

A separate report is submitted in the private part of the agenda in respect of this item, as it contains details of financial information required to be kept private in accordance with Paragraph 3 of Schedule 12A to the Local Government Act 1972. The grounds for privacy are that it refers to the identity, financial and business affairs of an organisation.

11 October 2018

Cabinet Member for Adult Services

Name of Cabinet Member:

Cabinet Member for Adult Services – Councillor Abbott

Director Approving Submission of the report:

Deputy Chief Executive (People)

Ward(s) affected:

All

Title: Adult Social Care – Market cost pressures and fee rates uplifts 2018/19

Is this a key decision?

No. Although this matter affects all wards in the City, the impact is not expected to be significant

Executive Summary:

Sustainability of the adult social care market is of major importance in order to ensure the safety, health and wellbeing of vulnerable adults with a range of eligible social care support needs.

The Care Act (2014) places duties on Local Authorities to ensure a sustainable market for adult social care and, amongst other responsibilities, requires councils to be assured that fee rates paid to social care providers enable them to meet legislative requirements including those relating to payment of the National Living Wage (NLW) or National Minimum Wage (NMW). The Act also places duties on Councils to ensure a sustainable market for adult social care.

Whereas some increases have been applied as standard to recognise costs associated with NLW the Council currently considers requests from providers for fee increases in excess of this on a case by case basis and in agreeing any increases a range of factors are taken into account including existing fee levels as a market comparison and time elapsed since a previous uplift was agreed. Council Tax precept and improved Better Care Fund (iBCF) resources have been used to fund these increases.

Applying the above principles providers of long term services for people with learning disabilities in the City have generally attracted higher than average fee rates, therefore, no increase was offered for this provision. Some providers have responded by seeking uplifts partly as a

consequence of national living wage increases but also as a result of a requirement to pay NLW for sleep ins and have also highlighted other general inflationary pressures. Such requests have been negotiated on a case by case.

All fee increases are agreed on the basis of market sustainability in that to not agree any increases would probably result in a position where providers were unsustainable and would therefore seek to exit contracts where no readily available alternatives exist.

The report describes the impact of fee rate increases, outlines options considered seeks endorsement of the approach taken and approval of increases in excess of £100k per annum.

Recommendations:

Cabinet Member is requested to:

1. Endorse the approach taken to agreement of fee increases for providers of adult social care
2. Approve increases in excess of £100k as detailed in section 5.1.

List of Appendices included:

None

Background papers:

None

Other useful documents

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

1. Context (or background)

- 1.1 One of the expectations of the Care Act (2014) is that local authorities assure themselves that fees paid to social care providers enable them to meet legislative requirements including payment of the national minimum wage, while at the same time commissioning services that are cost effective and offer value for money.
- 1.2 The Act also confers duties on local authorities in respect of market shaping and sustainability to ensure sufficient supply of good quality adult social care and choice wherever possible, whilst at the same time commissioning services that are cost effective and offer value for money.
- 1.3 There have been a series of legislative changes that increase costs to providers which the Council has recognised. For example, in April 2016, the Government introduced a new mandatory National Living Wage for workers aged 25 and above, initially set at £7.20 in April 2016 with a further increase to £7.50 in April 2017 rising to £7.83 from April 2018. The National Minimum Wage continues to apply for those aged under 25 but also rises each year standing at £7.38 per hour from April 2018 for people aged 21-24.
- 1.4 In addition to NLW pressures the changing position on sleep-ins has also created cost pressures as a result of HMRC guidance based on a ruling in the High Court which requires that sleep ins be paid at an hourly rate at least equal to the National Living Wage or National Minimum Wage with such provisions to take effect from July 2017.
- 1.5 However, the eventual position in respect of sleep ins is still unclear due to a subsequent June 2018 Appeal Court ruling that flat rate payments were entirely appropriate for sleep ins and that an hourly rate should only apply in cases where the worker was woken to attend to needs of an individual(s) during the night (this restated the position prior to the previous High Court ruling). In August 2018 Unison stated that they would be seeking permission to appeal this judgement through the Supreme Court.
- 1.6 Uplifts to the NLW may impact on the financial viability of the external social care provider market as market intelligence indicates that most care workers are over the age of 25 and currently paid at national living wage. Since the introduction of the NLW a number of provider organisations have written to describe the impact of additional cost pressures, including NLW, introduced in recent years that have not been recognised through increases in fees, and request a fee increase in order to remain sustainable.
- 1.7 Approach to management of fee increases**
- 1.8 Since 2013 Adult Social Care has been working with and keeping an 'open dialogue' with care providers where, if there were genuine cost pressures that would impact on sustainability this could be recognised through an evidence based fee review. The standard of evidence is that an increase is required to ensure market sustainability and to not agree any increases would probably result in a position where providers were unsustainable and would therefore seek to exit contracts.
- 1.9 The Council has applied an approach for National Living wage uplifts over the past 3 years which involves paying a percentage uplift for care homes for older people with a 2.5% uplift applied in 2018/19. For hourly based services such as home support and day opportunities an increased hourly rate has been applied e.g. 33p per hour in 2018/19. Providers have been expected to absorb some elements of cost increases.

- 1.10 For services catering for working age adults with disabilities the approach has been to offer no increase on the basis that costs of long term packages for this cohort are higher than the average paid by similar authorities.
- 1.11 In respect of sleep ins, the Council's position for contracted sleep ins has been to offer National Living Wage plus a contribution towards on costs i.e. National Insurance and pension contributions elements. It is important to note that this may not fully compensate providers for the full additional costs e.g. holiday pay, sick pay etc. and may be seen to erode pay differentials for more senior care workers. The NLW legislation focuses on the individuals receiving the increase and does not address the pay differential.
- 1.12 The Council currently commissions 140 sleep ins and has a programme of work in train with providers using an electronic assessment system which aims to ensure that sleep ins remain appropriate. It is anticipated that as an outcome from this work some sleep ins may no longer be required to meet needs and will be able to be removed.
- 1.13 Where providers approach the City Council for fee increases in excess of the NLW, and should they be able to produce a sufficient level of evidence, and if there is a genuine risk associated with market sustainability then increases may be agreed within the delegated authority of the Director of Adult Services. Where increases are in excess of this delegated authority Cabinet Member approval is sought.

2. Options considered and recommended proposal

2.1 Option 1: Recommended Option:

Cabinet Member is recommended to endorse the approach to fee increases currently applied, as described above and noting that changes to the approach may be required dependant on changing financial or legal circumstances.

In two instances providers have approached the Council for increases in excess of £100k per annum. Cabinet Member is recommended to approve these increases based on the circumstances detailed in 5.2

2.2 Option 2: Not Recommended

The increases could be declined. This may impact on the provider's ability to meet the needs of service users and could result in the council potentially paying a greater fee level than that sought for alternative provision.

3. Results of consultation undertaken

- 3.1 No specific formal consultation was undertaken to inform this approach, the process of open dialogue negates the need to undertake formal negotiation of fee levels as providers are engaged individually in the issues that affect them.

4. Timetable for implementing this decision

- 4.1 Providers were given a deadline of 30th June to respond to initial fee uplift offers. Where increases have yet to be implemented uplifts will be made by 31st October backdated to 1st April 2018.

5 Comments from Executive Director, Resources

5.1 Financial implications

The cost of initial National Living wage uplifts for older people accommodation based services, generic home support provision and day opportunities stood at approximately £500k for 2018/19.

Subsequent negotiation in respect of national living wage with disability providers is estimated to cost an additional £160k.

There are a limited number of negotiations yet to be concluded, in respect of broader inflationary pressures, however, the anticipated impact is an additional funding requirement of approximately £680k.

Cabinet member is requested to approve uplifts over £100k. For 2018/19 this is expected to apply to two providers as most increases are below this threshold. Details in relation to the two providers are shown in the table below.

	Fee rate Request	Negotiated Position	Rationale
Provider A (Learning Disability Supported Living)	Increase from £12.50 to 14.50 per hour £48.40 to £75 per 9 hour sleep in Total impact up to £123k	2 year deal	No uplift since 2012 £12.50 per hour below average rate. Sleep in was being paid at a flat rate now hourly rate. 2 year deal to moderate future exposure.
Provider B (Learning Disability Residential and Supported Living)	Home 1 – £1033 to £1135 pw (4.5%) Home 2 – £1155 to £1208 (4.4%) Home 3 – £914 to £939 (2.7%) Supported Living 33p per hour Total Impact up to £133k	2 year deal Implementation of an electronic monitoring system to indicate whether sleep ins might be reduced	No uplifts since 2012.

These increases are expected to exceed £100k for a number of reasons. In the case of Provider A due to the volume of service users and the fact that no increases has been awarded for a number of years with hourly rates being below the average for Supported Living provision.

With respect to Provider B, again no uplifts had been granted for a number of years. An established in City provider served notice on their contract which resulted in a business to business transfer to Provider B who had to work to a tight timescale to ensure service continuity which did not allow for a forensic analysis of financial sustainability. Subsequent in depth analysis by the provider elucidated significant financial risks to them at current rates resulting in the request for a significant uplift for 2018/19.

Costs of all uplifts are to be met through a combination of Council Tax precept and improved Better Care Fund (iBCF) resources with reporting on the latter sought through Adult Joint Commissioning Board as per the s75 agreement.

5.2 Legal implications

When commissioning services, The Care Act (2014) requires local authorities to be assured that contract terms, conditions and fee levels for care and support packages are appropriate to support the delivery of good quality care. This includes being satisfied that service providers are able to meet statutory obligations including those relating to payment of the National Living Wage (NLW) or National Minimum Wage (NMW).

The Act and associated statutory guidance also confers duties on Councils to take action to shape social care markets and ensure sustainability of a range and sufficiency of good quality care provision to enable adults with eligible care and support needs to have those needs appropriately met and offer choice where possible.

In July 2018 the Court of Appeal overturned a previous Employment Tribunal Ruling made in April 2016 and re-instated the option to pay a flat rate payment for staff sleeping in for most of the circumstances relevant to this report. Unison have applied to the Supreme Court in a challenge to this judgment but at the time of writing it has yet to be determined if the Supreme Court will allow the appeal to be heard.

6 Other implications

4.1 How will this contribute to the Council Plan (www.coventry.gov.uk/councilplan/)?

This proposal would contribute to the Council's key objectives through a contribution to protecting our most vulnerable people.

4.2 How is risk being managed?

Fee rate pressures are highlighted in the Adult Services risk register and managed accordingly.

4.3 What is the impact on the organisation?

The fee rate approach is instrumental in meeting the Council's responsibilities in relation to ensuring sustainable and vibrant social care market

4.4 Equalities / EIA

Not applicable

4.5 Implications for (or impact on) the environment

None

4.6 Implications for partner organisations?

Where the City Council commission services on behalf of Coventry and Rugby Clinical Commissioning Group as is the case for home support provision.

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Appendices

None