

Commissioning and Procurement Executive Committee – 13 February 2024

Subject:	Fee rates for Adult Social Care Services 2024/25		
Corporate Director:	Catherine Underwood - People		
Portfolio Holder:	Councillor Linda Woodings – Adult Social Care and Health		
Report author and contact details:	Jackie Wyse Interim Head of Service, Contracts, Quality and Personalisation jackie.wyse@nottinghamcity.gov.uk		
Other colleagues who have provided input:	Mark Astbury, Strategic Finance Del Sander, Solicitor Jo Pettifor, Procurement David Stillings, Personalisation Team Manager		
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	
Significant impact on communities living or working in two or more wards in the City		<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital	
Type of expenditure:		<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital	
Total value of the decision: £11.337m			
Section 151 Officer expenditure approval			
Has the spend been approved by the Section 151 Officer? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/a			
Spend Control Board approval reference number: N/a			
Wards affected: All			
Date of consultation with Portfolio Holder: 28.02.24			
Relevant Council Plan Key Outcome:			
Green, 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"/>		
Living Well in our Communities	<input checked="" type="checkbox"/>		
Keeping Nottingham Moving	<input type="checkbox"/>		
Improve the City Centre	<input type="checkbox"/>		
Better Housing	<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 2024/25 across Adult Social Care contracted provision. Nottingham City Council is contractually obliged to consider fee rates on an annual basis where it has a statutory duty to provide a service. Consultation will be undertaken with providers on these proposals and the responses will be fully considered prior to implementation from April 2024.			
Exempt information:			
Appendices to the 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 Local 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 the fee uplift proposal (as outlined in appendix 1, option 2 and section 3 of the report) to enable consultation with the market to take place.
2. To delegate authority to the Director of Commissioning and Partnerships in consultation with the Director for Adult Health and Social Care to agree fee rates in accordance with the proposals detailed in section 3 of the report and in exempt appendix 1, subject to the outcome of consultation with providers and in line with the Council budget.
3. To note that, subject to consultation outcomes (recommendation 1 above) and recommendation 4 below, the agreed rates will be implemented from April 2024.
4. To approve the spend of £11.337m associated with this decision, including approval to spend against high-cost placement provision through the Council's scheme of delegation for Adults Care Packages.
5. To note that, if upon completion of consultation the financial impact of any revised proposals exceeds the budget available, further approval from this Committee will be sought.

1. Reasons for recommendations

- 1.1 Section 5 of the Care Act, 2014 states: A local authority must promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishing to access services in the market:

- a) has a variety of providers to choose from who (taken together) provide a variety of services;
- b) has a variety of high-quality services to choose from.

The Care Act statutory guidance states in 4.35 Local authorities must not undertake any actions which may threaten the sustainability of the market as a whole, that is, the pool of providers able to deliver services of an appropriate quality – for example, by setting fee levels below an amount which is not sustainable for providers in the long-term. However, this should be considered with the duties relating to the delivery of a balanced budget.

- 1.2 In accordance with the Council's legal obligation, consultation on these proposals will be undertaken with adult social care providers during prior to April 2024.

The Director of Commissioning and Partnerships 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 notable change to the sustainability of the market and/or financial consequences of these proposals a further report will be presented through the appropriate governance process.

- 1.3 These proposals and the associated financial modelling are based on current full year financial forecasts in 2023/24.
- 1.4 The recommendations presented take account of the implications of inflationary pressures on the adult social care 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.

2. Background

- 2.1 The Council's fee rates for adult social care services have historically been reviewed annually and decisions based on an established methodology for calculating inflationary increases. An evidence base for pricing was originally developed based on the UK Homecare Association model for Care at Home type services and independent review of residential care pricing. These tools have been adjusted to account for factors including the current market position, cost of living indices and Office of National Statistics data.
- 2.2 Every year, these established tools have been used to undertake analysis of the potential impact of national living wage (NLW) requirements and other pressures such as cost of living, pensions, profit, and voids. Alongside these financial pressures, there are other aspects which are considered:
 - The current provider market including number of providers and quality of the market;
 - Demand for social care provision arising from demographic pressures;
 - Difficulty in attracting workers into the care sector due to competition from other sectors;
 - Competition between Local Authorities and their ability to pay more to the market.

The fee rate modelling process has therefore been key to support social care providers to meet NLW and other cost pressures, and to manage the social care market, whilst balancing against the Council's other budget commitments and pressures.

- 2.3 In December 2021 the Department of Health and Social Care (DHSC) announced the new Market Sustainability and Fair Cost of Care (FCOC)

Fund, available to support local authorities to begin preparing local care markets for reform and moving towards sustainable funding for this market.

Local authorities were expected to use this funding for activities such as conducting a cost of care exercise; improving data on costs; strengthening capacity for market oversight; and increasing fee rates as appropriate to local circumstances.

In 2023-24 Nottingham City Council received an allocation of £5.99m from this fund which has been used to support transformational work, to complete a strength-based review, bolster staffing levels and to provide a sustainable level of funding. The Fair Cost of Care work has been completed; however, the local response rate was extremely low (mirrored nationally) and therefore the outcome was inconclusive.

- 2.4 Due to the significant budget constraints further options have been proposed and are outlined in Appendix One. Information in relation to the market context (including benchmarking) and intelligence relating to the fragility of the market, quality and provider failure that is outlined within exempt appendix 3.

3. Other options considered

- 3.1 Consideration was given to a hybrid model, whereby each option would be broken down into two parts, part one applied the proposed uplift to all provision, part 2 applied the proposed uplift to providers on a contracted rate. (A contracted rate is one that is either a standard rate, a banded rate, or a commissioned rate. It does not include any provision where the rate is variable, and the provider has been able to state their fees at the point of placement).
- 3.2 Although the hybrid options have been considered they are not recommended. The care packages are currently recorded in CONTROCC in such a way that it is impossible to determine which are contracted and which are variable resulting in an inability to financially model this option.

Banded rates were introduced for working age adults residential care approximately 3 years ago, however, this only applied to new placements and not existing placements. It could also create disparity between providers, as not all providers had the opportunity to sign up to the banded or standard rates due to the specialisms they offer.

- 3.3 Alongside the uplift proposals outlined within this report, there are a range of projects (appendix 3) being undertaken to reduce the financial impact of the fee rate increases, including any additional resources required to accelerate these projects.
- 3.4 A range of options have been scoped and outlined within exempt appendix 1, with recommendations based on meeting statutory duties in relation to market stability and whilst balancing this with budget pressures. From the options proposed in appendix 1, Option 2 is recommended, along with the contingency measures in Section 3 of the appendix.

4. Consideration of Risk

- 4.1 The key risks for each option have been outlined within exempt appendix 1.
- 4.2 Legal considerations of risk are contained within the options outlined in Appendix One and below in the legal colleague comments section.
- 4.3 It is proposed to consult with service providers on these proposals before April 2024. Officers from Contracting and Finance will consider consultation responses and report the key themes 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.

5. Best Value Considerations

- 5.1 The service provision covered within this report is in place to support the Local Authority to meet a range of statutory duties.
- 5.2 The majority of commissioned services have been procured through a compliant process to ensure providers meet the required minimum standards, and in the case of services subject to a competitive tender, this included an evaluation of both price and quality to secure best value for money.
- 5.3 A number are contracted through an open accreditation process and in most cases, rates are set by the Council in order to ensure best value. The accreditation process for residential and nursing care and other services includes agreeing to the Council's terms and conditions. There are services currently in place whereby a spot arrangement has been agreed outside of a procurement process, however, through the duties and powers workstreams, mitigation projects and recommendations outlined in Appendix 4, these will begin to be addressed.

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

- 6.1 At this stage the financial implications on this report cannot be finalised.
- 6.2 The funding available to support fee uplifts in 2024/25 is still subject to any agreement by the Chief Executive and Section 151 Officer to increase the existing provision with the MTFP. The financial implications of the recommended option with this report are approximately £3.020m higher than the existing MTFP provision on 2024/25 with an additional risk of £3.000m if the National Living wage agreed is higher than the assumed level of £11.16 per hour set out in the report.

Mark Astbury, Strategic Finance - 20.11.23.

7. Legal colleague comments

- 7.1 Pursuant to para 16.1 below, on the basis that the majority of commissioned adult social care services in question are stated to have been contracted through open and compliant procurement processes, the fee rates and any proposed uplift relating thereto will need to be considered in light of the provisions contained in those Agreements on a case-by-case

basis and also in light of the obligations placed on the Authority to carry out its statutory functions.

- 7.2 The service provisions covered within this report are in place to support the Local Authority to meet a range of statutory duties and so any review of fee rates and proposed uplifts need to take into account what potential impact any decision relating to fees would have on the Local Authority to meet its statutory duties.

Del Sander, Solicitor - 27.12.23

8. Procurement colleague comments

- 8.1 There are no procurement implications arising from this decision.
- 8.2 The majority of commissioned adult social care services in question are contracted through open and compliant procurement processes, and the fee rates proposed have been developed through a robust methodology which considered factors impacting on the provider market, including National Living Wage, and which seeks to ensure fairness and consistency across providers.

Jo Pettifor, Category Manager, People - 14.11.23.

9. Crime and Disorder Implications (If Applicable)

- 9.1 Not applicable.

10. Social value considerations (If Applicable)

- 10.1 Commissioned adult social care services in the city are predominantly delivered by providers with a local operating base, therefore these proposals will support 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 is not required because 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.
- 12.2 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.

13. Data Protection Impact Assessment (DPIA)

- 13.1 A DPIA is not required as 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 None.