

Report to Director of Adults and Health

March 2022

Fees paid to Independent Sector Providers of Adult Social Care 2022/23

Report by Assistant Director (Commissioning)

Electoral division(s): All

Summary

The fees paid to independent sector providers of adult social care provision in the community and in residential and nursing homes are subject to annual review. This report to the Executive Director of Adults and Health makes recommendations for the increases to be awarded to relevant contracted provision for 22/23.

The proposals developed take account of the current market position, targeting support to areas most in need of stability and growth and which will support the Councils strategic intentions - particularly community based provision. Recommendations also focus on reducing the number of residential and nursing placements for which the Council is needing to pay an agreed rate rather than a usual maximum rate and to sustain markets in line with the direction that Government has signalled through the Market Sustainability and Fair Cost of Care Fund.

The context of increasing inflation, National Living Wage costs and the forthcoming introduction of the Health and Social Care Levy in April 2023 has also been considered in the development of the proposals for the level of uplifts and the direction of these.

Recommendations

The Director of Adults and Health is asked to approve the 2022/23 fee increases paid to independent sector providers in line with the proposals set out in section 2.2-2.26 of the body of the report.

Proposal

1 Background and context

- 1.1 Individuals who are assessed by the County Council under the Care Act 2014 as having eligible social care needs and in need of support to meet those needs often receive care and support from Independent Sector Providers. Fees paid to independent sector providers for these services are in line with the relevant

contract arrangements for the individual or service and uplifted as appropriate in accordance with an annual review of fees and charges.

- 1.2 Independent sector providers often support customers with a range of funding arrangements including social care customers referred by the Council on the individual's behalf, customers privately funding their own care directly, health funded patients and customers choosing to take a social care budget as a Direct Payment and funding care directly through that budget. The Council directly funds around an estimated 30% of the market being provided to older people in West Sussex whilst being the dominant purchaser of services for people with lifelong needs.
- 1.3 The social care market in West Sussex is impacted by the same challenges facing social care providers nationally, although often further exacerbated by the local economic position and associated challenges. The social care workforce is the foundation for the provision of social care and recruitment and retention of sufficient volumes of care workers is the most challenging it has perhaps ever been. The impact of the pandemic on the workforce can't be underestimated.
- 1.4 In recent years an increasing percentage of older peoples council funded care is commissioned outside of the published usual maximum rates which the Council publishes each year (see Appendix 1 for 22/23 rates.) This has escalated during the pandemic and the Council now has a position where a range of differential rates are paid in order to secure care. Providers paid on usual maximum rates and lower level agreed rates are identifying challenges in remaining financially sustainable as we approach a year of increasing costs, including a 6.6% increase in National Living Wage, rising National Insurance contributions, higher rates of inflation than we have seen for many years and a constrained workforce. The Council has a duty under the Care Act 2014 to ensure there is a sustainable and diverse market providing quality care services.
- 1.5 In September 2021 the Prime Minister announced a plan for reforms of how people in England will pay for their social care. These changes, amongst wider health and social care reforms set out in the Health and Social Care Bill are currently being worked through as part of the Parliamentary bill process. One of the focuses of the social care reforms is to provide a cap on the personal care costs that individuals are required to pay and to enable more people to ask the local authority to arrange care on their behalf to secure better value. This is expected to have an impact on local markets particularly in counties such as West Sussex where the market is heavily funded directly by residents at a rate which has previously been acknowledged as often being higher than those in receipt of Council funded social care.
- 1.6 On December 16, 2021, the Department of Health and Social Care then published the policy paper "Market Sustainability and Fair Cost of Care Fund: purpose and conditions 2022 to 2023" which sets out requirements for local authorities in preparation for implementation of the forthcoming Health and Social Care Bill. This includes requirements to prepare markets for the reform by conducting a cost of care exercise to determine sustainable rates, engage with local providers to understand the impact of the reform, strengthen capacity to enable greater market oversight and management and use the resources provided via the Fund "to genuinely increase fee rates appropriate to local circumstances". By September 2022 Local Authorities will be required to

have submitted the cost of care exercise, set out a market sustainability plan for the next 3 years and produce a spend report outlining how funding has been allocated.

- 1.7 The Council has recently published its Adult social care strategy 'The life you want to lead, Adult social care in West Sussex (2022-25)' which has been co-produced with voluntary sector partners, social care staff, people who access services and their carers. This outlines the five key priorities of: relationships and connections, empowerment, home, addressing gaps and inclusion and tackling inequalities. This strategic direction provides an important backdrop for decisions on how we commission and source solutions and services for people in West Sussex, and how these are funded.
- 1.8 The proposals within this decision are developed within the context of the forthcoming social care reform, the Council's strategic direction, the current challenges for the social care market and the impending market sustainability plan and cost of care exercise. Whilst the Council cannot predict the outcome of the exercise or the plan, the proposals aim to move in the direction that the Local Authority believes is required to first and foremost provide stability to our care market and to prepare for social care reform in West Sussex to support the market to develop and respond to the changing landscape ahead.
- 1.9 This report excludes contracted provision which has specified annual fee increases within the terms and conditions of the individual contracts and WSCC directly provided services.

2 Proposal details

- 2.1 In 2021-2022 the Council committed uplifts on a standard basis across the social care market in recognition of the impact of Covid-19 across the whole sector and with the aim of stabilising the whole sector. Going into 2022/23 the context is different and the rationale for the development of the proposals has considered the national contextual position with regards to increasing costs, inflation, forthcoming legislative and policy changes and market sustainability but also the local position. Within West Sussex there is insufficient supply of care at home to meet demand which impacts on the flow across the health and social care system and on the ability to source care for people in their own home quickly. Charges for residential provision are increasing significantly to often unaffordable levels and whilst the increasing costs for providers are acknowledged the Council in its development of the proposals needed to ensure that the funding is directed to where it is most needed in order to make services sustainable and develop the market in areas needed to support the residents of West Sussex. The direction of funding also indicates our commissioning priorities with a focus on development of dementia residential provision including dementia and nursing and community based care for all ages.
- 2.2 The proposals have therefore been prepared with these as the Council's strategic aims:
 - To target support at community-based providers to encourage the supply of the care types integral to delivery of the ambitions in 'The life you want to lead, Adult social care in West Sussex (2022-25)'.

- To prioritise care and support at home to mitigate current market fragilities and the financial risks that the Council will face when it is reprocurd.
 - To reduce the number of residential and nursing placements for which the Council is needing to pay an agreed rate rather than a usual maximum rate.
 - To sustain markets in line with the direction that Government has signalled through the Market Sustainability and Fair Cost of Care Fund.
- 2.3 In funding terms, the Council continues to recognise the financial pressures that providers are facing. The budget for 2022/23 includes growth in relation to all of the following:
- National Living Wage, which will rise by 6.6% to £9.50 per hour (for people aged 23 and over) from 1st April.
 - The 1.25% increase in the cost of the employer contribution to National Insurance as part of the introduction of the Health and Social Care Levy from April 2023.
 - Market Sustainability and Fair Cost of Care Fund. The Council is passporting its allocation of £2.23m into the Adults' budget.
- 2.4 When added to the standard inflationary uplift which has been made available, the outcome is a cash envelope of £18.4m, £1.1m of which will be met by NHS partners through the pooled budget for learning disabilities. If applied on an average basis across all types of care cost this would enable an increase of around 8% to be paid. That would not result in optimal use of the opportunity which exists and so the detailed proposals are as follows:

2.5 Residential and Nursing Care in West Sussex – Older People

- 2.6 In light of the context set out in the previous section, the proposal is to support sustainability in the residential and nursing market for older people and to move towards addressing the balance between local authority and self-funder rates by prioritising uplifts to the providers charging the least.
- 2.7 Usual maximum rates for both long term and short term placements are proposed to be increased by 10% on band B (high level of physical care needs) band F (person with mental health needs) and band P (Frail with intensive/complex physical care needs) and 18% for band C (specialist dementia care) and band D (care homes registered to provide nursing care – excluding Funded Nursing Care element.) All of these increases will be applied to both standard and enhanced rates which reflect different costs attributed to local economic factors across the county. At those levels of change, rates will move significantly closer towards the prices that providers are increasingly requesting when new placements are being made. It is envisaged that this will support market management once the impact of Covid-19 begins to abate. Dementia and nursing are proposed to have the highest uplifts because this is where the imbalance between demand and supply is greatest.
- 2.8 Where the Council has agreed a rate with a provider outside of the usual maximum rates (including outside of the county) rates agreed for residential placements up to £900 per week and nursing placements up to £1000 per week will receive a 5% increase. Rates agreed above these levels will not receive an uplift because it is reasonable for the Council to assume that the cost pressures

providers are facing will have been reflected in the prices being charged. For the same reason all rates agreed for placements made on or since the 1st of January 2022 will not receive an uplift.

2.9 Residential and Nursing Care – Lifelong Service customers

2.10 Residential and nursing provision for lifelong services does not operate in the same way as older peoples services and is largely based on the individual customer need, with increased levels of 1-1 care often required and impacting on the overall cost of care. All agreed rates for residential and nursing placements for customers with Lifelong service requirements such as learning disabilities, mental health and physical disabilities not related to age are proposed to be increased by 5%. This ensures consistency of approach with older people agreed rates, but without applying a cap because of the complexity of needs providers are supporting and the expenditure bound up with that.

2.11 Care and Support at Home (Domiciliary Care)

2.12 In addition to the context set out above, Care and Support at home services were due to be re-commissioned in 2021 and a decision was taking not to award at a time of market fragility and in light of ongoing impacts of the pandemic. The existing contracts arrangements therefore continue, but it is recognised that differential rates impact on lower cost providers and on ability to deliver volumes to enable the capacity needed to meet demand for services.

2.13 In addition, the Council continues to focus on enabling people to be supported at home as outlined in the Adult social care strategy 2022-25. On reflection of this strategic aim and to support sustainability of providers charging the lower costs to the Council and struggling with financial sustainability and ability to recruit as a result, the proposals are as follows:

2.14 Providers charging up to and including £25.00 per hour on a pro rata basis in line with the contract terms and conditions will receive an 8% increase. Where this increase does not match the United Kingdom Home Care Association's (UKHCA) published minimum cost of care for 22/23 of £23.20 the service will receive a commensurate increase to take the rate or rates to this level. Benchmarking against the UKHCA's recommended rate, which is nationally recognised, also demonstrates the Council's intent to pay a fair price for care.

2.15 All pro rata rates between £25.01 and £29.99 will receive a 5% increase, and all rates above £30.00 will not receive an uplift to this rate. These proposals will apply to all contracted rates.

2.16 The uplifts in 2.14 and 2.15 exclude the Contingency Care and Support at Home Services Contract (2021) which is within the first year of operation and therefore rates on this contract will not be uplifted at this point.

2.17 Supported Living and Shared Lives

2.18 The Adult social care strategy sets out the strategic aim to support more people to stay in their own homes and the importance of people having their own private space to live independently, control over what they do and when they do it and people wanting "it to feel like their own home as much as possible." The decisions on uplifts for Supported Living and Shared Lives reflect the Council's intention to support these forms of care to deliver these aims and

reflect a similar approach of proportionate increase as Care and Support at Home and the uplift for Supported Living and Shared Lives is therefore proposed at 8% increase on all current rates.

2.19 Other service provision:

- 2.20 Extra Care, day services and learning disability prevention services are all proposed to be increased by 5% in recognition of increasing costs and impacts of National Living Wage for the direct service costs.
- 2.21 Extra Care Housing has previously received the uplift in October of each year, which has impacted providers financially. These contracts will now be brought in line with the rest of the market to take effect from April 2022. 13 of the 16 care contracts are currently being reprocured and rates will therefore be set by the outcome of the tender process with an increase on rates until this takes effect.
- 2.22 Direct Payments are recommended not to be automatically uplifted. However, it is recognised that customers taking a personal budget as a Direct Payment may be unable to source the same level of care in 2022/23 due to increasing costs across the economy. Therefore, when customers are reviewed as part of usual process, social care workers will identify whether an increase is required on an individual basis in order to ensure that customers can purchase the necessary level of care and support needed within the budget. Funding equivalent to 5% increase will be provided for operational teams to call upon when appropriate, after a reassessment has taken place.
- 2.22 A similar approach will apply to short term placements and Live in Care. Whilst short stay placements on a usual maximum rate as set out in Appendix 1 will be automatically uplifted in line with 2.7, individually agreed rates will not be uplifted in this way. By virtue of short term placements time-limited nature any individually agreed fees that have been agreed for existing customers will remain as agreed at the start of the placement, but a funding allocation of 5% will be set aside to allow increased rates to be paid for new placements in 2022/23. The costs of live in provision are generally individually agreed and therefore this will only be applied based on individual need and circumstance following review and not automatically applied.
- 2.23 Specialist inpatient beds for people with a learning disability are also not recommended for an automatic uplift. These placements are usually short term in nature and subject to regular review which will provide an opportunity to identify whether an increase is required.
- 2.24 Increases as set out within the proposals will apply to all customers where the care is being arranged and purchased by the Council including customers with a Council Managed Budget, with residential placement funded entirely by the Council, customers with a deferred payment agreement, and customers funding the full cost of their care. Customers impacted by the increases will be notified of the change to their charges before the increased charges are implemented.
- 2.25 Top up contributions to the total cost of a residential placement regardless of who is paying the contribution are not included within the proposals for increase as these are not related to the care provided within the placement.

- 2.26 These proposals represent significantly higher increases than the Council has been in the position to award previously. The Council recognises that this is needed for the lower cost provision in particular and would strongly encourage providers to ensure that staff benefit in the uplift by increasing care worker pay. This is not only important to ensure compliance with legislation on National Living Wage and to reflect the nature, importance and value of the work but is also fundamental to growing the care workforce to deliver the capacity needed and to grow sustainable services. Providers receiving uplifts in excess of 5% will be particularly asked to reflect this in their budgets.

3 Other options considered (and reasons for not proposing)

- 3.1 The Council has considered applying a percentage uplift across all parts of the market as was completed in 2021/22. However, the Council is looking to utilise the funding available to Local Authorities in a more strategic way to ensure that we can deliver on the government's requirements to move towards a fair cost of care, and to stabilise and develop markets. Proposals have been developed in consideration of these objectives.
- 3.2 Previously the Council has paid the host authority rates where a West Sussex customer is living outside of the county. In 20/21 an increase was applied across all provision including out of county. To reflect host authority rates for all existing customers would present significant administrative challenges and hence whilst social care workers will endeavour to secure provision at host authority rates for new customers, rates for existing customers supported out of county will all be increased by 5% (up to the limits for older people residential services set out in 2.8.)
- 3.3 Consideration was given to commencing the uplifts from the 1st April in recognition that increasing costs tend to go up from this time. However this represents a change from previous practice of aligning the dates of uplifts with the date client contributions are changed. Separating these dates means two changes in quick succession to be notified and challenges with reconciliations. Aligning the dates is a more efficient process, allows time for system changes and many providers who will have worked with the Council previously will have adapted their financial processes accordingly and hence provides consistency. The date for implementation of the uplifts proposed will therefore be 10 April 2022 for non-residential uplifts and 11 April 2022 for residential uplifts.

4 Consultation, engagement and advice

- 4.1 The Executive Director of Adults and Health meets regularly with representatives of the social care market including 'West Sussex Partners in Care' a forum for social care providers. In addition, independent sectors take the opportunity during this time of year to reflect their cost pressures and indicate the level of increases required. The proposals have been developed taking account of feedback from representatives and from independent providers.
- 4.2 Recently representatives from West Sussex Partners in Care including providers from community and residential services met with the Cabinet Member for Adults and Health, the leader of the Council and local Members of Parliament to

set out the challenges across the market including the cost pressures. This information has also been used to inform proposals.

- 4.3 Individual providers will all have unique financial positions relating to aspects such as assets, investment, cash flow, turnover, model and volumes of business. It is recognised that cost increases for wide segments of the market cannot secure financial stability for every individual provider. Hence the Council welcomes early contact from service providers who identify financial concerns relating to their cost structures, financial position or the impact of the uplifts decisions on their individual business.
- 4.4 The recommendations will have an implication for the West Sussex Clinical Commissioning Group (CCG), because of the impact on pooled budgets, joint funding arrangements and where the CCG purchases care through Council frameworks. Since this will lead to increased costs for the CCG, consultation has taken place as part of sharing the Council’s strategy.

5 Finance

5.1 The actual cost of the recommendations will depend on the group of people who receive adult social care funding in 22/23. This will be subject to significant turnover which will lead to changes in the mix of spending and therefore the cost of the recommendations cannot be stated with complete certainty. Nevertheless, based on forecast customer numbers, the proposals are expected to account for £16.2m of the £18.4m of funding that is available. Given the turbulence that continues to affect the market because of Covid-19 and workforce constraints, the balance of £2.2m will be held as a reserve to manage the uncertainties that lie ahead in 2022/23.

5.2 Revenue consequences

	Year 1 2022/23 £m	Year 2 2023/24 £m	Year 3 2024/25 £m
Revenue budget	18.4	18.4	18.4
Cost of proposals	18.4	18.4	18.4
Remaining budget	Nil	Nil	Nil

5.3 The effect of the proposal:

(a) How the cost represents good value

The Council is experiencing significant increases in the number of agreed rates over the usual maximum rates and increasing differentials of the costs that residential care for older people in particular can be sourced at. The increase to the usual maximum banded rates signals the intention to move away from costs which are unaffordable for the Council whilst bringing costs at the lowest levels up to a rate which is more sustainable

for providers. The impact of this will be tracked through the monitoring of the Adults' budget in 2022/23.

Paying increased rates across areas of the market that the Council want to focus on to support strategic objectives to be delivered will encourage recruitment and retention in these markets which would be expected to support growth in capacity in order that services and solutions can be found for people needing care and more quickly than is currently available. This in turn would expect to avoid people going into crisis by providing support at an earlier stage.

(b) Future savings/efficiencies being delivered

The Adults budget for 2022/23 includes savings of £4.77m from care costs. Delivery of this is contingent on a stable market which will provide solutions and services and will aim to work to develop the market into areas where growth is required, to both support individuals within their communities and in their own home where possible. The proposals in this report have been designed to achieve that objective and so become an enabler for the savings target.

(c) Human Resources, IT and Assets Impact

Fee and rate uplifts involve manual processes to make changes within the systems, and resource from contracts, commissioning, finance, adults and IT systems teams to implement the changes.

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
The pattern of increases does not bring stability to the market.	There can be no guarantee about the outcome, especially if Covid-19 remains an influence. However, the Council has retained funding of £2.2m to manage potential markets risks, for example in areas such as dementia nursing where its position faces the greatest challenges. This will enable consideration to be given to specific measures to support the market in order to limit its financial exposure.
Providers do not accept the increase as sufficient to cover costs.	All providers will review the impact of collective decisions on their individual business. There will be no ability to appeal the decisions but the Council will work with providers on an open book accounting basis to support in situations of hardship and financial sustainability resulting from decisions made collectively.
Full cost payers will experience an increase in the amount they are recharged in relation to their individual service. This risks complaints and	Full cost payers could not be charged less than the Council pays as this would result in inequity of cost of care particularly for those who pay directly to providers, which the government is seeking to address through the Adult social care reform. Full cost payers will be communicated to regarding the

Risk	Mitigating Action (in place or planned)
financial hardship for full cost payers where the increase is significant.	change in charge in advance so that they can consider their options.
The increases impact the charges paid by the NHS for the same care provision.	The Council has engaged with the Clinical Commissioning Group and NHS Continuing Healthcare team to outline the headline proposals in order that the NHS can consider the uplifts to be applied to the same provision through health funding.

7 Policy alignment and compliance

- 7.1 All care groups were considered in the development of the approach to ensure that service provision can be made available to all. Risks identified include potential risk for nursing dementia services which will be managed through the mitigations identified to reduce the risk of impact on any person with a nursing dementia need.
- 7.2 The proposals are intended to support the Council and the provider market in the forthcoming changes required to meet the expectations of the Health and Social Care Bill, the Adult Social care reform in particular and the market sustainability plan and cost of care exercise. It is also in line with the Council's strategic intentions and supports the Council to deliver its statutory duty to provide care and support for those individuals who have been assessed under the Care act 2014 as having eligible social care needs.
- 7.3 The proposals are also considered to be in line with the Human Rights Act, 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. Ensuring sustainable services will support the delivery of these Human Rights.
- 7.4 There are no negative climate change, public health, social value or crime and disorder implications. Encouraging funding to be directed to the social care workforce will support social value through increased local recruitment.

Catherine Galvin
Assistant Director (Commissioning)

Contact Officer: Juliette Garrett, Commissioning Lead (Older People), Tel: 0330 022 23748, email: Juliette.garrett@westsussex.gov.uk

Appendices

Appendix 1 – Care Guide Rates for 22/23.

Background papers None