

**COMMISSIONING AND PROCUREMENT SUB-COMMITTEE – 16/12/15**

<b>Subject:</b>	National Living Wage 2016/17 Inflationary Uplift Consultation Proposals		
<b>Corporate Director(s)/ Director(s):</b>	Candida Brudenell, Assistant Chief Executive		
<b>Portfolio Holder(s):</b>	Alex Norris		
<b>Report author and contact details:</b>	Antony Dixon <a href="mailto:Antony.dixon@nottinghamcity.gov.uk">Antony.dixon@nottinghamcity.gov.uk</a> 0115 8763491		
<b>Key Decision</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Subject to call-in</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Reasons:</b> <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input checked="" type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision			<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Total value of the decision:</b> £3.595m per year			
<b>Wards affected:</b>	<b>Date of consultation with Portfolio Holder(s):</b> 20 November 2015		
<b>Relevant Council Plan Key Theme:</b>			
Strategic Regeneration and Development	<input type="checkbox"/>		
Schools	<input type="checkbox"/>		
Planning and Housing	<input type="checkbox"/>		
Community Services	<input type="checkbox"/>		
Energy, Sustainability and Customer	<input type="checkbox"/>		
Jobs, Growth and Transport	<input type="checkbox"/>		
Adults, Health and Community Sector	<input checked="" type="checkbox"/>		
Children, Early Intervention and Early Years	<input type="checkbox"/>		
Leisure and Culture	<input type="checkbox"/>		
Resources and Neighbourhood Regeneration	<input type="checkbox"/>		
<b>Summary of issues (including benefits to citizens/service users):</b>			
This report presents proposals for inflationary uplift in 2016/17 across adult contracted provision taking account of the introduction of National Living Wage in April 2016. The Council is legally bound to consider inflation on an annual basis where it has a statutory duty to provide a service. It is proposed that the Council will consult with providers on these proposals during January 2016.			
<b>Exempt information:</b>			
<b>State 'None' or complete the following.</b>			
Elements of the report will be exempt from publication under paragraphs 3 of Schedule 12A to the Local Government Act 1972 because it contains information relating to the financial or business affairs of particular persons (including the authority holding that information) and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information as it contains information relating to the negotiation of service budgets.			
<b>Recommendation(s):</b>			
<b>1</b> Committee approves proposals which will be consulted on with service providers for inflationary uplift in 2016/17 as detailed in paragraph 2.7			
<b>2</b> Committee delegates authority to the Assistant Chief Executive to increase contract values in accordance with the proposals detailed in paragraph 2.7 of this report, subject to the outcome of consultation and agreement of the Council budget			
<b>3</b> Committee approves spend associated with this decision in 2016/17			

## **1 REASONS FOR RECOMMENDATIONS**

- 1.1 The Council is legally bound to consider inflationary uplift in respect of services that it has a duty to provide. Market intelligence indicates that a significant section of the adult social care workforce is paid at an hourly rate below the National Living Wage to be implemented from April 2016.
- 1.2 In accordance with legal obligations the Council will consult with adult social care providers with regard to these proposals. The Assistant Chief Executive will take account of consultation responses and issue variations to existing contracts should no significant issues arise

## **2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1 It is Council policy to pay Living Wage in respect of all services that it directly commissions. This policy predates the government commitment to introduce a National Living Wage in the July 2015 budget
- 2.2 Officers from the City Council have been undertaking financial modelling of the potential impact of adult social care service providers meeting National Living Wage (NLW) requirements and other inflationary pressures including cost of living and pensions auto enrolment. This modelling has also considered budget savings required across adults provision as a consequence of on-going reductions in the funding the Council receives from government. Officers from Finance, Commissioning, Procurement, Legal and Market Development have been involved in formulating these proposals.
- 2.3 Modelling has been undertaken on a sector by sector basis across the social care budget. This has taken place against a backdrop of increased demand for social care provision as a result of demographic pressures and policy change and increased difficulty in attracting workers into caring professions due to increased competition from retail and service sectors.
- 2.4 For the purpose of modelling it has been assumed that the whole social care workforce is paid at current National Minimum Wage (NMW) of £6.70ph. As such the proposed uplift may be more generous to providers that currently pay above this level, particularly if the assumed £0.50 increment is not passed onto the workforce. This is, however, a pragmatic position given the bureaucratic burden of attempting to identify the precise wage structure of every single adult social care service provider and current capacity issues impacting on some areas of social care service delivery.
- 2.5 It is not proposed to offer uplift in 2016/17 to account for National Living Wage to other areas of contracted provision. These contracts are all based on tendered values and intelligence indicates that, in the main, the workforce delivering these contracts is already paid in excess of National Living Wage. Uplift may be required in future years; however, where contracts will be re-tendered this process is likely to take account of future incremental rises.
- 2.6 The options proposed also assume that National Living Wage uplift will be offered to the whole workforce and not just the over 25's. It is important to note that the financial impact of these proposals is based on assumptions of the volume of care to be delivered in 2016/17 based on current projections

## 2.7 Proposals for inflationary uplift are as follows:

### 2.7.1 Residential & Nursing Care

It is proposed to offer all residential and nursing care providers in the City an uplift to meet NLW requirements – this has been calculated as an uplift of £18.56 pw based on existing Fair Price for Care (FPC) assumptions. For those providers that are currently paid at standard rate the total uplift to be offered will be £40.42 taking account of NLW, FPC, 1% non-wage inflation and Voids/profit. For those providers paid at non-standard rates the total uplift proposed is £20.09 taking account of NLW and non-wage inflation only. The total projected cost of these proposals is £1.554m

For County placements an uplift of £20.09 has been assumed for Bands 1 and 2 placements and non-banded placements. This uplift has also been assumed for all out of county placements. The total projected cost of these proposals is £0.312m (nb actual uplift will be determined by the respective LA).

Uplift for respite and short-term residential placements has been calculated on the basis of the assumptions used to calculate City and non-City placements. The total projected cost of these proposals is £0.200m

### 2.7.2 Care at Home

It is not proposed to offer inflationary uplift to spot contracts. These are negotiated with providers on an individual basis. Plans are in motion to accredit spot contract providers which will help in rationalising current pricing.

It is proposed to offer all Care @ Home Framework providers a £0.69 per hour inflationary uplift for the hours of care that they deliver (incorporating a 10% increase in delivered hours based on August 15 data). This will account for NLW uplift and Auto-enrolment but not other non-age inflationary pressures. It is proposed to offer old Homecare Framework providers (who are still paid at pre-Care at Home agreed hourly rates) the same level of uplift but capped at a maximum rate of £14.10ph. The rationale for this is that this is the maximum rate that will be paid to current Care @Home framework providers and, therefore, that quality care should be deliverable at this rate.

The total projected cost of this proposal is £459,542

### 2.7.3 Care Support and Enablement (CSE)

It is proposed to uplift all supported living and outreach contracts by £0.69 per hour based on the same assumptions as for Care at Home. It is proposed that, in both cases, the uplift is capped at the current average rate + £0.69p: £14.17 for outreach, £14.69 for supported living. The rationale for imposing the cap is that if the majority of care can be delivered at this rate then it should be possible for all providers.

The total projected cost of this proposal is £216,919.

### 2.7.4 Day care/Opportunities

Day care is paid at both hourly and sessional rates. An average hourly rate of £13.12 has been identified. Where an hourly rate is paid it is proposed to cap the uplift at £13.81 based on the same assumptions as for Care at Home. Where a sessional rate is paid it is proposed to offer an across the board uplift of 2.74%.

This is based on the differential in total cost of paying a capped £0.69p uplift to hourly rate provision.

It is proposed to uplift day opportunity rates by £0.69 per hour based on the same assumptions as for Care at Home. It is proposed that this rate is capped at the £14.17 hourly rate that it is proposed to offer CSE outreach providers on the basis that similar support tasks are likely to be conducted.

The total projected cost of this proposal is £44,543.

#### **2.7.5 Extra care**

New contracts for Extracare Charitable Trust are currently under negotiation and it is not anticipated that an uplift to account for 16/17 NLW will be required (actual rates paid may, however, increase). For other extra care providers it is proposed to cap the uplift at the maximum £14.10 rate for Care at Home providers on the basis that the care provided is the same.

The total projected cost of this proposal is £1,424.

#### **2.7.6 Adult Placement Scheme**

It is proposed to offer an uplift of £20.29 for residential rates (as with residential care) and 2.74% for sessional rates (as with day care) to families offering adult placements. This uplift is being offered as adult placements are a comparatively low cost form of meeting care needs and it would not be advantageous to disincentivise such provision

The total projected cost of this proposal is £39,265

#### **2.7.7 Direct Payments**

It is proposed that £0.62 uplift be granted to the paid rate for direct payment (DP) based on the same assumptions as Care @ Home minus pensions auto-enrolment (paid on an ad-hoc basis). Whilst current DP rates assume a paid rate to PA's of £7.27ph it is proposed to offer uplift as DP rates are highly competitive when compared to Care @ Home rates and it would not be advantageous to disincentivise such provision at a time of strained capacity within homecare.

The total projected cost of this proposal is £552,827 with a further £27,978 required to fund standard inflationary uplift for other DP spend.

2.8 It is proposed to consult with service providers on these proposals during January 2016. Officers from Commissioning & Finance will consider consultation responses and report the key themes to the Assistant Chief Executive. Should the outcome of these consultations cause consideration of significant change to the shape and financial consequence of these proposals (with due regard given to available budget) a further report will be brought to Committee in March 2016

2.9 In respect of future years NLW increments it is the Council's intention to work towards open book arrangements with service providers in order to inform future inflationary pressures uplift.

### **3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

3.1 Not to offer inflationary uplift to social care providers to meet national living wage requirements. This option has been rejected as there is considerable evidence that

a significant section of the workforce is currently paid a level below NLW and, in some areas of provision, capacity issues are starting to emerge due in part to a difficulty in recruiting and retaining staff.

- 3.2 To undertake analysis of individual provider costs and offer uplift based on actual wage rates paid. This option has been rejected as it will be administratively burdensome and problematic. Rates and methods of payment are not standard across the sector and there is not always a direct correlation between low rates of pay and low hourly rate of service delivery.
- 3.3 Not to impose a cap on inflationary uplift for some forms of provision. Whilst the Council needs to ensure that service providers are sufficiently remunerated to enable them to meet NLW requirements it also needs to take account of financial pressures as a result of on-going cuts in government funding

#### **4 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

- 4.1 Finance comments are contained within the exempt appendices for this report

#### **5 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND INCLUDING LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

- 5.1 There is a risk that, should inflationary uplift not enable social care providers to meet NLW and other inflationary pressures, providers will exit the market and exacerbate capacity issues that are starting to become apparent in some sectors of social care provision.
- 5.2 The impact of the National Living Wage has been highlighted by a significant number of Social Care Providers as a serious risk to the delivery of existing services. Providers have stated that failure to consider and address this impact is likely to lead to the loss of their services. Social Care services are complex and cannot be easily and swiftly re-procured. In addition the loss of a Provider is likely to have a detrimental impact on their service users. Reaching agreement with Providers over contract fees is therefore essential to mitigating this risk.
- 5.3 The proposed introduction of the National Living Wage (NLW) in April 2016 will result in increased financial obligations upon Providers to pay their staff over the age of 25 £7.20 per hour as opposed to the current £6.50 National Minimum Wage.
- 5.4 The service delivery in the care market is under pressure with increased difficulty in recruiting workers, resulting in decreased capacity and increased demand across the sector.
- 5.5 Providers submitted service costs with their tender submissions for these contracts. At the time of tendering, these costs would not have accounted for the additional costs resulting from the implementation of the NLW.
- 5.6 Whilst it will be legal requirement of Providers as employers, to pay the NLW to its staff when it comes into force, the Council is not under a legal obligation to increase payment to Providers to directly cover these increased costs. The Council is however under a contractual obligation to review prices with Providers

annually and has considered it appropriate at this time to take account of the implementation of the NLW to the extent financially possible in line with budgetary constraints whilst doing this.

- 5.7 There is a real risk that Providers will struggle on their existing rates to cover the additional costs that will be placed upon them by the NLW, which has the ability to threaten delivery of services to the Council under these contracts, if financial provisions are not made.
- 5.8 Given the rates and methods of payments vary considerably across the sector, it has not been possible at this stage to calculate an uplift on actual rates paid per provider under individual contracts. However, the Council has undertaken substantial financial modelling to determine the most appropriate and fair way to offer an uplift to care Providers, to help enable them to cover increased costs that will result from the additional obligations upon them, including at this time the NLW.
- 5.9 The Council will consult with care Providers on the proposals raised in this report in January 2016. An assessment of the consultation will be undertaken with a view to consideration being made as to the outcome of the process. If the proposals result in a significant change to those in this report, further approval must be sought.
- 5.10 Legal services will assist if required during and following the consultation process in terms of reflecting the uplift costs to providers under their existing contracts.

## **6 SOCIAL VALUE CONSIDERATIONS**

- 6.1 Not applicable

## **7 REGARD TO THE NHS CONSTITUTION**

- 7.1 Not applicable

## **8 EQUALITY IMPACT ASSESSMENT (EIA)**

- 8.1 An EIA is not required because this report is solely concerned with adjustment to existing contractual values

## **9 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)**

- 9.1 None

## **10 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT**

- 10.1 None

## **11 OTHER COLLEAGUES WHO HAVE PROVIDED INPUT**

- 11.1 Kate Lowman – Procurement Category Manager Social Care
- 11.2 Darren Revill – Finance Analyst
- 11.3 Dionne Sreaton – Solicitor