

Report to Cabinet Member for Adults and Health

February 2021

Fees Paid to Independent Providers of Adult Social Care 2021/22

Report by Executive Director of Adult Social Care and Health

Electoral division(s): All

Summary

The fees paid to independent providers of adult social care provision in the community and in residential and nursing homes are subject to annual review.

This report sets out the proposal for the increase and the factors considered in setting the fees.

It is our priority to ensure that the market can cope with vulnerable people at this unprecedented time dealing with COVID-19, therefore the Council has made and continues to make provision to address financial pressures resulting from this independently of this decision.

Recommendation

The Cabinet Member for Adults and Health is asked to approve a fee increase of 1.75% for contracted providers who have made individual care agreements with West Sussex County Council (WSSCC) Adults and Health Social Care Service.

Proposal

1 Background and context

- 1.1 West Sussex County Council's (WSSCC) Health and Social Care Directorate commissions independent care providers, including residential, nursing, home-based care, and day care to provide care to individuals or service users who are assessed in line with the Care Act 2014 as having eligible care needs and are in need of support. Fees paid are in line with the individual contract agreements for the individual or for the service and uplifted as appropriate in accordance with an annual review of fees and charges.
- 1.2 Most of the care within West Sussex is provided by independent organisations and therefore they can choose whether they will accept social care customers. For example, in the older adults market in West Sussex the Council buys approximately 35% of care, with health buying approximately 1%. The rest of the market is taken up with private care arrangements and a small number of

individuals placed by other councils. Across older people as a customer group needs can often be categorised in one of several ways, so a series of indicative rates are set at which placements are expected to be made for dementia, frailty, and nursing. There is an increasing gap between the level of payments made by private or self-funding customers and the amount available for those in receipt of social care.

- 1.3 For younger adults and mental health care services individuals are mainly placed either by health or social care with a minimum number of those paying for their own care so there is no real impact of self-funders with private care arrangements on this part of the provider supply or market.
- 1.4 WSCC has two key duties to consider when agreeing fees. The first is regarding public law, which means fees agreed must be affordable to the public purse and fit within the regional context taking into reasonable consideration the authority's own finances, as well of those of the providers. The second duty (Care Act 2014) is to ensure there is a sustainable, diverse, and agreed quality supply of care in the area.
- 1.5 The tension of agreeing fees in the context of the regional market position (with a dominant availability of care priced for those who can fund their own care) and the Council's duties, means that several providers will not supply care to the Council for social care funded customers. Providers may also try to negotiate a fee in excess of that previously agreed with the Council. This is possible as the Council has a limited number of block contracts and therefore mainly purchases care on a spot basis, which means that while an indicative rate applies, the market forces of supply and demand can fluctuate the price at any time. On the other hand, this approach enables the Council to only buy what is needed.
- 1.6 This report excludes block contracts as the annual fee increase are generally contained within the terms of conditions of each of those contracts. The timing of those fee increases varies from contract to contract, in line with the terms and conditions.
- 1.7 Commissioning officers annually review fees, in addition to the two duties above, the officers consider:
 - Financial (business pressures) on providers such as inflation, national living wage, CQC regulations both in provision of different levels of care and standard of living accommodation, training, pensions etc. The legitimate costs of a business, recognising businesses are run for profit.
 - Contract clauses for the providers relating to price levels changing and inflation.
 - Using market intelligence to ensure care purchased is in line with commissioning strategies.
 - Information from and dialogue with providers via Provider Forums, individual provider discussions and West Sussex Partners in Care (Care Provider Association) to identify pressures and issues to support the sustainability, quality, and diversity of the market place.
- 1.9 Due to the pandemic the health and social care system, including care providers, is not only under pressure, but in a state of constant change. The

numbers of individuals needing care, the type of care and the organisations who previously may not have wished to work with the Council are all changing factors. It is therefore difficult for both the Council and providers to understand the impact of the current situation in the longer term.

- 1.10 Therefore the proposal excludes any funding for the pandemic (Covid), as during 2020/21 funding has been supplied separately to providers, both those contracted with the Council and the wider market, via one off payments to sustain the contracted providers and Infection Control Grant payments received from Central Government through the year which have been passed to both contracted and non-contracted providers. In addition, while spot purchases have largely remained in line with guidance there have been occasions when slightly higher prices have been paid to reflect current provider pressures.
- 1.11 Additionally in 2021/22 some key framework agreements are or will have recently been re-tendered enabling providers to submit bids for the provision of care.

2 Proposal details

- 2.1 In recent years, the County Council has allocated its uplift funding on a differentiated basis to reflect specific market conditions and to support its commissioning intentions. For 2021/22 this is not considered appropriate. Covid-19 has had a wide-ranging impact across providers in all care sectors, so market stability is the overriding priority. As a result, the proposal is to increase the amount that the County Council pays to all care providers by 1.75% for the financial year 2021/22, with the exceptions below in item 3.
- 2.2. The type of care covered is Care homes, Care homes with Nursing (including Dementia), Supported Living, Care and Support at Home Shared Lives, Day Care, Prevention Services and drug and alcohol residential (rehabilitation/detox services). For all of these, which includes placements that are made outside West Sussex, the increase will be payable from April 2021.
- 2.3 For Extra Care Housing providers will also be paid an uplift in line with the contract terms and conditions but this will be from October 2021 in line with contract anniversary dates.
- 2.4 Appendix 1 shows the effect of the increase on the Council's indicative rates.

3 Other options considered (and reasons for not proposing)

- 3.1 Direct Payments are not included within the above proposal as the amount payable to the individual / service user, made to enable the person to buy their own care (excluding long term residential care), is reviewed as part of an annual care review undertaken by a social worker. Any variation will be made in line with the person's care needs. These can also be altered at any time throughout the year and this has occurred particularly as some provision, such as Day Service provision, may have become unavailable during the year due to the pandemic. Similar cost pressures are likely to apply to the items purchased using a Direct Payment, so funding equivalent to a 1.75% increase will be provided for operational teams to call upon, when appropriate, after a reassessment has taken place.

- 3.2 Deferred payments apply when the person has insufficient cash funds but enough assets to pay for their own care. The Council pays the provider as the Council has contracted the care on behalf of the person, therefore these placements will receive an increase. There is a separate re-payment process between the Council and the person.
- 3.3 Placements arranged between 1 January 2021 and the 31 March 2021 will not receive an uplift unless they are made at the Council's indicative rate.
- 3.4 Short term placements (additional services) are outside the scope of this fee increase. These will be short one-off placements purchased on a spot contract and subject to rapid turnover.
- 3.5 Prices charged for a placement in one of the County Council's in-house services are subject to a separate process and so are outside the scope of this report.
- 3.6 This increase is not applied to a specific part of the Supporting Living Framework (i.e. sleep in rates) due to a decision pending at the Supreme Court.
- 3.7 The 'top-up' care payments by third parties or individuals to care providers, are subject to individual agreements between each provider and individual and are therefore excluded from this report.

4 Consultation, engagement and advice

- 4.1 The Council has discussed fee increases as part of the West Sussex Social Care Provider Forum with a range of representatives from across the care sector. Commissioners have also discussed fee increases with West Sussex Partners in Care. In addition, providers have individually contacted commissioning officers and the feedback from all these mechanisms have been considered in the development of the approach.
- 4.2 Although the fee increase covers the Consumer Price Index (CPI) and the National Living Wage, for any individual provider the actual level of cost pressure may be different. Due to the impact of the pandemic and the provision of other additional payments through the year, neither the Council or the providers are in a position to fully understand how to factor into the baseline costs of any contract a 'normal' post pandemic fee without competition. With contracts such as Care and Support at Home and Supported Living about to be tendered or re-tendered during 2021/22, significant areas of spending will also be subject to market forces. Providers have the right to object to any proposed fee increase.
- 4.3 There is a low risk of legal challenge by providers if they feel that the Council has not met its duties under the Care Act and are not paying sufficient fees to enable them to be sustainable. The proposals have taken into account factors such as inflation and increased costs to providers.

5 Finance

- 5.1 In gross terms, the County Council spends around £226m on the care costs which are the subject of this report. £3.94m has been provided in the 2021/22 budget to fund the uplifts which are being proposed, of which £0.3m will be met by the West Sussex Clinical Commissioning Group through the pooled budgets for learning disabilities and working age mental health. That figure consists of £1.13m as an inflation allocation, which is based on the September 2020

Consumer Price Index of 0.5%, plus £2.81m as a contribution towards the cost pressure that care providers will face when the National Living Wage rises by 2.18% to £8.91 per hour from 1st April (as defined by legislation). In aggregate terms this is equivalent to an increase of 1.75%.

5.2 The actual cost of the recommendation will depend on the group of people who receive adult social care during 2021/22. This will be subject to significant turnover, which will lead to changes in the mix of spending and therefore the cost of the recommendation cannot be stated with complete certainty. Nevertheless, based on forecast customer numbers, the proposal is affordable and accounts for the totality of the funding that is available.

5.3

	Year 1 2021/22 £m	Year 2 2022/23 £m	Year 3 2023/24 £m
Revenue budget	3.94	3.94	3.94
Cost of proposal	-3.94	-3.94	-3.94
Remaining budget	0	0	0

5.4 The effect of the proposal:

(a) **How the cost represents good value**

Operating conditions for adult social care providers are particularly challenging at this moment in time because of Covid-19. Consequently, the County Council's budget strategy enables an uplift that allows for the impact of both general inflationary pressure and of the increase in the National Living Wage from April. In that way the proposals will maintain the value of the County Council's payments in real terms and so aim to strike a balance between the needs of the market and affordability to the local taxpayer. The uplifts do not take into account specific Covid-19 related costs, which will be considered separately because their impact should be time-limited.

(b) **Future savings/efficiencies being delivered**

The recommendation seeks to maintain the County Council's market position. Paying anything else would risk being a false economy because of the County Council's dependence on independent providers. Opportunities for future savings/efficiencies will arise instead from successful delivery of the service's ambition to promote independence, which aims to produce better care outcomes for people, thereby making for more efficient use of resources over the longer term.

(c) **Human Resources, IT and Assets Impact**

The impact on the administration of the fee uplift is reflective of the number of individual agreements or spot purchases made. This is a complex uplift to administer which takes approximately 10 days to prepare and implement. This covers finance, adults, and IT systems teams.

The changes to fees impact on the provider return reconciliation process, which is a manual process supported by complex spreadsheets, all of which will need to be altered.

It also impacts on our Central Placing and Sourcing and operational teams who need to review individual cases if the fees agreed are higher than the individuals' personal budget.

The review of the impact on Top Up' and Deferred Payments is a manual exercise.

In addition, any agreed re-negotiation for any care provided at home then has to be manually administered as there is no automated process to back date any fees agreed.

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
<p>Providers do not accept the increase as reasonable and request higher prices</p> <p>Potential Impact: Inability to purchase services enough to accommodate demand for services.</p> <p>Provider instability and market exits.</p>	<p>The dynamics of the care market mean that this risk cannot be discounted. However, the turbulence created by Covid-19 makes those dynamics subject to change, which is likely to create opportunities as well as present challenges. These will be addressed through the County Councils market position statement, which will aim to ensure a sustainable supply of care in the future through collaborative working with providers. In the short term a further £0.6m is available in the Resilience Fund, which can be used to address specific issues, available to providers should they suffer financial hardship. This includes open book accounting requirements.</p> <p>Consultation and engagement with providers.</p> <p>Recognising the award of additional payments made during 2020/21 to sustain the market, as well as Infection Control monies and availability of free PPE during 2020/21 now extended until June 2021.</p> <p>Additionally, some major contracts / frameworks are due to be awarded, tendered, or re-tendered which may provide a way of Providers identifying individual costs, in line with the relevant process and as appropriate.</p>
<p>The necessary system changes are not made to allow the uplifts to be paid to providers from the beginning of April</p>	<p>Re-prioritisation of work.</p>

7 Policy alignment and compliance

- 7.1 All care groups were considered in determining the approach for fees and rates to encourage a fair and uniform approach. The proposals will not have a disproportionate effect, either negative or positive, on any person with a protected characteristic in comparison to those without those characteristics.
- 7.2 The fee uplifts proposed are applicable to customers who meet the national eligibility threshold and are eligible for financial support from adult social care to meet their assessed needs, for those customers who are full cost payers there will be an effect on the sum they are recharged.
- 7.3 The proposals outlined in this paper are intended to cover inflationary costs. It excludes the additional costs of the pandemic as the long-term impact is unknown and has been funded during 2020/21 by WSCC and central government grants. Longer term commissioning strategies and intentions will require review in line with the changing markets during 2021/22.
- 7.4 At the current time cost impacts are reflected across all markets and with the instability and changing position caused by Covid19, the approach reflects the current demands and priorities.
- 7.5 In reaching a decision on the level of fees, the Council has considered its duties under the Human Rights Act, and in particular Article 8, and the need to consider the private and home life interests of all those assessed to be in need of residential and other basic care. The Council has endeavoured to ensure that the proposal in this report enable these needs to be met.
- 7.6 There are no climate change, public health, social value or crime and disorder implications.

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Appendices Appendix 1 (Care Guide rates for 2021/22)

Background papers None