

Stage 2 Consultation Report

Introduction

Leicestershire is changing the way it pays for residential and nursing care, the contractual arrangement and the way in which it makes new placements. To make these changes, the Council formally consulted with members of the public, services users, advocacy agencies and care home providers.

The purpose of this report is to document the feedback from the second stage of the consultation, provide an analysis of the themes that emerged and set out the Council's response to the feedback received. This report should be read in conjunction with the report that was published following the first stage of the consultation.

Though the fee review consultation was undertaken in two stages, no final decisions will be taken until approved by the Council's Cabinet, anticipated to be at the meeting in June 2019. Throughout the second stage of the consultation, consultees were advised that they could comment on the first stage proposals as well as those in the second stage of the consultation.

Background

The current arrangements for determining the fees for care homes in Leicestershire have not been reviewed since 2011. Since then new responsibilities have been placed on the Council by the Care Act 2014. Similarly, the core contract and specification for residential care have not been reviewed since 2012. These documents need to be revised to reflect the Care Act changes as well as the changes made following this consultation.

The Council's overall aim is to support people to live at home for as long as possible to reduce the need for residential and nursing care services and develop alternative accommodation options such as Extra Care. This approach is described in Promoting independence, Supporting Communities; Our Vision and Strategy for Adult Social Care 2016–2020.

However, the Council recognises the vital contribution that residential care, and nursing homes make in Leicestershire and that for some people a care home is the only service that can offer the care and support needed. With over 2,000 people supported by the Council in care homes, some 180 homes in the county and expenditure in the region of £86m per annum, this is a critically important part of the adult social care market.

The consultation on this review has been in two stages; stage 1, considered care home providers' views about the proposed changes to the structure and processes involved in making and reviewing residential and nursing care placements.

The stage 2 consultation is summarised in Appendix 1. In this stage of the consultation, the Council sought views on:

1. The proposed band rates for Older Adults (OAs)

2. The proposed band rate for Working Age Adults (WAAs)
3. The proposed approach for annual uplifts
4. The proposed contractual changes
5. The proposed implementation approach

The responses to these proposals are detailed in Appendix 2 and discussed later in this report.

Consultation approach and response rates

The second stage of consultation began on Tuesday 26 March and closed, six weeks later, on Tuesday the 7 May 2019, six weeks later. 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 to take part in the consultation from the beginning. The Council also publicised and held a public meeting on Monday 29 April.

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. These key groups were contacted directly to encourage participation, and they were given the option to respond by completing an online questionnaire, by email or by telephone.

Consultation with Advocacy Organisations

The Council again, as in the first stage of the consultation, contacted advocacy organisations to request comment 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. Contact was also 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 meeting.

None of the organisations responded to the consultation proposal either by completing the questionnaire, by email, or by telephone contact. No comments were made regarding the draft Equality and Human Rights Impact Assessment Report that was published as part of the consultation papers.

Consultation with service users with a Deferred Payment Agreement (DPA)

There is an expectation that the fees the Council pays to providers will increase because of the fee review, so the fees paid by service users with a DPA would also increase. The Council therefore wrote to all the service users with a DPA, or their representatives. Family members representing 3 service users with a DPA attended the public meeting which the Council held. Three others also responded by telephone to seek further explanation of the process and its potential impact on their arrangements; no one emailed or completed the questionnaire. The points raised at the public meeting are discussed in the responses below.

Public Meeting

Following the issue of a press release, the Council held a public meeting on 29 April. Six people attended representing 4 older adults in care homes, three of whom were using a Deferred Payment Agreement, the other person was a self-funder.

At this meeting the fee review was explained, as was the consultation undertaken to support the review, together with the desire to obtain the views of members of the public. Naturally, 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.

It was 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 8th April 2019.

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. But 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.

There was a discussion about how a Deferred Payment Agreement (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. Discussion also referred to the contractual arrangements for people in care homes, the importance of a lasting Power of Attorney, and how individual need is assessed.

When discussing the proposed increase in fees people present supported an increase 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 was the market. Providers need staff and must pay the rate that will attract them, which in Harborough is greater than the National Living Wage. It was also explained that, although the Council only funds some 35% of the places in Leicestershire care homes, it must pay fees that ensure that it can make placements when required to do so.

Consultation with EMCARE

EMCARE supported the development of the proposals via the Provider Reference Group ahead of the consultation. It also encouraged its members to take part in the consultation but did not complete an online questionnaire or submit a written response.

Two meetings were held with EMCARE, at which their views were sought. The first meeting held was on 25 February, after the completion of the first stage of the consultation and the second was held on 7 May.

During the first meeting, feedback from stage 1 was summarised, most providers supported the two-band approach, some providers raised concerns about the use of the Care Funding Calculator and the proposal to remove voluntary Quality Assessment Framework (QAF) payments. Most providers did not support the idea of paying Leicestershire rates to Out of County providers. It was explained at the first meeting that the Council is making some planning assumptions and adjusting its approach based on the feedback from stage one of the consultation, but that no final decisions will be made until Cabinet does so in June 2019 after the second stage of the consultation is complete.

It was queried whether providers would have to sign the new contract before new payments were implemented. It was confirmed at the time that this was not the case and discussion of the contract changes focused on the desire to align quality standards with those of the CQC.

It was suggested that use of the CQC Provider Information Return may be a good way to standardise reporting and reference was made to the work of the Home First Care Home subgroup discussions on this matter.

The point was made that if the Council's Quality Assessment Framework (QAF) payments were to be removed then the sums involved are significant for some providers and that some would need time to plan for that. It was explained that the Council would make clear its plans for the QAF in stage 2 of the consultation.

Plans were outlined for the second stage consultation and it was explained, at that time, that the outcome of the first stage of consultation and the approach to stage 2 would be examined by the Scrutiny Committee on 11 March and that relevant papers would be published 4 March.

Regarding implementation, it was highlighted that the Council was not up to date with its reviews and it was explained in response that the required resourcing was being examined as part of the implementation planning.

It reiterated that the Council would welcome as much feedback as possible from providers to the consultation and a response from EMCARE. A meeting was agreed during the consultation, to provide any clarifications that EMCARE might need ahead of the finalisation of their response.

During the second meeting, EMCARE provided detailed feedback on the proposed Core Contract and Specification, as well as comments on the Individual Placement Agreement (IPA) and Band Definitions. Amongst other things, concerns were raised about the language used such as the repeated need to 'ensure', 'demonstrate' or 'indemnify', clauses which appeared to overreach the Council's authority and clauses that were potentially burdensome, with limited benefit. Clarification was also sought about equipment and short-term placements.

Some sections referred to a 7-day notice period, which seemed impractical from both the providers' and Council's perspective. The value of including the QAF schedule (and process) without payments was questioned, As was the 19 and 24-hour guidance in the Band Definitions. All the comments made were recorded and will be considered, alongside the contributions made by providers and others during the consultation.

Consultation with Residential and Nursing Care providers

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 5 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 for the first stage of the consultation.

Also, prior to the start of the second stage consultation, an email was sent to providers on 4th March 2019 advising them of the forthcoming consultation. This communication also gave them advance notification of a series of consultation meetings that would be held at localities around the county during the consultation period to facilitate diary planning.

The consultation was launched on 26 March by email to Leicestershire and out of county providers. In total 282 emails were sent to providers. The email provided summary information about the consultation, a link to the website where all the consultation information and questionnaire could be found and email and telephone contact details for those that wished to respond via those routes. 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 of 7 May 2019.

Of the 282 emails sent on 26 March, 91 (32%) were opened and 17 recipients (19% of those who opened the email and 5% of group emailed) used the email to click through to the fee review pages on the website. Of the 282 emails sent 191 (68%) were not opened.

A reminder was sent 17 April and 67 (24%) were opened and 9 recipients (13% of opened emails, 3% of total group) used the email to click through to the fee review pages on the website. The final reminder was sent 1 May 2019 and 77 (27%) were opened and 12 recipients (16% of opened emails, 4% of total group) used the email to click through to the fee review pages on the website.

Providers were also invited to give their views at a launch meeting on the first day of the consultation or at one of a series of 7 other meeting held at localities across Leicestershire, during the consultation period. 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.

In summary, 130 different providers opened one or more of the emails sent during the consultation, but it is safe to say that only a very small number of providers used it to access the fee review information. Regarding the consultation website, in total the consultation page was viewed 617 times by 478 unique visitors. Seven providers completed the questionnaire online, representing 11 care homes.

Three of the providers that attended the consultation meetings also completed the online questionnaire, so overall, 13 providers representing 34 care homes contributed to the consultation. This represents 5% of all the providers currently used and 8% of the care homes, and as such is a small sample. The questionnaire responses and the views expressed at the consultation meetings are detailed in Appendix 2, the key themes that emerged regarding each proposal are discussed in the next section

Provider Responses on Proposals

Proposal 1 – Older Adult Band Rates and Supplementary Needs Allowance.

C.co was commissioned by the Council to undertake an independent review of local care costs in Leicestershire. This exercise was undertaken using the cost data provided by local providers and other benchmarking data.

Based on the recommended options from C.co the Council proposes that for Older Adult Placements, the Residential band should be set at £561 per week (£576 for 2019/20). That the Residential Plus band is set at £619 per week (£635 for 2019/20), and that the Supplementary Needs Allowance (SNA) rate is set at £11.36 (£11.66 for 2019/20) per hour.

When assessing the responses to the proposals it is important to say that the response rate via the questionnaire, and attendance at the consultation meeting, was low; only 5% of the providers that the Council has people placed with took part in the consultation. Also, just 7 providers responded to the questionnaire and one provider that was critical responded at length.

However, based on the responses, one provider was very critical of the proposed band rates and, though the proposed rates represent a significant increase on the current rates, 3 other providers said that the rates proposed were not sustainable. One provider offered some financial information to support the view expressed but none of the others did.

One argument put forward to support the view that the rate is unsustainable for the market is that the Residential rate is below what most providers charge currently and therefore top up payments will continue be required. The Council acknowledges that top up payments are made across the county, but the at this time Council commissions 58% of residential care placements at the current band rates, which are significantly below the proposed bands.

Another key point that one provider highlighted is that the split of residents between Residential and Residential Plus will be critically important in determining the financial viability of the home. This is an important point and the Council has tested the proposed bands internally and has worked with the provider concerned to pilot a checklist that will enable the Council to agree bandings with providers during the transition to the proposed new bands. But at the same time, cases that will clearly move to one band or the other can be progressed quickly to complete implementation as soon as possible.

It was also argued that the proposed bands are below the Laing Buisson benchmark rates, and that a zero-based review, working with providers should be undertaken by the Council. It is important to say here that the Council tried to work with providers to build up a model of the cost of care in Leicestershire. Via the Provider Reference Group that met before the first sage of the consultation a fee model was developed and consulted upon in stage 1. Providers were asked to populate that model but very few provided the level of detail required. The independent financial consultant (C.co) gathered all the relevant information that was supplied and used it to develop the proposed bands that were consulted upon in stage 2. The Council therefore takes the view that proposed bands reflect the cost of care in Leicestershire much more closely than the Laing Buisson benchmarks.

A recurring theme is that the proposed Supplementary Needs Allowance (SNA) rate is too low. Again, this rate was calculated from the returns that providers made and so should reflect current expenditure. At the proposed level of £11.66 for 2019/20 it is above the Care Funding Calculator hourly rate, which is £10.66, that is used for Working Age Adult placements in Leicestershire. The Council accepts the point raised that this rate will not cover the cost of agency staff but believes that homes should be looking to have a consistent, employed staff team and not rely on agency staff to meet complex needs. The Council is also investing in the External Workforce Team through the Inspired to Care project, which aims to support all providers in the care sector with changing perceptions, recruitment, retention and recognition of care staff.

The increased level of need of residents in recent years and increasing regulatory requirements were highlighted as reasons why the proposed 19 and 24 hours of individualised care were too low for the proposed Residential and Residential Plus band respectively. These estimates were discussed with the Provider Reference Group ahead of consultation, are based in previous research and are similar to those used by Leicester City Council. The hours are intended to be indicative of the levels of support individuals need and the Council recognises that this will be to some extent based on the core staffing hours that a Home uses.

Proposal 2 Working Age Adult Band Rate

Following the options developed by C.co, the Council proposes that for Working Age Adult (WAA) Placements, the proposed WAA Residential band is £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.

The key concern raised here, by one provider, is the use of the Care Funding Calculator (CFC), rather than the band rate on which the Council was consulting. That provider argued that rather than using the CFC, the Council should agree the cost of care for each resident at each home based on the actual cost incurred at that home. Irrespective of the advantages and disadvantages of such an approach, this is not what the Council was consulting upon. The decision was taken by the Council's Cabinet in October 2018 that the Council would use the CFC for Working Age Adult (WAA) placements. A second WAA provider commented in one of the consultation meetings that the band rate appeared reasonable but wanted to undertake further checks.

The nature of this client group is that, unlike residents in OA homes, most WAA residents will have a bespoke package rather than the WAA band payment, and that was highlighted in the consultation meetings. However, some will be placed on a band and therefore an appropriate band is needed.

Proposal 3 – Annual uplift

In line with the C.co options developed, the Council proposes that band rates are increased annually for the next 3 years to March 2022 using a blended rate based on Average Week Earning (AWE) services rate and the Consumer Price Index (CPI).

The Council proposes 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.

The proposal of having an automatic uplift has support, that was seen in stage 1 too, but the key concern voiced here is the use of the AWE Services measure rather than the National Living Wage (NLW). Most, if not all, appeared to regard this as the wrong driver to use, arguing that the movement in NLW, drives increases in their own payroll costs.

The argument was made that if the uplift mechanism did not keep pace with costs, the gap between what the Council pays, and the actual cost of care would widen, leading to poor quality and ultimately providers leaving the market. This argument that band rates that are too low will result in reduced quality was a point that was made throughout, but no evidence was provided to support it. In common with many counties, 8 out of 10 care homes in Leicestershire are rated as good by the Care Quality Commission, it regards leadership as a key determinant. The Council has hitherto, found no evidence of a link between quality and fees in its contract and quality management work.

The use of a blended rate based on labour and non-labour cost should, it was suggested, be 70/30. This suggestion came from one WAA provider, but no evidence was submitted to support that assertion. Furthermore, uplifts in that market are more likely to be driven by individual review and use of the CFC rather than using the blended rate.

Proposal 4 – Contractual Changes

The proposed changes are to 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 changes in legislation such as Human Rights, Health and Safety, General Data Protection Regulations and Equalities. As part of the contractual changes, the Council will remove the voluntary QAF payments but work with providers, via Inspired to Care, to recognise and reward best practice and excellence in care.

For current QAF providers, the key issue here is the removal of the QAF payments, though for other providers this was not a concern. There is support for the proposal to align contractual requirements with the CQC, but the point was made again that quality came at a cost, and that the fees needed to be sufficient to fund it. Feedback on the draft Core Contract, Specification and Individual Placement Agreement was received and will be considered when drafting the final versions of these documents.

Proposal 5 – Implementation Approach

The Council wishes to make the implementation of the new fee rates as seamless as possible for all involved. To this aim 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.

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.

A minority of providers agreed with the approach outlined, concerns were raised that the transfer of existing residents to the new bands will be budget or administratively led, rather than needs led. The concern that the transition might be delayed was also highlighted. The challenge here is that in trying to mitigate one of these issues, the risk associated with the other increases. Implementation planning is in progress, and, based on the consultation feedback, an approach will be developed that entails consideration of the residents in each home, communication with the provider about cases that are borderline Residential Plus, and automatic transfer of those that clearly fall into the Residential band. This, together with the recruitment of additional staff, will enable a quicker transition of current residents to the proposed bands.

Implementation regarding Out of County (OCC) placements was raised as an issue, but the current practice to pay the host Local Authority rate and review high cost placements will continue, so further communication with Out of County Providers will be needed during implementation to explain that there will be no change to the current approach.

General points and other issues

A key issue highlighted here is the view that while the Council, and the CQC want excellence, the funding is insufficient to deliver it, this issue has been addressed earlier. Also, even though a significant increase in rates is proposed, there is still a suspicion that this is a cost cutting exercise. One respondent seemed to think that rates are being cut, but they are not. Compared with the current Band 3 rate of £466 per week, the proposed Residential rate of £576 for 2019/20 is a 24% increase.

Conclusion

The first point to make in conclusion is that though the response rate has been low, the quality of the responses has been high, from members of the public, providers and EMCARE. The information supplied, from people with knowledge and expertise in the field, will shape the remaining work on the Fee Review and its outcome.

Regarding the Older Adult band rates, it is interesting that one respondent argued for a zero-based approach, as in effect that is what the Council tried to undertake at the outset. However, the limited and partial information supplied meant that this approach proved not to be feasible, so costs were grouped to estimate the cost of care in Leicestershire.

The argument that the published Residential band rate falls short of the cost of care has not been evidenced during the consultation. The fact that the proposed bands are based on data collected by an independent financial consultant does not seem to be taken into account by the respondents.

Some financial information was provided by one organisation, but it was partial and relates to just one home.

Two WAA providers took part in this consultation and one thought that the Proposed WAA band was fair, the other was not so much concerned with the level at which the band was set but rather the use of the CFC to calculate the cost of care, upon which the Council was not consulting.

Regarding Proposal 3 there is support for it in principle, although one provider has argued that there should be consultation each year to agree the uplift based on the documented cost of care. However, the use of AWE has been questioned by all providers who took part in the consultation and the blended rate split by some. Providers state that a gap that already exists between the Council's fees and the actual cost of care will worsen if the annual inflationary increase is flawed.

Regarding Proposal 4, loss of the QAF payments was the issue that generated most concern, but only for those on the QAF scheme. That said, whilst it is a minority of providers, it is a significant number, 51 homes, nevertheless. There is support for the proposal to align requirements with the CQC and EMCARE have provided detailed feedback on proposed changes.

Feedback on the implementation approach creates a dilemma for the Council. Of course, the fees paid should be needs led rather than administratively driven, but full reviews take time, and although additional staff have been employed, use of a needs led approach to drive implementation will delay completion of it to more than 12 months. If the Council responds to the concerns raised in respect of Proposal 1, then many of the concerns raised about implementation can be alleviated. It is recommended therefore that the Council continue with its plans to implement using a combination of review and administrative transfer, but that it works closely with individual providers, as cases are transferred to the new bands.

Recommendations

Proposal 1 – Proceed with the implementation of the proposed Older Adult bands and SNA rate.

Proposal 2 – Proceed with implementation of the proposed Working Age Adult band.

Proposal 3 – Proceed with the approach consulted on that provides an automatic uplift mechanism, but continue to consider the use of the Average Weekly Earnings Services Rate with the market, with particular consideration of factors such as policy change which may follow from the publication of a Green Paper or response to the recent CMA report; significant changes to NLW or any other significant factors.

Proposal 4 – Proceed with implementation of the contractual changes, taking account of the detailed comments received.

Proposal 5 – Proceed with implementation planning, ensuring that the needs of residents are not compromised by the need to implement in a timely manner, alongside the work needed on the recommendation associated with proposal 1 above. Also, monitor implementation closely with a range of residents and care homes to ensure there is not an adverse impact.

Next Steps

This report and its recommendations will be submitted to the Project Board and Departmental Management Team for consideration.

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