

Adult Social Care Committee

Date: **Monday 7 March 2016**

Time: **10am**

Venue: **Edwards Room, County Hall, Norwich**

SUPPLEMENTARY A g e n d a

10. Fee Levels for Adult Social Care Providers 2016/17

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Report by the Executive Director of Adult Social Services

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Adult Social Care Committee

Item No. 10

Report title: Fee levels for adult social care providers 2016/17

Date of meeting: 7 March 2016

Responsible Chief Officer: Harold Bodmer, Executive Director of Adult Social Services

Strategic impact

The Council invests more than £260m a year in purchasing adult social care services from the market. The Council has legal duties under the Care Act 2014 to promote the effective and efficient operation of this market including its sustainability through setting and maintaining adequate fee levels.

Executive summary

The Care Act requires the Council to promote the effective and efficient operation of the care market to secure the sustainable supply of high quality care services for adults in Norfolk. The Council is almost entirely reliant upon hundreds of independent businesses and organisations for the provision of care services in which it invests more than £260m a year through a large number of legally binding contracts. Setting and maintaining fee levels that can support a sustainable care market in the long term is key to this. This report sets out the recommended approach for 2016/17.

The price uplifts proposed in this paper include recognition of the cost of national living wage legislation on the care market and therefore some increases proposed are above the price inflation included in the growth pressures for Adult Social Care Committee. The service previously identified financial risks due to national living wage in the budget papers to Adult Social Care Committee on 25 January 2016 and in budget recommendations to County Council on 22 February 2016.

Recommendations

The Committee is recommended to consider and agree the approach to fee uplifts for the 2016/17 financial year as set out below:

- **In respect of contracts where an inflation index or indices are referenced an uplift is implemented to match any changes in the relevant index or indices.**
- **In respect of contracts where there is a fixed price for the duration of the contract, no additional uplift in contract prices takes place**
- **In respect of contracts with pre-agreed tendered prices, (any uplift that may be agreed is limited to no more than 1.2%)**
- **In respect of contracts where there is a requirement to consider inflationary effects but with discretion in relation to any changes in rates, any uplift that may be agreed is limited to no more than 1.2% with the following exceptions:**

Home care contracts

In the case of home care contracts an increase of 40p to hourly rates is proposed, which is equivalent to a 2.7% uplift to the average price for block contracts and 2.5% uplift for spot contracts. This has regard to relevant matters - in particular the impact of the

national minimum wage and national living wage and the sustainability of this market segment.

Residential and nursing care spot contracts

In the case of residential and nursing care, any uplift is determined by the implementation of the cost adjustment mechanism proposed as part of the current cost of care process approved by the Council and currently underway.

In particular relevant cases

Where there is a specific contractual obligation upon the Council to consider a price review the Executive Director of Adult Social Services may agree any further necessary and evidenced increment to prices that is justified and that is fair, based on the principle of equal treatment of providers. This may be, for example, in relation to a change in law, or where a provider can demonstrate on an open book basis, notwithstanding all appropriate efficiencies, that the price is not sustainable in relation to the particular section of the market concerned

1. Proposals

- 1.1 The proposal is to implement a fee uplift for the 2016/17 financial year of 40p per hour for home care which equates to a 2.7% increase in 2015/16 average home care block contract prices and a 2.5% increase in the spot price. This applies to those contracts where the Council has discretion to do so.
- 1.2 It is also proposed to adjust the fee rates for residential and nursing care as approved by the Adult Social Care Committee in due course following the completion of the cost of care process.
- 1.3 In respect of contracts for other care services where the Council has discretion to do so, any increase to be limited to no more than 1.2% as agreed on a case by case basis.
- 1.4 It is also proposed to implement a fee uplift in accordance with relevant indices in those contracts that oblige the Council to do so.

2. Evidence

2.1 The legal framework

Care Act 2014

- 2.1.1 The Care Act places duties on local authorities to facilitate and shape their market for adult care and support as a whole, so that it meets the needs of all people in their area who need care and support, whether arranged or funded by the state, by the individual themselves, or in other ways.
- 2.1.2 The ambition is for local authorities to influence and drive the pace of change for their whole market leading to a sustainable and diverse range of care and support providers, continuously improving quality and choice, and delivering better, innovative and cost-effective outcomes that promote the wellbeing of people who need care and support.
- 2.1.3 The statutory guidance to the Care Act requires local authorities to commission services having regard to cost effectiveness and value for money. The guidance also states that local authorities must not undertake any actions which may threaten the

sustainability of the market as a whole, that is the pool of providers able to deliver the services required to an appropriate quality - for example by setting fee levels below an amount which is not sustainable for providers in the long term. The guidance emphasises the need to ensure that fee levels are sufficient to enable providers to meet their statutory obligations to pay at least the national minimum wage and provide effective training and development of staff.

2.2 Contracts

The Council invests over £260m a year in securing the care services needed through a large number of contracts. These contracts contain legally binding provisions regarding fee levels and often the treatment of inflationary and deflationary pressures on the fee levels which vary from contract to contract. The various contractual requirements are described below.

2.3 Indexation of prices

These contracts specify an annual variation by reference to a specific price index or indices. In these cases the Council is contractually obliged to apply whatever the indexation requires by way of price variation.

2.4 Fixed prices

These contracts set a fixed price for the duration of the contract. The Council is not contractually obliged to adjust prices in these types of contracts.

2.5 Pre-agreed tendered prices

In these contracts the provider is required to set out in advance the prices they require over the life of the contract including their assessment of inflation with no facility for altering those prices. In these circumstances the Council is not contractually obliged to make any changes to prices but has a discretion to consider changes in wholly exceptional circumstances.

2.6 Prices subject to annual inflation consideration

These contracts typically require the Council to consider any changes in provider costs that may have occurred in the previous year and or may occur in the forthcoming year and to make adjustments to reflect these changes at its discretion. This means that the Council is not contractually obliged to implement any changes to prices.

2.6.1 In all cases it is important to note that the market duties under the Care Act still have to be considered in relation to the long term sustainability of the market.

2.6.2 These duties apply irrespective of what the individual contract terms may say. This means that the Council needs to consider its approach to fees with regard both to the specific contractual terms that might apply and to the duties under the Care Act

2.7 Independent residential and nursing care contracts

The Council is currently undertaking a separate process to determine its usual prices for independently provided residential and nursing care in Norfolk and to develop a cost adjustment mechanism to deal with any changes in provider costs.

2.8 Pay increases and National Living Wage

The National Living Wage (NLW) comes into effect on 1 April 2016. The NLW is in effect an additional band in the national minimum wage (NMW) structure and applies to workers who are at least 25 years old.

- 2.8.1 The NMW still applies minimum hourly wage rates for adults below the age of 25. The headline NMW rate applies to workers who are over 21 and from 1 April 2016 will apply to workers between 21 and 25 years old.
- 2.8.2 The NMW was raised in October 2015 from £6.50 an hour to £6.70 an hour. The NLW will be set at £7.20 an hour rising to at least £9 an hour by 2020 depending upon the performance of the economy as a whole.
- 2.8.3 It is simply not practical to determine the precise financial impact of the obligation placed on care providers in Norfolk to pay eligible workers at the new NMW rate and the NLW rate as the composition of the workforce by age and current rates of pay will vary from provider to provider.
- 2.8.4 Skills for Care manage the National Minimum Data Set (NMDS) which contains the most comprehensive information about the care workforce. Skills for Care have recently carried out analyses of the composition by age and current pay rates across the social care market as a whole and the tables below show the position in Norfolk for care workers, based on quality pay data.

2.8.5 **Table 1. Proportion of care workers by hourly rate bands**

Source. NMDS-SC Nov 2015

Base. Care workers in Norfolk with quality pay data

	All ages	25 and over					
	All bands	All bands	Under £7.20	Under £6.75	£6.75 to £6.99	£7.00 to £7.19	£7.20 & over
All services	7,339	5,993	39%	23%	6%	10%	61%
Adult residential	3,857	3,035	49%	36%	8%	6%	51%
Adult Day	119	100	16%	7%	2%	7%	84%
Adult domiciliary	2,574	2,196	35%	12%	4%	19%	65%
Adult community care	187	181	0%	0%	0%	0%	100%
Other	602	481	5%	0%	3%	2%	95%

- 2.8.6 This data shows that the average hourly rate for care workers already exceeds the new NLW rate and the NMR rate and that 61% of direct care workers are paid above the NLW rate already. The data also show, however, that 39% of direct care workers are being paid at varying degrees below the new NLW rate with a significant proportion of those being paid less than £6.75 an hour.
- 2.8.7 Having regard to these data and the resilience of the care market as a whole in Norfolk the evidence points to the need to increase some of the prices that the Council pays the market to enable providers to discharge their legal obligations in relation to NMW and NLW.

2.9 **Auto-enrolment pensions**

Under the Pensions Act 2008, every employer in the UK must put certain staff into a pension scheme and contribute towards employee pensions. The implementation has

been staged over a number of years, but by 1 April 2017 all current employers including those with only one employee must have implemented a scheme. Until April 2018, the employer minimum contribution is 1% of adjusted pay. Not all staff will be eligible for auto-enrolment and staff can opt out.

2.10 Cost of regulation

The Care Quality Commission (CQC) has recently consulted on the proposed 2016/17 uplift in regulatory fees. Consideration has been given to the expected increase for home support providers. The uplift reflects a move to ensure full cost recovery by CQC for regulation in each sector. There is a significant increase for home care providers. Most providers operate from one location for which the 2016/17 annual fee will increase from £796 to £2,229.

2.11 Price Inflation

The Office for Budget Responsibility produces forecast inflation information. The Consumer Price Index (CPI) takes accounts of a range of factors across all areas of spending. It reflects price increases, but also deflation for some areas of spending such as energy costs. The forecast CPI for financial year 2016/17 is 1.2% and was calculated using the November OBR Economic and Fiscal Outlook for 2016/17.

2.12 Proposed approach to prices for 2016/17

Having regard to the contractual obligations described above and the overarching market duties of the Care Act the following approach to fee uplifts for 2016/17 is proposed for contracts in the following four contract categories:

- Category 1 - In respect of contracts where an inflation index or indices are included an uplift is implemented to match any changes in the relevant index or indices.
- Category 2 - In respect of contracts where there is a fixed price for the duration of the contract that no uplift in contract prices takes place.
- Category 3 - In respect of contracts with pre agreed tendered prices that any uplift that may be agreed is limited to no more than 1.2%
- Category 4 - In respect of contracts where there is a requirement to consider inflationary effects, but with discretion in relation to any changes in rates, that any uplift is limited to 1.2% with the exception of contracts for home care or residential and nursing care.

2.13 Home care

In the case of home care contracts (except recently tendered contracts with a pre-agreed tendered price) an increase of 40p per hour is proposed having regard to relevant matters and in particular to the impact of the national minimum wage and national living wage and the sustainability of this market segment.

2.14 Residential and nursing care

In the case of independent residential and nursing care for older people and working age adults, any uplift is determined by the implementation of the cost adjustment mechanism proposed as part of the current cost of care process.

3. Financial Implications

- 3.1 The 2016/17 budget for Adult Social Care included an increase to meet unavoidable cost pressures for prices, including contract increases. As set out in this report the uplift for independent residential and nursing care will not be finalised until the cost of care exercise and subsequent agreement of a price adjustment mechanism is completed.
- 3.2 The recommended award is for of an uplift of 40p per hour for providers of home support (excluding contracts with pre-agreed tendered prices) and 1.2% for other providers where there is a contractual requirement to consider a fee uplift. The overall additional investments required (including the eventual 2016/17 price uplift for providers of residential care) to meet the national living wage are not expected to be able to be contained within the 2016/17 budgetary provision for the service.
- 3.3 Until the outcome of the cost of care review and agreement of the price adjustment mechanism is agreed it is not possible to predict the full financial consequences. In relation to the contracts excluding independent residential and nursing care, the recommended award would incur cost pressures of £2.420m, which is £0.540m above the budgeted provision. The additional cost pressure of £0.540m will be funded from the Business Risk reserve in 2016/17 and then included within the budget setting process for 2017/18.
- 3.4 The 2016/17 County Council Budget agreed on 22 February identified the financial risks arising from the National Living Wage and set out funding to help meet additional pressures arising from the Council's obligations towards the market.

4. Issues, risks and innovation

4.1 Impact on equalities

The recommendations in this report take into account the duty on the Council to have regard to the need to eliminate unlawful discrimination, harassment and victimisation and advance equality of opportunity between different groups and foster good relations between different groups. It is recognised that the services concerned are delivered to individuals, a high proportion of whom have the protected characteristics under the Equality Act 2010 of disability and/or age. It is therefore important that the price for these services is set in a sustainable way to support the range of services that advance opportunities and well-being for the individuals concerned.

4.2 Legal implications

The recommendations in this report are proposed to enable the Council to fulfil its duties under the Care Act 2014 to set the price it pays for care and support services in a sustainable manner. The recommendations are aimed to achieve this difficult balance between setting a sustainable price, and getting best value for money for services, enabling each pound spent to deliver the greatest impact on individuals in receipt of services. Due to the complexities of achieving this balance across a diverse and complex market it is necessary to retain the discretion to review the sustainability of services in particular relevant cases as set out in the recommendations.

Officer Contact

If you have any questions about matters contained in this paper or want to see copies of any assessments, e.g. equality impact assessment, please get in touch with:

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