



ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE

10 JUNE 2019

REVIEW OF LONG TERM RESIDENTIAL AND NURSING CARE FEES

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

Purpose of the Report

- 1 The purpose of this report is to provide an update to the Committee on the proposed changes to the way in which the Council agrees prices for residential care and residential nursing care and focuses specifically on the second stage of the consultation.

Policy Framework and Previous Decisions

- 2 The Care Act 2014 places statutory duties on councils to establish a usual price for the care home placements they fund. This price needs to give due regard to ensuring that there are sufficient care and support services in the local market to meet the needs of all people who require them. It also places a duty on councils to give due regard to ensuring provider sustainability and viability to enable them to meet their employer duties and responsibilities and provide the agreed quality of care.
- 3 The Adults and Communities Department undertakes an annual fee review process with the residential and nursing care market, but it has not fundamentally reviewed its pricing structure since 2011. It is recognised that there have been significant changes to the way care and support is delivered since this time and that the demographic of people moving into residential care arranged by the Council is now different. A fundamental review of the Council's fee structure and fee levels was therefore necessary to ensure this remains fit for purpose and supports a sustainable care market across the County.
- 4 On 16 October 2018, the Cabinet authorised the Director of Adults and Communities to commence a two-stage consultation exercise on the proposed changes to the way in which the Council agrees prices for residential care and residential nursing care.
- 5 The first stage of consultation took place between 14 November 2018 and 9 January 2019. Outcomes from this stage and proposals for the second stage of consultation were reported to and considered by the Committee at its meeting on 11 March 2019. This report forms the update following consultation Stage 2 that the Committee requested.

Background

- 6 The vision for adult social care is to reduce the number of long term admissions into residential care through increasing the supply and quality of community services as well as the range of alternative accommodation-based provision available. However, there will always be a need for residential care provision for some individuals.
- 7 During the financial year 2017/18, there were 852 permanent admissions into residential care in Leicestershire, the majority of which (816) were for people aged over 65. Placements were made into 161 private care homes and 24 voluntary and not for profit homes. In total, there are approximately 2,100 people currently living in residential and nursing care - 1,700 older adults and 400 working age adults. The total gross Council expenditure for providing such care was projected at £86 million for 2018/19.
- 8 Residential and nursing care placements made by the authority for those aged 65+ are currently based on five banded rates as set out in the table below. However, only two of these bands are routinely used - Band 3 and Band 5 - and are often increased by supplementary needs allowances, third party top ups, or a local authority assisted funding payment meaning the current banded rate payments often do not reflect the total fee paid.

Current Banding	Banding Description	Weekly Rate
Band 1	Older People	£394
Band 2	Mental Illness/Drug or Alcohol Dependency	£417
Band 3	Dependent Older People	£466
Band 4	Learning Disability	£483
Band 5	Highly Dependent People/Physical Disability	£555
NRS	(Nursing)	£482

- 9 Placements for working age adults are made using the Care Funding Calculator (national benchmarking tool) that gives an indicative cost band for the individual. The consistent application of this tool is challenging in practice and can lead to significant variations in pricing. The relatively limited number of providers in the working age adult residential/nursing care market also contributes to additional pressure on costs.
- 10 The fee review seeks to establish a methodology that:
- Reflects the actual cost of providing care efficiently in the local market;
 - Assures value for money and affordability of placements whilst ensuring compliance with the Council's statutory duties under the Care Act 2014;
 - Can be used to calculate the cost of placements for people with complex care needs;
 - Can be altered to reflect changes in local and national requirements;
 - Includes a process for annual fee review.

Consultation Stage 2 Proposals

- 11 Building on the first stage of the consultation that considered the methodology and approach to be taken in the fee review, the second consultation contained the following proposals:
- Proposal 1: Based on the recommended options from C.co, the independent financial consultants appointed to support the development of a fair cost of care, the Council proposed that for Older Adult Placements, the Residential band should be set at £561 per week (£576 for 2019/20); that the Residential Plus band should be set at £619 per week (£635 for 2019/20); and that the Supplementary Needs Allowance (SNA) rate should be set at £11.36 (£11.66 for 2019/20) per hour;
 - Proposal 2: Following the options developed by C.co, the Council proposed that for Working Age Adult (WAA) Placements, the proposed WAA Residential band should be £705 per week (£724 for 2019/20). The Care Funding Calculator will be used, as it currently is, to calculate the individual cost of care for WAAs with needs greater than those that can be met at the WAA Residential band.
 - Proposal 3: In line with the C.co options developed, the Council proposed that band rates should be increased annually for the next three years to March 2022 using a blended rate based on Average Week Earning (AWE) services rate and the Consumer Price Index (CPI). The Council proposed applying AWE to staffing costs only, with CPI being applied to the remaining elements, a 57/43 split. Using the latest rates published in December 2018, this would produce an increase of 2.68% for 2019/20.
 - Proposal 4: Contractual changes will ensure the contract is reflective of the current legislation, best practice and guidance. The Council is also seeking to align its quality requirements with those of the Care Quality Commission (CQC). 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 to reflect developments in existing legislation affecting areas such as Human Rights, Health and Safety, General Data Protection Regulations and Equalities. As part of the contractual changes, the Council proposed to remove the voluntary Quality Assessment Framework (QAF) payments but work with providers, via Inspired to Care, (the Council's Strategy for supporting the social care workforce), to recognise and reward best practice and excellence in care.
 - Proposal 5: The Council wishes to make the implementation of the new fee rates as seamless as possible for all involved. To this end the intention is to automatically transfer as many cases as possible to the new appropriate band. To enable this the Council will begin assessing the eligibility of individuals against the proposed new banding definitions from April 2019 onwards. Although new placements will be made on the existing banding definition the information will be used by the authority to support an automatic transfer to new rates. The same approach will also be carried out for reviews undertaken between April and the start of formal implementation. It is the intention of the Council to automatically transfer current service users with a Band only placement, and where possible those with SNAs and Third Party Top Ups onto the proposed Residential band.
- 12 More complex placements will be reviewed to determine the eligibility of the individual within the new Band definitions. To expedite the implementation, the

Council intends to establish a proportionate review process to support this implementation.

Stage 2 Approach and Responses

- 13 The second stage of consultation began on 26 March and closed on 7 May 2019. The Council publicised the proposed Fee Review consultation by Press Release on the first day of the consultation. In this way the Council gave members of the public the opportunity take part in the consultation from the beginning. The Council also publicised and held a public meeting on the evening of 29 April 2019 that was attended by six people.
- 14 The Council sought the views of residential and nursing care providers, including the representative organisation EMCARE, advocacy organisations and service users with a Deferred Payment Agreement (DPA). These key groups were contacted directly, to encourage participation, they were given the option to respond by completing an online questionnaire, by email or by telephone.

Consultation with Residential and Nursing Care providers

- 15 Prior to the consultation, providers were invited to join a Provider Reference Group, to help the Council to shape its approach to the fee review. That group met five times prior to the consultation between April and October 2018. Discussions at that group relating to, amongst other things, the proposed banding definitions and cost template, were considered when developing the consultation proposals. A full report of the work of the Provider Reference Group was included in the consultation materials.
- 16 On 4 March 2019, ahead of the second stage of consultation formally commencing, an email was sent to providers advising them of the forthcoming consultation with advance notification of a series of eight consultation meetings that would be held at localities around the county during the consultation period to facilitate diary planning. Nine providers, representing 30 care homes attended consultation meetings and commented on the proposals using that mechanism. At those meetings, providers were encouraged to visit the website to complete the questionnaire.
- 17 The consultation was launched on 26 March by email to all residential care providers in Leicestershire and out of county providers with which we hold a contract. In total 285 emails were sent to providers asking them to visit the website and give their views using the online questionnaire. A follow up email was sent on 17 April to encourage providers to participate and a final reminder was sent on 2 May, five days ahead of the consultation closure date.
- 18 In total 118 different providers opened one or more of the emails sent during the consultation and the consultation website was visited 617 times, in 478 unique visits. Seven providers completed the questionnaire online, representing 11 care homes. However, two of the providers that attended the consultation meetings also completed the online questionnaire, so overall, 14 providers (5% of the providers with which the Council commissions placements) representing 35 care homes contributed to the consultation.
- 19 Although the response rate has been low, with relatively few providers responding, the quality of the responses has been high. The information supplied, from providers

with knowledge and expertise in the field, will shape the remaining work on the Fee Review and the final proposals submitted to the Cabinet.

Principal points from provider feedback received

- 20 Four providers indicated in their responses that the proposed rates for Older Adult placements are still lower than that required by the market, but unfortunately did not submit sufficient financial information to enable the model proposed by C.co to be reconsidered. The proposed rates are significantly above the current fees and are consistent with benchmarked fees paid against neighbouring authorities. No concerns have been raised in relation to the proposed Working Age Adult fee. The Council will, in line with its Market Shaping responsibilities, ensure that the market is sustainable when setting its fees.
- 21 A recurrent theme in the provider engagement events and contained within four of the questionnaires submitted was concern about the proposed annual uplift mechanism, and the use of AWE rather than National Living Wage. The Council is therefore carefully examining the arguments put forward before making a final proposal to the Cabinet.
- 22 Comments received in relation to the contract, including those made by EMCARE, are currently being considered by Legal Services before the Core Contract, Specification and other Schedules are finalised. The comments received have not been material in nature but instead relate to clarity of definitions, duties and timescales. Concerns were raised about the language used such as the repeated need to 'ensure', 'demonstrate' or 'indemnify'. Some of these clauses were considered to overreach the Council's authority and were potentially burdensome, with limited benefit.
- 23 Providers that are currently receiving QAF payments, along with EMCARE have raised concerns about the proposal to cease the voluntary QAF payments as part of the implementation of the new fee rates. However, the proposed new fee rates are above the current band rate and QAF combined so the Council believes the financial impact of the change will be mitigated. This proposal was also considered during the first stage of the consultation when providers had broad support for a consistent approach to quality that aligned with CQC requirements, rather than the current voluntary approach to additional payments.
- 24 Feedback from providers with regards to the proposed implementation referred mainly to the need for it to be completed in a timely manner. Detailed work on this area began during the Stage 2 consultation and is continuing to ensure a swift implementation subject to Cabinet approval.

Consultation with Advocacy Organisations

- 25 The Council again, as in the first stage of the consultation, contacted advocacy organisations to request comments on the proposals from the perspective of service users, carers and families. Drawn from the Voluntary Action database and those agencies with which the Council contracts, 14 organisations were contacted. None of the organisations responded to the consultation proposal either by completing the questionnaire, by email or by telephone contact.

- 26 Contact has continued with the Carers Group of the Learning Disability Partnership and a presentation was also made to the Learning Disability Partnership Board at its April 2019 meeting. A Task and Finish Group was convened by the Leicestershire Equality Challenge Group at which the Stage 2 consultation and the EHRIA were reviewed.

Public Engagement

- 27 Following the issue of a press release, and a letter sent to all the service users, or their representatives, with a DPA, the Council held a public meeting on 29 April 2019. Six people attended representing four older adults in care homes, three of whom were using a DPA; the other person was a self-funder. At this meeting the fee review was explained, as was the consultation undertaken to support the review, and the desire to obtain the views of members of the public. It was also explained that the proposed increase in the fees for 2019/20 will result in some people who pay top ups having their top up payment reduced or removed completely and that these changes would be backdated to 8 April 2019.
- 28 There was discussion about the cost of care incurred by people living in care homes and their families both through the 'means tested' charges that apply and the top up payments that are made. Questions were also asked in relation to Government Policy in this area, including the proposed cap on care costs that was not implemented.
- 29 When asked about whether a care home must justify an increase in fees, it was explained that regarding Council placements, which only account for approximately 35% of places in Leicestershire, increases are agreed via the annual fee review. Most self-funding people in care homes have negotiated their fee individually with the care home and the Council is not involved in those fees unless asked to support by the person or their family.
- 30 There was a discussion about how a DPA would be affected and it was explained that the Council had written to people with a DPA because the proposed increase in fees would affect them directly.
- 31 People present supported an increase in fees on the basis that costs were increasing and that homes needed the money to provide a good quality service. Good examples of workers, on low pay, providing good care were mentioned and those present asked if the Council could do anything to ensure that fee increases could be translated into better pay for care staff. It was explained that while there are laws and regulations regarding pay, the main driver of pay is market forces. Providers need staff and must pay the rate that will attract them.

Consultation with EMCARE

- 32 EMCARE supported the development of the proposals via the Provider Reference Group ahead of the consultation. It has also encouraged its members to take part in the consultation; but did not complete an online questionnaire or submit a written response. However, two meetings were held with EMCARE at which their views were sought and have been incorporated into the general feedback on the proposals.

Resource Implications

- 33 The gross cost of residential care/nursing care for adults was to be £91 million in 2018/19 and the Council receiving £38 million income from charging service users and local health commissioning partners through joint arrangements. The net estimated cost was therefore approximately £53 million, and the estimated impact of the proposed fees would increase costs to £99 million.
- 34 The Director of Corporate Resources and the Director of Law and Governance have been consulted on the content of this report.

Timetable for Decisions (including Scrutiny)

- 35 Following the Cabinet's approval, the first stage of the consultation, focusing on the architecture of the fee structure, took place between 14 November 2018 and 9 January 2019. The second stage of the consultation, including the proposed fee rates, took place between 26 March 2019 and 7 May 2019.
- 36 The Adults and Communities Overview and Scrutiny Committee was consulted on the proposed changes at its meeting on 6 November 2018 ahead of the first stage of consultation and was consulted ahead of the second stage of the consultation process at its meeting on 11 March 2019.
- 37 The outcome of the consultation, proposals for a revised fee structure and the financial implications of this will be presented to the Cabinet at its meeting on 25 June 2019. Subject to the Cabinet's approval, implementation of the new rates will be back dated from 8 April 2019.

Background Papers

Leicestershire County Council Strategic Plan 2018-22
<https://www.leicestershire.gov.uk/about-the-council/council-plans/the-strategic-plan>

Report to Cabinet: 14 December 2010 - Quality Assessment Framework for Older People's Residential and Nursing Independent Care Providers
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=2914&Ver=4>

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>

Circulation under the Local Issues Alert Procedure

- 38 None.

Equality and Human Rights Implications

- 39 The consultation has been informed by the findings of the Equalities and Human Rights Impact Assessment (EHRIA) screening, which was undertaken to support

Stage 1 of the consultation, and a full EHRIA assessment which was completed for Stage 2. The results of the consultation will feed into the final EHRIA report, together with advice from the Leicestershire Equality Challenge Group and legal advice, which will be presented to the Cabinet in June 2019.

- 40 Changes in the fee structure will financially impact on those service users who have been assessed as full cost payers, but who have their care arranged by the Council – these number approximately 60 at this time. In addition, given that the Council is the single largest purchaser of residential and nursing care in the County, any changes to the fee rates paid by the authority are likely to have an impact on the wider self-funder market.

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