

## Report to the Cabinet

Meeting to be held on Monday, 3 December 2018

## Report of the Head of Service, Policy, Information and Commissioning (Live Well)

### Part I

Electoral Divisions affected:  
(All Divisions);

### Adult Social Care Fee Uplifts - 2019/20

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#### Executive Summary

Lancashire County Council supports approximately 30,000 carers and adults in community and residential based settings, at an annual net cost of approximately £331 million per year.

This report sets out the county council's proposed fee uplifts for adult social care providers for 2019/20. However, it should be noted that the county council is currently using structural reserve funding and faces continued financial pressures. Notwithstanding these pressures, the county council continues to increase fees to support Lancashire providers.

The uplifts proposed in this report are a weighted average of national living wage, pension auto-enrolment and other inflationary factors, and are subtly different across services and fee levels due to their differing cost bases.

This is deemed to be a Key Decision and the provisions of Standing Order C19 have been complied with.

#### Recommendation

Cabinet is asked to approve the following uplifts:

- (i) Residential and nursing care
  - Older Peoples approved residential care rates:
  - Nursing Standard 3.91%
  - Nursing Dementia 3.95%
  - Residential Standard 3.86%
  - Residential Higher 3.98%
  - Residential Dementia 4.01%

For other client groups, a rate of 4.01% is proposed and, in turn, the minimum fee level for new placements increased to £567.33.

- (ii) Homecare (all client groups)  
It is proposed that where care has been commissioned off-framework, an inflationary uplift of 4.53% is applied; in line with the 2018/19 cost increase associated with the Homecare Framework.
- (iii) Supported Living  
Increase waking hour rate to £15.17 per hour and change the basis of night time payments to a fixed rate of £47.43 per night, with a top up of £11.73 for the period 1 April 2019 to 30th September 2019, to allow time for service providers to implement new staff terms and conditions.
- (iv) Direct Payments – 4.53%.
- (v) Carers – Uplift the fixed payments of £210/£315 to £220/£330 respectively.
- (vi) Shared Lives – 4.85 %.
- (vii) Day Care (Non "Older People" services) – 3.92 %.
- (viii) Rolling Respite and Provider Brokerage – Uplift in line with the relevant service (e.g. homecare/residential care).

All increases to be effective from 1 April 2019.

## **Background and Advice**

Lancashire County Council supports approximately 30,000 carers and adults in community and residential based settings, at an annual net budget of approximately £331 million<sup>1</sup>. This net figure includes income from Health and Service User contributions as well as Better Care Funding. The net cost also includes approved savings amounting to £22 million which Adults Services are targeting to achieve.

The county council is faced with a significant shortfall in overall funding during the next three years, as demand and cost pressures are forecast to continue to increase.

Some of the demand pressures are being addressed through the Adults Transformation work, and may be alleviated to an extent by changing models of service delivery.

This report focusses on uplifting rates for existing service models at a level which is affordable for the county council, but also reflects inflationary costs incurred by providers in delivering their services.

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<sup>1</sup> 2019/20 forecast

The most significant increase in costs for 2019/20 is the continued increase in the National Living Wage, which will increase by 4.85% from £7.83 to £8.21 per hour.

## **Uplifts**

The National Living Wage will increase by 4.85% but this does not represent the total cost increase of delivering services. Whilst labour constitutes a significant component, there are other aspects of provider's cost base that change by higher or lower amounts.

The uplifts proposed are a weighted average of national living wage, pension auto-enrolment and other inflationary factors and are subtly different across services and fee levels due to their differing cost bases.

## **Residential Care**

It is recommended that Older People's approved residential care rates are increased in line with the table below.

	<b>2018/19 Fee</b>	<b>2019/20 Fee</b>	<b>Increase</b>
RESIDENTIAL STANDARD	£449.21	£466.55	3.86%
RESIDENTIAL HIGHER	£508.14	£528.36	3.98%
RESIDENTIAL DEMENTIA	£545.46	£567.33	4.01%
NURSING*	£514.44	£534.55	3.91%
NURSING DEMENTIA*	£606.78	£630.75	3.95%
<i>*EXCLUDING HEALTH FUNDED REGISTERED NURSING CARE CONTRIBUTION</i>			
<i>ROOM PREMIUM REMAINS UNCHANGED</i>			

For other client groups, a rate of 4.01% is proposed and, in turn, the minimum fee level increased to £567.33.

In 2015, the county council moved away from its banded fee model with 50 fee levels, to a simplified structure of 5 fee levels plus a compliant room premium for placements where room meets Care Quality Commission minimum standards. Future intentions regarding residential requirements and fee structures will be communicated via our Market Position Statement.

## **Homecare**

### *On-Framework*

The current Homecare Framework commenced in November 2017, and providers tendered a rate for each year of the contract. No further uplift is proposed in this report.

### *Off-Framework*

It is proposed that, where care has been commissioned off-framework, an inflationary uplift of 4.53% is applied; in line with the 2018/19 cost increase associated with the Homecare Framework.

## **Supported Living**

### *Waking hours*

It is recommended that the supported living approved rates are increased to £15.17 per waking hour (4.5%).

### *Sleep-in payments*

In April 2016, as a result of a change in legislation relating to sleep-in shifts (arising from the case of Mrs J Whittlestone v. BJP Home Support Ltd) the county council changed the basis of its sleep-in fees, to reflect all sleeping hours counting towards national living wage.

On 13 July 2018, the Court of Appeal issued its decision in the Royal Mencap Society v. Tomlinson-Blake ruling and overturned the previous ruling relating to sleep-in shifts:

*In short "...carers who work sleep-in shifts at a client's residence and who are 'on call' are not entitled to the National Minimum Wage for periods whilst they are asleep."*

As a result of this decision, the county council may return to paying a flat rate fee.

It is recommended that, with effect from 1 April 2019, service providers are paid a fee that matches (and subsequently mirrors) the county council's in-house staff sleep-in terms and conditions. For 2019/20, this is set at £36.08 staff payment and equates to £47.43 provider payment (after allowing for national insurance and pension costs).

Feedback from some of the county council's largest supported living providers is that staff terms and conditions have been changed as a result of previous legal rulings, and that they will need time to implement new terms and conditions in light of this new ruling. It is therefore recommended that the county council pays a top up of £11.73 for the period 1 April 2019 to 30 September 2019 (total payment of £59.16 representing a payment to staff of £45 per shift).

It is not possible to determine the exact number of care workers affected by this decision, as some workers will not undertake any sleep-in shifts whilst others may undertake several shifts per week. However, the county council estimates this decision will impact between 1,500 and 2,000 care workers.

The county council currently spends c£14 million per year on sleep-ins. Changing the fee as described above is anticipated to save in the order of £6m in 2019/20. This is included within the Money Matters report which is also on the agenda for Cabinet's consideration.

### **Extra Care**

All extra care contracts have been retendered with providers tendering a rate for each year of the contract. No further uplift is proposed in this report.

### **Carers**

Carers are paid a one off fixed amount of £210 or £315 as a direct payment, depending on the level of support they require. The scheme was introduced in April 2015 and is intended to help people in their role as a carer. They may use this money as they see fit.

The proposal is to uplift the payments in line with National Living Wage to £220 and £330 respectively.

### **Shared Lives**

Shared Lives is a care service for adults with learning or physical disabilities and for older people. Care is family based and provided by individuals and families. Shared Lives carers are local people recruited and trained to make sure they have the right qualities to provide care and support.

The proposal is to uplift fees by 4.85% in line with the National Living Wage increase.

### **Day Care**

Day time support is delivered in a variety of locations from traditional accommodation based services through to outdoor activity centres. During 2018/19, the county council established an open list of pre-qualified service providers who are contracted to meet our quality standards. The list is specific to Older People's day time support services, with prices being pre-agreed during this process. No further uplift to Older People's day time support rates are proposed in this report.

For all other client groups an uplift of 3.92% is proposed.

### **Council Commissioned Respite & Individual Service Funds**

The proposal is to uplift fees associated with rolling respite and provider brokerage in line with the relevant service, e.g. residential respite and supported living Individual Service Funds will be uplifted in line with the rates detailed earlier in this report.

### **Direct Payments**

It is recommended that an inflationary uplift of 4.53% is applied to all weekly Direct Payments set up prior to 1 April 2019.

If, after this uplift has been applied, any person who still cannot meet their care and support needs within their existing budget, or finds they are receiving too high a personal budget, should contact the county council.

### **Out of County Placements**

In order to prevent unequal price uplifts in neighbouring Authority areas, the rate uplifts described in this report will not be applied to placements made outside of the county council's border. Instead, the county council will honour the host authority uplifts upon receipt of confirmation of the host authority uplift. *(Providers should make contact via [contractmgmt.care@lancashire.gov.uk](mailto:contractmgmt.care@lancashire.gov.uk) and provide confirmation of the host authority's rate increase).*

## Consultations

The county council has not undertaken formal consultation in relation to these proposals. However, in September 2018, the county council held an informal meeting with nine of its largest supported living providers to seek their views and potential implications of a reduction in sleep-in fees, resulting from the Court of Appeal Decision. Key points from this meeting are as follows:

- *The rate paid to providers should consider the impact on staff retention and the ability to deliver safe services and therefore allow them to pay staff at least £45 per night, which would equate to £59 per night to providers inclusive of on-costs.*
- *The county council should await the outcome of whether Unison's appeal has been granted before putting forwards a final position.*
- *The county council should not implement any changes in the current financial year and April 2019 would be the earliest possible date they could complete a consultation period with affected staff.*
- *The county council should consider a phased reduction to allow provider employees affected by this change time to adjust to a lower take home pay.*

## Implications:

This item has the following implications, as indicated:

### Financial

The fee uplifts described in this report will cost approximately £8m after taking into account a saving of approximately £6m on supported living sleep-in fees.

As part of the county council's Medium Term Financial Strategy, price inflation is estimated and included using the Laing and Buisson model. This report does not result in an additional pressure on the Adults Services budget as price increases (including living wage) have already been built into the Medium Term Financial Strategy.

It should be noted that, whilst the price increases proposed in this paper do not pose additional pressures on the county council's Medium Term Financial Strategy, the county council is currently using structural reserve funding and faces continued financial pressures.

Notwithstanding these pressures, the county council continues to increase fees to support Lancashire providers.

### Legal

The Care Act statutory guidance states that "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."

Fee uplifts proposed in this report have been set at a level that reflects current market conditions. They incorporate changes to the national living wage as detailed in the Chancellor's Autumn statement in addition to other factors such as changes in employer's contribution rates for pension auto-enrolment and general inflation.

#### *Supported Living Night Rate*

The Court of Appeal decision represents the current interpretation of the law. However, it may not be the final position in relation to sleep-in rates of pay and The Supreme Court could overturn the Court of Appeal decision.

The decision as to whether the Supreme Court will grant Unison the right to Appeal the July ruling has not yet been announced but is expected imminently. If leave to appeal is granted, it will be 2019 before the Supreme Court hears the case and a decision may not be reached before 2020/21.

#### **List of Background Papers**

Paper	Date	Contact/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A