

Report of: Head of Commissioning (Contracts and Business Development)

Report to: Director of Adults and Health

Date: 22nd November 2017

Subject: Report to request an increase to the Independent Sector Older People's Care Home Fees.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and No integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The report seeks the Director of Adults and Health approval for uplift payments to the residential and nursing care home fees for the period 20th December 2016 to the 31st March 2017 and then a further increase from April 1st 2017 to December 19th 2017 whilst the Cost of Care exercise is completed and a fee set for the new contract which will be effective from 1st April 2018 (subject to a separate DDP report requesting approval to implement a new short term agreement on the existing terms and conditions from December 20th 2017 to 31st March 2018).
2. A procurement process was undertaken to employ external consultants to lead on a new Cost of Care exercise in order to develop a new fair affordable fee that will be utilised in the new Older Peoples Residential and Nursing contract and, following evaluation of the bids received, Mazars were appointed as an external consultant to carry out the cost of care analysis.
3. Mazars submitted their final report and negotiations are currently ongoing to establish a final fee structure for the new contract which will commence 1st April 2018 following the necessary approvals.

Recommendations

1. The report seeks the Director of Adults and Health approval for uplift payments to the Older People residential and nursing care fees for the periods from the 20th December 2016 to the 31st March 2017 and a further increase from April 1st 2017 to December 19th 2017.
2. The Head of Contracts and Business Development, Adults and Health will implement this decision directly after it has been taken, subject to the necessary clearance process being completed. This will be done by issuing relevant letters to the organisations informing them of the increase and making the backdated payments for the new fees to all relevant care homes within the Leeds City boundary.

1 Purpose of this report

- 1.1 The report to the Director of Adults and Health seeks approval for uplift payments to the Older Peoples residential and nursing care fees for the period from the 20th December 2016 to the 31st March 2017, and from April 1st 2017 to December 19th 2017 whilst the Cost of Care exercise is completed to agree a new fee for the new contract which will come into effect 1st April 2018.

2 Background information

- 2.1 The council currently has a framework contract in place for care homes which is now in its final year. This contract was let in December 2012 for a five year period.
- 2.2 Within the contract the process for setting new fees states that the annual review would take due regard of the percentage change in 'actual cost' experienced by providers. This process involved the providers submitting an annual return which would show variations on each of their cost elements which made up the direct and indirect costs. The cost of capital used in the calculation of the fee was excluded from the review process as this would remain fixed throughout the life of the framework contract.
- 2.3 A cost of care template was developed which allowed providers to submit their actual costs variations as part of the review process. The contract stated that where a provider failed to submit their return during the review period, then it would be presumed that that provider had sustained no increase in their cost base.
- 2.4 The contract also stated that after reviewing all the evidence and taking due regard of the annual local government finance settlement made to the Council, the Council would inform providers of any decision taken to amend the price and this would apply to all providers from the anniversary of the framework contract.

3 Main issues

- 3.1 Since the contract was let, the Care Act 2014 has been introduced which sets out guidance for local authorities around market shaping and commissioning of adult care and support. Within section 4.35 of the guide it states:
- 3.2 *“Local authorities should consider the impact of their own activities on the market as a whole, in particular the potential impact of their commissioning and re-commissioning decisions, and how services are packaged or combined for tendering, and where they may also be a supplier of care and support. The local authority may be the most significant purchaser of care and support in an area, and therefore its approach to commissioning will have an impact beyond those services which it contracts. 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 the fee levels below an amount which is not sustainable for providers in the long-term.”*
- 3.3 In March 2016, the legal advisors of Leeds Care Association (LCA) wrote to the Council pointing out that by applying the uplift formula in the contract, the Council would not be complying with its duties under the Care Act. Legal advice was sought and it was agreed that the council would work with the LCA to establish a fair fee review to avoid the possibility of further legal action.
- 3.4 As the council was already undertaking the re-commissioning exercise for care homes, it was agreed and accepted by LCA that the fee review exercise for the next contract would be used and applied to the final years fee review for the current contract.
- 3.5 A Procurement process was undertaken to employ external consultants to lead on a new Cost of Care exercise in order to develop a new fair, affordable fee that will be utilised in the new contract for Older Peoples residential and nursing care homes and, following evaluation of the bids received, Mazars were appointed as an external consultant to carry out the cost of care analysis.
- 3.6 Mazars submitted their final report and negotiations are currently ongoing to establish a final fee structure for the new contract that (subject to DDP approval) will come into effect 1st April 2018.
- 3.7 A financial analysis of the Mazars data returns has now been undertaken by Adults and Health Financial Management and those results returned to Commissioners who have used this analysis to determine a fee proposal.
- 3.8 A further report will be submitted to DDP seeking permission to enter into an interim agreement with the current Older People’s residential and nursing care home providers for the period 20th December 2017 to 31st March 2018 once the negotiations to agree the fees have been completed.

3.9 Any future agreements will then commence 1st April 2018 which will bring the contract in line with the financial year/budget periods.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 As part of the communications with providers it was agreed that this year's inflationary award would be set based on the conclusion of the Mazars cost of care exercise. All providers who are part of the framework contract were given the opportunity to submit a cost of care template stating how their costs have varied during the past year and this is the basis on which future review calculations were carried out.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An Equality Impact Assessment Screening Tool has been completed for this report and is included as Appendix 1.

4.3 Council policies and City Priorities

4.3.1 The Older People residential and nursing services will contribute to the Council's policies and the Best Council Plan including delivery of the better lives programme by contributing to: people living longer and healthier lives; helping people to live full, active and independent lives; ensuring that people's quality of life is improved by access to quality services; involving people in decisions made about them, and; helping people to live in healthy and sustainable communities

4.4 Resources and value for money

4.4.1 In recognition of the impact that the national living wage, inflation and pension has had on the Older People's care home sector the proposed fee's to be paid are detailed in Appendix 2 of this report.

4.4.2 The cost of the implementation of the revised fee for the period 20th December 2016 to 31st March 2017 will be £1.1m for this period

4.4.3 The cost of the implementation of the revised fee for the period 1st April 2017 to 19th December 2017 will be a further £3.5m during this period.

4.4.4 The total cost of implementing the revised fees for the remaining contract period is £4.6m, however it should be noted that these prices are the basis on which the future fee negotiations will be based.

4.4.5 The proposal causes a financial pressure of approximately £670k after allowing for the (part year) use of the inflationary uplift and impact of the National Living Wage for the whole of 2017/18, a further £2.3m has been identified from Care Act funding. The pressure will be met from within Adults and Health resources. The pressure this causes in future years is included in the directorates current financial planning processes.

4.4.6 There are provisions within the existing contract to implement fee uplifts.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 There are no specific legal implications as part of this report because the existing terms and conditions allow for financial uplifts throughout the life of the contract.
- 4.5.2 This decision has been placed on the list of forthcoming key decisions and is subject to call-in. The report does not contain any exempt or confidential information.

4.6 Risk Management

- 4.6.1 There are no significant risks identified in making the decision recommended by this report.

5 Conclusions

- 5.1 Whilst the negotiations are still ongoing to determine future care home fees it is proposed that uplift payments on fees are made for the period from the 20th December 2016 to the 31st March 2017 and April 1st 2017 to the 19th December 2017.

6. Recommendations

- 6.1 The report seeks the Director of Adults and Health approval for uplift payments to the Older Peoples residential and nursing care fees for the periods from the 20th December 2016 to the 31st March 2017 and April 1st 2017 to December 19th 2017.
- 6.2 The Head of Contracts and Business Development, Adults and Health will implement this decision directly after it has been taken, subject to the necessary clearance process being completed. This will be done by issuing relevant letters to the organisations informing them of the increase and making the backdated payments for the new fees to all relevant care homes within the Leeds City boundary.

7. Background documents¹

- 7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.