

Commissioning and Procurement Executive Committee – 10 January 2023

Subject:	Fee levels for Children’s Care Placements 2023/24		
Corporate Director/ Director:	Catherine Underwood, Corporate Director for People Ailsa Barr, Director for Children’s Integrated Services		
Portfolio Holder:	Cllr Cheryl Barnard - Children, Young People and Schools		
Report author and contact details:	Mary Anne Cosgrove, Head of Children in Care, Care Leavers and Regulated Services Tel: 07929 667363 Email: mary-anne.cosgrove@nottinghamcity.gov.uk		
Other colleagues who have provided input:	Katy Ball, Director of Commissioning and Contracting Lisa Melrose, Lead Children’s Commissioner Paul Stevenson, Strategic Finance Business Partner Steve Oakley, Head of 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		
If Capital, provide the date considered by Capital Board Date:			
Total value of the decision:	£2,985,872		
Wards affected:	All		
Date of consultation with Portfolio Holder:	05/12/22		
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 checked="" type="checkbox"/>	
Healthy and Inclusive		<input type="checkbox"/>	
Keeping Nottingham Moving		<input type="checkbox"/>	
Improve the City Centre		<input type="checkbox"/>	
Better Housing		<input type="checkbox"/>	
Financial Stability		<input checked="" type="checkbox"/>	
Serving People Well		<input type="checkbox"/>	
Summary of issues (including benefits to citizens/service users):			
<p>This report presents proposals for placement fee levels in 2023/24 across externally commissioned children’s care placements, including children's residential care homes and foster care placements.</p> <p>The Council has a statutory duty to ensure sufficient accommodation to meet the needs of its looked after children and young people. Nottingham City Council is part of several pan-Local Authority framework agreements in addition to contracting children’s placements in its own right. Whilst placement fee levels are reviewed on an annual basis, due to the current unprecedented economic climate, the annual inflationary increase is expected to exceed that ordinarily applied and is subject to council discretion.</p>			

Exempt information:

An appendix to the report is exempt from publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 because it contains commercially sensitive information relating to the Councils pricing structure and financial modelling.

In addition, in 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.

Recommendations:

- 1** To approve proposals for fee levels for Children's Care Placements as outlined in the pricing details at exempt Appendix 1.
- 2** To delegate authority to the Director for Children's Integrated Services to agree fee levels in accordance with the proposals detailed in the exempt Appendix 1, subject to the outcome of further engagement and in line with the Council budget. Subject to engagement and recommendation 4 below, the agreed rates will be implemented from April 2023.
- 3** To approve the total spend of up to £2,985,872 associated with this decision, including approval to spend against high cost placement provision through the Council's scheme of delegation for Children's Care Packages.
- 4** To note that agreement is subject to final Council approval of the 2023/24 Budget on 6th March 2023. If, after completion of further engagement with the relevant parties, the financial impact of any revised proposals exceed the budget available, further approval from the appropriate Committee will be sought.

1. Reasons for recommendations

- 1.1 Nottingham City Council considers the fee levels for children's care placements on an annual basis, and in doing so will take account of a number of factors, within the context of the wider financial position of the Council.
- 1.2 The Council has a statutory duty to ensure there is sufficient accommodation for its looked after children and young people which meets their needs in its authority area (section 22G of the Children Act 1989 'the sufficiency duty'), balanced against budget commitments and pressures for the Council.
- 1.3 Where the Council is party to pan-local authority frameworks, there must be engagement with local authorities party to these framework agreements. Where the outcome of these discussions require consideration of significant change to the financial consequence of these proposals (with due regard given to the available budget) a further report will be presented through the appropriate governance process.
- 1.4 These proposals and the associated financial modelling are based on information currently available about service utilisation and demand.
- 1.5 The recommendations presented take account of the implications of inflationary pressures on the children's placements market and aim to represent a fair allocation of funding and to support the market across all service areas. The proposals seek to support a sustainable, efficient, and effective market within the available resources.

2. Background (including outcomes of consultation)

- 2.1 The council has a statutory duty to ensure there is sufficient accommodation for its looked after children and young people which meets their needs ('the sufficiency duty') in its authority area.
- 2.2 To support this duty, the Council commissions children's care placements (including residential care homes and foster care) from external agencies through a number of mechanisms. This includes through collaborative framework agreements with other local authorities such as the D2N2 Children In Care Framework and the East Midlands Regional Framework, and through block contracting and spot purchasing arrangements directly with providers.
- 2.3 Price reviews for these externally commissioned children's care placements are undertaken annually in line with contract terms and conditions. Due to the current unprecedented economic climate, the annual inflationary increase is expected to exceed that ordinarily applied and is subject to council discretion. For example, under the D2N2 CiC Framework, weekly prices will increase annually, at the discretion of D2N2 by 1.5% or CPI, whichever is the lower. Should CPI rise above 3% the annual increase will be reviewed by the Contracting Authorities'.
- 2.4 Decisions for price increases are based on a range of factors such as the current market position, cost of living indices and Office of National Statistics data. Specifically, consideration has been given to the National Living Wage and other pressures, pensions, profit margins and voids. This review also considers budget savings required as a result of reductions in the funding the Council receives and other financial pressures.
- 2.5 The review takes place against a backdrop of increased demands on children's social care, policy change, difficulty in attracting workers into the care sector due to competition from other sectors and lack of capacity with the children's placement market.
- 2.6 Nationally, the children's placement market has been found to be functioning inefficiently. A market study (undertaken by the Competition and Markets Authority in 2021/22) reported significant problems in how the placements market functions and made a number of policy reform recommendations to government. Concerns included a lack of placements (of the right kind in the right places) and high levels of profit, pricing and debt within the market's largest private providers.
- 2.7 An increase in fee rates to placements takes effect from April 2023. Where frameworks are pan-local authority, the Council will engage with those local authorities as required. The D2N2 CiC framework is joint with Derby City, Derbyshire County and Nottinghamshire County Council's.

3. Other options considered in making recommendations

- 3.1 Do nothing. Due to under-capacity in the children's placements market and economic pressures, taking no action risks providers not offering placements for Nottingham's children. This would result in a failure to meet the sufficiency duty and a higher proportion of off-framework placements being made at a higher cost and at a distance from Nottingham.

3.2 Offer different fee rate proposals. This option is not recommended as the proposals have taken into account knowledge of the market and feedback from providers, and the overall budget pressures for Children's Social Care. D2N2 employs a joint post and has undertaken a range of market engagement work to understand pressures and risks to sufficiency which has informed the proposed rate. 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 Children's Social Care budget and this is not a feasible option.

4. Consideration of Risk

4.1 Affordability. The Council's financial pressures are significant and further savings are required in 2023/24, with cost pressures anticipated to continue. The analysis undertaken has taken account of the wider budget position and these proposals are considered the fairest way to distribute the funding available across children's care provision.

4.2 Risk of failure to meet the sufficiency duty. A fee level set too low risks providers not offering places to Nottingham's children in care. This could result in more placements being sourced off-framework at potentially a higher cost, and more young people being placed at a distance which require more extensive planning for supporting services and is contrary to the sufficiency duty. This risk is exacerbated due to the lack of capacity in the national market.

4.3 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; 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. This has been informed by the CMA market study (see Section 15 of this report) and an understanding of the local market. The proposals take account of provider feedback on the costs of delivering services and financial pressures.

5. Best Value Considerations

5.1 Undertaking the work to identify appropriate fee levels for external placements alongside ensuring market sufficiency and sustainability ensures that the Council is achieving best value for its children. By working together across D2N2 and the East Midlands on fee uplift the Council benefits from the bigger buying power of the partnerships.

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

6.1 Finance comments are contained within an exempt appendix.

7. Legal colleague comments

7.1 Placement fee levels are reviewed on an annual basis in line with contracted terms. Engagement will be undertaken with providers and other Local Authorities party to the framework agreement and the responses will be fully considered prior to implementation from April 2023. The Director of Children's Integrated Services will take account of these views and issue variations to

existing contracts reflective of the proposals in this report should no significant issue arise and subject to it being lawfully permissible.

Del Sanders, Locum Solicitor, Contracts and Commercial

8. **Other relevant comments**

8.1 There are no procurement implications arising from this decision.

8.2 The commissioned services in question are contracted through compliant procurement processes, and the placement rates proposed considers factors impacting on the provider market and which seeks to ensure fairness and consistency across all providers and reflect the affordability constraints of the local authority.

Steve Oakley, Head of Procurement

9. **Crime and Disorder Implications (If Applicable)**

9.1 Not applicable.

10. **Social value considerations (If Applicable)**

10.1 Children are placed in local provision wherever possible when this is in their best interests.

10.2 This approach also supports local employment and investment in the local economy.

11. **Regard to the NHS Constitution (If Applicable)**

11.1 Not applicable.

12. **Equality Impact Assessment (EIA)**

12.1 An EIA will be undertaken following engagement with providers as required to inform the final fee rates.

13. **Data Protection Impact Assessment (DPIA)**

13.1 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.

14. **Carbon Impact Assessment (CIA)**

14.1 A CIA is not required because there are no carbon implications arising from this decision. It does not make any proposals for the delivery of services or activities but relates to the funding levels of existing contracted services.

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

15.1 None.

16. **Published documents referred to in this report**

- 16.1 Competition and Markets Authority, Children's Social Care Market Study Final Report (2022). Available at: <https://www.gov.uk/government/publications/childrens-social-care-market-study-final-report>