

ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE
11 MARCH 2019

REVIEW OF LONG TERM RESIDENTIAL AND NURSING CARE FEES

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

Purpose of Report

1. The purpose of this report is to inform the Committee of the responses received during the first stage of the consultation on the proposed changes to the way in which the Council agrees prices for the spot purchase of residential care and residential nursing care and to seek its views on the second stage of the consultation.

Policy Framework and Previous Decisions

2. The review of residential care and residential nursing care fees (the fee review) will contribute to the delivery of the following outcomes in the Council's Strategic Plan for 2018-22:
 - Strong Economy; local residential and nursing care providers will be resilient, helping prevent provider failure;
 - Keeping People Safe; paying providers a sustainable price in Leicestershire will help contribute to keeping people safe, protected from harm, and ensure their wellbeing;
 - Affordable and Quality Homes; Leicestershire has a range of quality residential and nursing care homes.
3. On 16 October 2018, the Cabinet authorised the Director of Adults and Communities to commence the two-stage consultation exercise on the proposed changes to the way in which the Council agrees prices for residential care and residential nursing care.
4. The Adults and Communities Overview and Scrutiny Committee was consulted on the changes being proposed during the first stage of consultation at its meeting on 6 November 2018 and its views are now being sought on the second stage of the consultation process.

Background

Process for Consultation One

5. Prior to the consultation, providers were invited to join a Provider Reference Group (PRG) to help the Council to shape the approach to the fee review. The group met five times between April and October 2018, prior to the consultation. A full report highlighting the work of the PRG was included in the consultation materials and shared with the Committee in November 2018.

6. Also prior to the consultation formally commencing, providers were notified of a series of consultation meetings that would be held at localities around the county during the consultation.
7. CIPFA C.Co (C.Co) consultancy service, was commissioned by the County Council to deliver an independent 'local' cost of care fee review. In addition, C.Co was also requested to provide a methodology and proposal for the annual uplift of care fees and supplementary needs payments. A cost of care template with a suggested breakdown between staffing, hotel and overhead costs was developed and shared with the Council. The template was reviewed and revised following feedback and presented as scheduled to the meeting of the PRG on 3 October 2018. Further revisions following input from the PRG, together with the addition of notes for individual line items, enabled a 'final' template to be agreed for consultation with providers.
8. The first stage of the consultation was launched on 14 November 2018 with an email being sent to 250 residential homes. This provided summary information about the consultation, a link to the website where the consultation information and the questionnaire could be found, and contact details for key officers. A follow up email was sent on 19 December 2018 to encourage providers to participate and a final reminder was sent on 7 January 2019, two days ahead of the consultation closure date of 9 January 2019.
9. The consultation website was visited 258 times by 71 different providers representing 77 homes. Six providers completed the questionnaire, representing 11 care homes. Sixteen providers, representing 26 care homes attended consultation meetings and commented on the proposals using that mechanism. Feedback was received from more providers supporting older adults than working age adults.
10. The County Council contacted 14 advocacy organisations to request comments on the proposals from the perspective of service users, carers and families. Contact was also made with the Carers Group of the Learning Disability Partnership Board and the Equality Challenge Group. None of these organisations responded to the consultation proposal in writing, although the Carers Group discussed the proposal at a meeting on 3 December 2018 and the Equality Challenge Group met on 14 January 2019 to discuss the consultation proposals. Both groups intend to respond fully to the second stage consultation.
11. The County Council gave members of the public the opportunity take part in the consultation by including a link on the 'Have Your Say' page on its website. As there is an expectation that the fees the Council pays to providers will increase, so the fees paid by service users with a Deferred Payment Agreement (DPA) would also increase. The County Council therefore wrote to all 69 service users with a DPA to make them aware of the activity taking place. Two individuals responded by telephone to seek further explanation of the process.
12. No comments were made about the draft Equality and Human Rights Impact Assessment (EHRIA) screening tool that was published as part of the consultation papers, but the Equality Challenge Group will review this along with the full EHRIA assessment that will be published as part of the second stage consultation. A copy of the EHRIA is attached as Appendix A.

13. EMCARE supported the development of the proposals via the PRG ahead of the consultation. It also encouraged its members to take part in the consultation although it is noted that EMCARE did not submit a response itself, however, a productive meeting took place with EMCARE on 25 February 2019.
14. A draft full report and draft summary document (attached as Appendices B and C respectively) outline the details of the consultation process, proposals and the responses. Below is a summary and proposals being taken forward to consultation 2:

Consultation 1 proposals and responses

Proposal 1 – A Two Band Approach for Older Adults

15. The Council proposed to replace the current five band residential and single nursing band system with a two-band system that will be used to commission placements in older adult care homes. Supplementary Needs Allowance (SNA) payments will continue to be payable, at an agreed rate, where required, and usually only in exceptional circumstances. as the proposed band descriptions include a high level of support.
16. The consultation response indicated broad support for the proposal of two bands for older adults, with a standard hourly rate agreed for SNA when required. However, observations have been made that will need to be considered when calculating the band rates, in particular the definitions for each band, the assumed hours of care needed and the transition process. Though providers that attended the consultation meeting recognised the importance of the band definitions, no one commented on the draft definitions published as part of the consultation.
17. It is therefore proposed that the Council proceeds with Proposal 1, to develop a two-band system for older adult placements, together with a standard hourly rate for SNAs. The band descriptors should include the assumed hours of care required and will be made available again during consultation 2.

Proposal 2 – Use of the Care Funding Calculator (CFC) for Working Age Adults (WAA)

18. The Council proposed to continue with its use of the CFC to commission placements into WAA care homes, but with a standardised set of hotel (non-staff) costs for Leicestershire. Though the Council was not consulting on the use of the CFC as such, several providers made criticism relating to it, saying that it failed to identify all the relevant costs and therefore understated the cost of care for each service user. Providers also said that the tool was not updated to take account of inflation and wage increases. The questionnaire response was ambivalent, with two of the six providers supporting the proposal, two disagreeing with the proposal and two expressing no view. Those that did not support the proposal argued that the hotel costs should be agreed for each care home with the provider. This corresponds with other concerns raised by providers about the approach related to differing hotel costs because of home size, location and occupancy. Further to this, C.Co was not provided with enough financial information from providers to support a detailed modelling exercise on individual lines and has instead produced a figure constituting the three broad areas of staffing, running costs and operators' return.

19. Considering these concerns, it is proposed that the Council refines Proposal 2 to develop a Leicestershire standard band for WAA accommodation and uses the National CFC - an online tool which uses market data to enable the negotiation for the provision of 'specialist' and/or complex care placements.

Proposal 3 – A review of the Council's standard cost template

20. Consultees were asked to comment on a draft template for capturing all the costs related to a residential care placement and to supply details of their costs.
21. There was positive feedback on the template structure and it was described as comprehensive. Observations were made about specific cost lines which can be incorporated into the next version. The point was also made that the rates were more important than the template per se.
22. It is proposed that the Council proceeds with Proposal 3, the use of the standard cost model template, taking account of the feedback on particular line items, to develop the cost of care calculation, banded rates and a standard hourly rate for SNA. The template will be populated and made available for consultation 2.

Proposal 4 – Annual Fee Review

23. It is proposed that annual fee reviews will be undertaken using an agreed methodology that will be linked to the National Living Wage and inflation as measured by the Consumer Price Index (CPI) and implemented without further consultation. In line with the current contractual arrangements, Third Party Top-ups will also be reviewed annually in April each year by the provider.
24. Providers were broadly supportive of this proposal, welcoming more transparency and less uncertainty. Providers also saw the benefits from a financial planning perspective for both providers and the Council. However, providers pointed out that flexibility was needed, for example when new costs occurred or there is a sector wide issue that drives up costs.
25. It is proposed that the Council proceeds with Proposal 4, to develop a mechanism to apply annual increases automatically. The process should be transparent and take account of new cost items that may arise during the year. It must also entail the mechanism to suspend the approach if there is a sector wide issue that results in a significant change in costs. The proposed mechanism will be made available during consultation 2.

Proposal 5 – Out of County Placements

26. Currently, the Council pays fees for out of county placements in line with those of the local authority in which the home is located. Some local authorities pay out of county providers the same rates as it pays for care in its own local authority area. The Council requested the views of providers on these different approaches.
27. There was no support for the Council paying out of county providers the rate agreed for Leicestershire. Key concerns highlighted were that such an approach would be both inequitable and impractical. Many out of county placements are negotiated individually, rendering the proposal redundant.

28. It is proposed that the Council does not proceed with Proposal 5, to pay Leicestershire banded rates to out of county providers. The assumption going into consultation 2 will be that out of county cases will be paid at the locality rate. Annual rate increases will be made, with no back dating beyond the fiscal year of the increase, in line with the locality rate increases.

Proposal 6 – Core Contract and Specification Refresh

29. The residential and nursing care core contract and specification was last reviewed in 2012. These documents will be updated to take account of changes in legislation, regulation and best practice. The Council is also exploring a revision of the Individual Placement Agreement (IPA), including its approach to the use and administration of Third Party Top-ups and a proposal to implement a system for using electronic signatures.
30. There was broad support for the proposal to revise the core contract, specification and IPA. Providers said that the current contract was out of date, that the revision should provide greater clarity about the required standard of quality and the alignment with the Care Quality Commission (CQC) was welcomed. Concerns were raised about potential delays when providers call for the CQC to re-inspect and inconsistency with different inspectors.
31. Regarding the proposed removal of the Quality Assessment Framework (QAF) premium payments, providers that are QAF accredited were critical of the proposal. The concerns expressed related to an undermining of the importance of quality, the loss of the benefits the QAF brings with staff motivation and morale, and the loss of income which helps to fund quality improvement work and initiatives. It was also suggested that this was a cost saving measure.
32. However, some national providers also said that it was unusual to have an incentive of this type and that it was more common for councils to not commission placements with organisations that did not achieve the required quality standards. Also, it was said that quality payments could be aligned with CQC ratings.
33. It is proposed that the Council should proceed with Proposal 6, to review the core contract, specification and IPA. The draft documents will be made available as part of consultation 2. It is also proposed that the Council removes the voluntary QAF premium payments and align quality requirements with those of the CQC. Alongside this, the Council should work with providers to increase the recognition and celebration of good practice via the current mechanisms such as Care Ambassadors, Dignity in Care, and Carer of the Year Awards.

Process for Consultation 2

34. Consultation 2 is due to start on 18 March 2019 and run until 29 April 2019. The same format as consultation 1 will be used, with providers and stakeholders advised of meetings in various localities and provided with the web address for all the consultation material and feedback methods. Consultation 2, building on consultation 1, consists of four proposals as follows:

Proposal 1 - The proposed band rates for Older Adult homes in Leicestershire

35. C.Co is developing a standard local 'residential' cost of care for older age adults. The work is based on 2018/19 data and will include an enhancement to reflect an occupancy rate below 100%.
36. In order to determine a 'residential+' rate for older age care, the C.Co are developing two options, both of which use the 'residential' rate as a base figure but increase the staffing element to reflect the difference of 24 rather than 19 hours of care required. Increasing the staffing element by 26% (five hours) to reflect the percentage increase in care hours between 'residential' and residential+' only would give an initial residential+ rate. However, a further increase may be required to recognise that more complex care may require more training and backfill, more one to one care and reflect a 'well-being' need for the individual carer.
37. Although acknowledging that the new banding model, with provision for an enhanced level of care for older age adults, is intended to reduce the level of SNAs, C.Co is developing a methodology for SNAs based around the additional hours of care by a carer and senior carer, inclusive of an additional up-lift for non-core hours such as night time working and bank holidays.

Proposal 2 – The proposed band rate for WAAs homes in Leicestershire

38. C.Co is also developing a standard cost of care for WAA. The original intention was to produce standard local 'hotel' costs for WAA along the lines of those identified in the National CFC. However, as described above, the lack of templated, granular data to support the modelling exercise has meant that C.Co has produced a figure constituting the three broad areas of staffing, running costs and operators' return. The CFC will be used, as it currently is, to calculate the individual cost of care for WAA with needs greater than those that can be met at the WAA residential band.

Proposal 3 – Annual uplift

39. As part of its remit C.Co was asked, using its knowledge of the market and experience, to determine an appropriate methodology that will enable a consistent and fair annual increase of care fees. Within its report, C.Co is recommending a 'blended' rate of increase that takes account of the percentage change of the 'Service Sector' element of the AWEs and the CPI datasets, both published by the Office of National Statistics. Using the latest 2018 rates, AWEs for the services sector was 3.6% and CPI 2%. C.Co is proposing the higher 'services' rate over the 'economy rate' because it is more relevant to the provision of care. The use of the AWEs is intended to positively impact a broader range of employees than the National Minimum Wage that targets those at the lower end of pay and grading structures.
40. Consideration will need to be given to how efficiency improvements can be reflected in the future annual changes so that a balanced position is found. The National Living Wage has impacted recent increases in care contracts, so that they have been higher than what was applied historically. However future increases need to be sustainable and County Council contracts tend to increase by CPI or less.

Proposal 4 – Contractual changes

41. The proposed changes are to ensure the contract is reflective of the current legislation, best practice and guidance. Wording has been updated to be more respectful to people who use the services and to consider changes in terminology. New clauses have been added due to changes in legislation such as Care Act, Human Rights, Health and Safety, General Data Protection Regulations and Equalities. These should not increase the burden on the provider but should offer additional guidance on what the provider needs to do to ensure they are aware of and meeting these areas.

Proposal 5 – The proposed implementation approach

42. The Council wishes to make the implementation of the new fee rates as seamless as possible for all involved. The intention is to automatically transfer as many people as possible to the new appropriate band. To enable this the Council will begin assessing the eligibility of individuals against the new banding definitions from April 2019 onwards. Although new placements will be made on the existing banding definition, providers and service users will also be informed of the new banding definition that they will likely be included within, subject to completion of the consultation and final sign off. This will also be carried out for any reviews undertaken between April and the start of formal implementation.
43. It is the intention of the Council to automatically transfer current Band rate only placements onto the proposed 'standard' banding. Placements that are currently subject to payments in addition to the banding, such as ANA or Local Authority Additional Funding payments, will be reviewed to determine the eligibility of the individual within the new banding definitions. The Council intends to establish a proportionate review process to support this implementation.
44. Where agreement is reached on the care needs of an individual, but disagreement remains over the hotel costs and therefore the total placement cost, support will be sourced from the corporate Commissioning Support Unit who will be able to lead these negotiations in partnership with care pathways.
45. Further details on the consultation process in relation to consultation 2 will be circulated to members of the Committee as Appendix D prior to its meeting on 11 March 2019.

Resource Implications

46. The estimated gross cost of residential care/nursing care for adults is forecasted to be £92 million in 2018/19. However, the Council receives £27 million income from charging service users and £10 million from local health commissioning partners through joint arrangements. The net estimated cost is therefore approximately £55 million. The full budgetary implications will be finalised after the proposed fee rates have been determined and the consultation period has been ended.

Legal Implications

47. The process adopted in relation to consultation for these proposals is lawful and compliant with general public sector decision-making principles. It is not unusual to consult in stages especially in relation to significant proposals. The Council is required to ensure that proposals remain at a formative stage and that no decisions are made until the end of the final (second) consultation process. The Council should ensure that any views expressed at the end of the first consultation stage are provisional only and that consultees continue to be able to make representations on the both the second stage as well as the information that was provided during the first consultation stage.
48. The Director of Corporate Resources and the Director of Law and Governance have been consulted on the content of this report.

Timetable for Decisions

49. The outcome of both stages of the consultation, proposals for a revised fee structure and the financial implications of this will be presented to the Cabinet in June 2019 for final decision. Subject to the Cabinet's approval, implementation of the new rates will be back dated from 1 April 2019.

Conclusions

50. The Committee is invited to comment on the proposals being put forward as part of consultation 2.

Background Papers

- Leicestershire County Council Strategic Plan 2018-22 - <https://www.leicestershire.gov.uk/about-the-council/council-plans/the-strategic-plan16>
- Promoting independence, Supporting Communities; Our vision and strategy for adult social care 2016–2020 - https://www.leicestershire.gov.uk/sites/default/files/field/pdf/2016/3/23/ASC_Strategy_2016_2020_0.pdf
- Report to Cabinet: 16 October 2018 – Review of Long Term Residential and Nursing Care Fees <http://politics.leics.gov.uk/documents/s141196/Review%20of%20Long%20Term%20Residential%20and%20Nursing%20Care%20Fees.pdf>
- Report to Adults and Communities Scrutiny Committee: 6 November 2018 – Review of Long Term Residential and Nursing Care Fees http://politics.leics.gov.uk/documents/s141939/5_November_Rev%20of%20Long%20Term%20Res%20and%20Nursing%20Care%20Costs.pdf

Circulation under the Local Issues Alert Procedure

51. None.

Equality and Human Rights Implications

52. An EHRIA screening was undertaken to support the first phase of the consultation. A full assessment has been completed to support the second phase of the consultation and is included as Appendix A. Changes have been made to the fee structure following consultation and engagement and this is reflected in the EHRIA. A full and robust action accompanies the EHRIA to mitigate any areas where there may be potential for discrimination.

Appendices

- Appendix A – EHRIA
- Appendix B – Draft Consultation Full Report
- Appendix C – Draft Summary Consultation Report
- Appendix D– Draft Consultation 2 Proposal (to be circulated to members of the Committee prior to its meeting on 11 March 2019)

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