

Commissioning and Procurement Executive Committee – 15 February 2022

Subject:	Fee Rates for Adult Social Care Services 2022/23		
Directors:	Katy Ball, Director for Commissioning and Procurement Steve Oakley, Head of Contracting and Procurement		
Portfolio Holder:	Councillor Adele Williams – Adults and Health		
Report author and contact details:	Jo Pettifor – Category Manager - Strategy and People Tel: 0115 8765026 Email: jo.pettifor@nottinghamcity.gov.uk		
Other colleagues who have provided input:	Hayley Mason, Strategic Finance Business Partner Dionne Scream, Solicitor, Contracts Commercial and Employment Steve Oakley, Head of Contracting and Procurement		
Key Decision	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Subject to call-in
			<input checked="" type="checkbox"/> Yes
			<input type="checkbox"/> No
Reasons:	<input checked="" type="checkbox"/> Expenditure	<input type="checkbox"/> Income	<input type="checkbox"/> Savings of £750,000 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 checked="" type="checkbox"/> Yes
			<input type="checkbox"/> No
Type of expenditure:	<input checked="" type="checkbox"/> Revenue	<input type="checkbox"/> Capital	
Total value of the decision: £6.299m			
Wards affected: All			
Date of consultation with Portfolio Holders: Cllr Williams – 27/01/22, Cllr Webster – 26/01/22			
Relevant Council Plan Key Outcome:			
Clean and Connected Communities		<input type="checkbox"/>	
Keeping Nottingham Working		<input type="checkbox"/>	
Carbon Neutral by 2028		<input type="checkbox"/>	
Safer Nottingham		<input type="checkbox"/>	
Child-Friendly Nottingham		<input type="checkbox"/>	
Healthy and Inclusive		<input checked="" type="checkbox"/>	
Keeping Nottingham Moving		<input type="checkbox"/>	
Improve the City Centre		<input type="checkbox"/>	
Better Housing		<input type="checkbox"/>	
Financial Stability		<input type="checkbox"/>	
Serving People Well		<input checked="" type="checkbox"/>	
Summary of issues (including benefits to citizens/service users):			
This report presents proposals for fee rates in 2022/23 across Adult Social Care contracted provision. Nottingham City Council is contractually bound to consider fee rates on an annual basis where it has a statutory duty to provide a service. The Council will consult with providers on these proposals and consider responses prior to implementation from April 2022.			
Exempt information:			
Appendices 1, 2 and 3 to this report are exempt from publication under paragraphs 3 and 5 of Schedule 12A to the Local Government Act 1972.			
Financial advice is exempt under paragraph 3 because it contains commercially sensitive information relating to the Councils pricing structure and financial modelling. Having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information as declaring financial modelling to suppliers would prevent the Authority from managing the market efficiently, which could cost it more.			

Legal advice is exempt under paragraph 5 because it contains information that is subject to legal professional privilege. Having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, because the information sets out the legal implications inherent in the course of action proposed here, which the decision maker is arguably entitled to consider without the Council's position being affected by consideration of those implications.

Recommendations:

- 1** To approve proposals for fee rates for Adult Social Care Services in 2022/23 as outlined in the pricing details at exempt Appendix 1, which will be consulted upon with service providers.
- 2** To delegate authority to the Director of Commissioning and Procurement in consultation with the Director for Adult Health and Social Care to agree fee rates in accordance with the proposals detailed in the exempt Appendix 1 pricing detail, subject to the outcome of consultation with providers and in line with the Council budget. Subject to consultation and recommendation 4 below, the agreed rates will be implemented from April 2022.
- 3** To approve the total spend of £6.299m associated with this decision, including approval to spend against high cost placement provision through the Council's scheme of delegation for Adults Care Packages.
- 4** To note that if upon completion of the consultation the financial impact of any revised proposals exceed the budget available, further approval from this Committee will be sought.

1. Reasons for recommendations

- 1.1 Nottingham City Council is contractually bound to consider fee rates in respect of services that it has a duty to provide. This is balanced against budget commitments and pressures for the Council.
- 1.2 In accordance with the Council's legal obligation, it is proposed to consult with adult social care providers with regard to these proposals during February – March 2022. The Director of Commissioning and Procurement in consultation with the Director for Adult Health and Social Care will take account of consultation responses and issue variations to existing contracts reflective of the proposals in this report should no significant issue arise. Should the outcome of these consultations require consideration of significant change to the shape and financial consequence of these proposals (with due regard given to the available budget) a further report will be presented through the appropriate governance process.
- 1.3 These proposals and the associated financial modelling are based on information currently available about service utilisation and demand changes as a result of Covid 19.
- 1.4 The recommendations presented take account of the implications of the National Living Wage for the market and aim to represent a fair allocation of funding and to support the market across all service areas. It is considered that a balanced, reasoned and informed approach has been taken and that the proposals seek to support a sustainable, efficient and effective market within the available resources.

1.5 It is proposed to undertake a full review of costs of ASC pricing during 2022-2023 to determine sustainable rates for the longer term, particularly in the context of forthcoming changes by the Department of Health and Social Care (DHSC) to the arrangements for self-funders. DHSC has announced a new fund, the Market Sustainability and Fair Cost of Care Fund, which will be available in 2022-23 to support local authorities in paying a fair rate for care and preparing local markets for reform. The allocation to Nottingham City Council in 2022-23 is expected to be approximately £1m and this will be used to source a full review of local costs and a sustainable level funding.

2. **Background (including outcomes of consultation)**

2.1 Following its budget announcement in July 2015, the government introduced the National Living Wage (NLW), which replaced the National Minimum Wage as the statutory minimum wage payable to workers in the United Kingdom. The Council has a legal duty to consider fee rates for social care contracted services and in doing so, it must consider the implications of the NLW for care providers.

2.2 Every year officers undertake analysis of the potential impact of fee rates on adult social care providers meeting National Living Wage requirements as well as other pressures such as cost of living, pensions, profit and voids. This analysis also considers budget savings required across adult provision as a consequence of reductions in the funding the Council receives and other financial pressures.

2.3 Analysis takes place on a sector by sector basis across the social care budget against a backdrop of increased demand for social care provision arising from demographic pressures, policy change and increased difficulty in attracting workers into the care sector due to increased competition from other sectors. The Council's inflationary fee rate modelling is therefore key to support social care providers to meet NLW and other inflationary pressures, and to manage the social care market. This must be balanced against budget commitments and pressures for the Council.

3. **Other options considered in making recommendations**

3.1 Do nothing – the Council is contractually bound to review contract fee rates on an annual basis. Doing nothing would present a risk of legal challenge and for this reason, this option was rejected.

3.2 Offer different fee rate proposals. This option is not recommended as the proposals have resulted from significant work and modelling between finance and contracting, taking into account knowledge of the market and feedback from providers, and the overall budget pressures for Adult Social Care. The final proposals have taken account of the potential impact on service delivery and risk of market failure. Offering different fee rate proposals would place further pressure on the Adult Social Care budget and this is not a feasible option.

3.3 To undertake analysis of individual provider costs and offer fee rates based on factors such as wage rates paid, pension contributions, profit and void levels etc. This option would not be feasible at this time as it would be administratively burdensome due to variations in rates of pay and other costs across the sector.

4. Consideration of Risk

- 4.1 Affordability - The Council's financial pressures are significant and further savings are required in 2022/23, with cost pressures anticipated to continue. The analysis undertaken considered the wider budget position and these proposals are considered the fairest way to distribute the funding available across all adult social care provision.
- 4.2 Risk of market or provider failure. A number of market related factors have been considered including size of the market; any evidence of market failure or collapse; whether providers are managing to deliver and cover their costs under the current fee rates and whether pricing is equitable and supports an efficient, effective and sustainable market. The proposals take account of provider feedback on the costs of delivering services and financial pressures. During the Covid pandemic additional support has been provided to this market to assist with these pressures.
- 4.3 It is proposed to consult with service providers on these proposals during February – March 2022. Officers from Contracting and Finance will consider consultation responses and report the key themes and issues and any risks arising to the Director of Commissioning and Procurement in consultation with the Director for Adult Health and Social Care. Should the outcome of these consultations require consideration of significant changes to the proposals (with due regard given to the available budget) a further report will be submitted through the appropriate governance process.
- 4.4 Legal considerations of risk are contained within exempt appendix 3.

5. Finance colleague comments (including implications and value for money/VAT)

- 5.1 Finance comments are contained within exempt appendix 2.

6. Legal colleague comments

- 6.1 Legal comments are contained within exempt appendix 3.

7. Other relevant comments

7.1 Procurement colleague comments

There are no procurement implications arising from this decision. The commissioned services in question are contracted through open and compliant procurement processes, and the fee rates proposed were developed through a robust methodology which considered factors impacting on the provider market and which seeks to ensure fairness and consistency across all providers.

Julie Herrod, Lead Procurement Officer - 31 December 2021

8. Crime and Disorder Implications (If Applicable)

- 8.1 Not applicable.

9. Social value considerations (If Applicable)

9.1 Not applicable.

10. Regard to the NHS Constitution (If Applicable)

10.1 Not applicable.

11. Equality Impact Assessment (EIA)

11.1 An EIA will be undertaken following consultation with providers on the proposals and prior to final approval. The consultation will include specific questions about the potential impact of the proposed fees and mitigating actions that could be taken. Consultation responses will be reviewed, and risks identified will be analysed to assess the impact of the proposal on services as a whole, citizens within those services, and providers

12. Data Protection Impact Assessment (DPIA)

12.1 A DPIA is not required because this decision does not involve personal data. The data protection implications of the contracted services involved is addressed in the existing contractual arrangements.

13. Carbon Impact Assessment (CIA)

13.1 A CIA is not required because there are no carbon implications arising from this decision as it relates to the funding levels of existing contracted services.

14. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

14.1 None.

15. Published documents referred to in this report

15.1 None.