- 11.3 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 cost of the proposed fee uplifts set out in this paper is £11M. This will be partly funded by annual uplifts in associated financially assessed income, from uplifts in health funding of jointly agreed packages and from uplifts in associated grant income. Expected income from these sources is £3.6M with the balance of the cost - £7.4M - being met from an increase in the Market Sustainability and Improvement Fund for 2024-25 and from the approved revenue pressure bid for Care Provider Annual Fee uplifts. This pressure bid totals £13.174M and is also referenced in the 2024-25 Care Home Fee Proposal Cabinet paper tabled at this Cabinet meeting.

#### 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 home care and support and day care provision, 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 cost of care exercise as the rate they pay providers. It is noted that the Council has provided rationale for the 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. 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 home care and support and day care provision.

## **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.
- 5.2 The Council must have regard to the matters in section 149 of the Equality Act 2010, the Public Sector Equality duty when setting rates.

## **Corporate objectives and priorities for change**

- 6.1 This proposal will support local businesses 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.

## Proposed Home Care Fee Rate for 2024-25 Fee Model

|                                      | 2023-24      | Proposed     |            |
|--------------------------------------|--------------|--------------|------------|
|                                      | £            | 2024-25      | Increase   |
|                                      |              | £            | %          |
| Wages                                | 11.87        | 12.89        |            |
| Employers NI                         | 0.71         | 0.78         |            |
| Pension                              | 0.36         | 0.38         |            |
| <b>Hourly Cost</b>                   | <b>12.94</b> | <b>14.05</b> | <b>8.6</b> |
| Holiday Pay 4 weeks                  | 0.99         | 1.08         |            |
| Sickness pay assume 2 weeks per year | 0.49         | 0.54         |            |
| 5 training days per year             | 0.25         | 0.27         |            |
| Bank holidays 8 days per year        | 0.39         | 0.43         |            |
| <b>Net Hourly Rate</b>               | <b>15.06</b> | <b>16.37</b> | <b>8.7</b> |
| Head office and profit               | 3.61         | 3.75         | <b>4.0</b> |
| <b>Total Hourly Rate</b>             | <b>18.60</b> | <b>20.12</b> | <b>8.1</b> |

Last year's rate was rounded down from £18.67 to £18.60 due to the previous requirement to divide by 12.

Assumptions used:

Staffing costs inflated in line with National Minimum wage increases, [Minimum wage rates for 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/minimum-wage-rates-for-2024)

Head Office Costs inflated in line with CPI Inflationary rate for 2024, [Inflation and price indices - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/inflation-and-price-indices)