


REPORT TO CABINET

06 May 2020

Subject:	Care Home Fees – Older People 2020/21
Presenting Cabinet Member:	Councillor Farut Shaeen - Cabinet Member for Healthy Lives
Director:	Director of Adult Social Care – Stuart Lackenby
Contribution towards Vision 2030:	
Key Decision:	Yes
Cabinet Member Approval and Date:	Councillor Farut Shaeen – 29th April 2020
Director Approval:	Stuart Lackenby – 20th April 2020
Reason for Urgency:	Urgency provisions do not apply
Exempt Information Ref:	Exemption provisions do not apply.
Ward Councillor (s) Consulted (if applicable):	Ward councillors have not been consulted.
Scrutiny Consultation Considered?	Scrutiny has not been consulted.
Contact Officer(s):	Daljit Bhangal Operations Manager – Commissioning daljit_bhangal@sandwell.gov.uk

DECISION RECOMMENDATIONS

That Cabinet:

1. Approve the following care home fees for older people for 2020/21, calculated in accordance with the agreed model, to be effective from 1 April 2020 and that the Director of Adult Social Care be authorised to communicate this to the relevant providers and implement the fee increase.

	Residential	Dementia Residential	Nursing	Dementia Nursing
	£ /week	£ /week	£ /week	£ /week
2019/20 Fees	436.28	491.04	599.06	606.74
Increase in SMBC Fees	19.62	22.06	16.48	16.75

Change in 2020/21 NHS RNC	N/A	N/A	Not announced based on 2019/20 rates*	
Notional 2020/21 fee including RNC contribution*	455.90	513.10	615.54	623.52
Movement in SMBC Element of the Fee	4.50%	4.49%	3.80%	3.80%

* The NHS Registered Nursing Care (RNC) contribution towards the costs of a place in a care home are set nationally by NHS England, this figure is included in the stated fee level at the 2019 - 20 rate, any changes will be passported to NH providers once known.

1 PURPOSE OF THE REPORT

- 1.1 On 19 April 2017, Adult Social Care presented a report to Cabinet (Residential Care Home Fees model and rates 2017-18 (Minute No. 87/17) seeking approval for the use of a proposed costing model to form the basis of discussion and fee setting for Care Home Fees for Older People in future years. Cabinet approved the recommendations.
- 1.2 The model has been used since 2017 to calculate the increase of Care Home Fees and has been used to calculate the proposed Care Homes Fees for 2020-21. This report seeks approval for the Director of Adult Social Care to communicate the resultant fees to the relevant providers and implement the revised fees from 1 April 2020.
- 1.3 As a result of the current global pandemic, adult social care providers are facing an unanticipated and unprecedented impact to their fees and voids, and the council is separately working up an offer that would support them at this time. This offer is beyond the scope of this paper.

2 IMPLICATION FOR VISION 2030

- 2.1 The proposals contained within this report support the Sandwell Council vision 2030 as stated in Ambition 2, "Sandwell is a place where we live healthy lives and live them for longer, and where those of us who are vulnerable feel respected and cared for.
- 2.2 Sandwell Council Adult Social Care will support adults with social care needs who are no longer able to live at home by providing cost effective residential services.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 The council is responsible for the commissioning, contracting and payment of residential care home placements (residential and nursing) for older people who meet the access criteria and do not have assets in excess of the limits set by the Government. Individuals are charged for their care depending on their individual financial circumstances in accordance with the rules set out by the Government.
- 3.2 The council purchases placements in care homes for older people. Placements are purchased at standard rates set by the council. There are four categories of standard rate, Residential, Residential Dementia, Nursing Homes and Dementia Nursing. In addition to placements made at standard rate the council has a significant number of agreements with homes for specific individuals where payments made are in excess of standard rate either via a negotiated fee, usually for individuals with specific needs or where a Third-Party contribution has been agreed.
- 3.3 On 31 August 2016, following extensive discussion with the sector the Council established the base rate for care home fees in Sandwell. During this process, as referenced in the Cabinet report, the council wrote to the West Midlands Care Association on 24 March 2016 requesting the substantiating information for additional costs that the sector claimed it had previously been agreed would be provided. A response was received on 16 May 2016; however, this response did not cover all areas of information requested, nor did it contain any verification of additional costs incurred by providers in Sandwell. The council wrote again on 16 May 2016 to request this, and a final response was received on 24 May 2016 in a letter erroneously dated 18 May 2015.
- 3.4 As reported to Cabinet on 31 August 2016, the council reviewed the information submitted by the West Midlands Care Association. The responses provided did not offer any additional evidence of costs in the sector and nor in the opinion of the council did they provide any further persuasive information or case for the council to increase the previous financial uplift offered.
- 3.5 On 19 April 2017, Adult Social Care presented a report to Cabinet (Residential Care Home Fees model and rates 2017-18 (Minute No. 87/17) seeking approval for the use of the proposed costing model to form the basis of discussion and fee setting for Care Home Fees for Older People in future years. Cabinet approved the recommendations. There are no material reasons to change this model.

4 THE CURRENT POSITION

- 4.1 The model approved was developed via a working group which consisted of Officers of the Council and representatives from the West Midlands Care Association WMCA. The group agreed terms of reference and met to establish the principle and detail of a proposed cost model.
- 4.2 The model has taken into account increases to the National Living Wage, increases to auto enrolment pensions and links to various Consumer Price Indices (CPI), as well as links to the council pay award.
- 4.3 It is noted that the WMCA response to consultation identifies dissatisfaction with the base fee, however as described in 3.3 and 3.4 above, this matter has previously been considered and no further supporting information has been provided to the council by the WMCA.
- 4.4 Unfortunately, the FNC rate 2020/21 has yet to be confirmed by the Department of Health and Social Care and therefore the rates identified in this report include the FNC rate for 2019/20. Any change in the FNC rate will be fully passported on to Nursing Home providers when announced.
- 5 The model has been used to calculate the proposed Care Home Fees for 2020/21 and this report seeks approval for the Director of Adult Social Care to communicate the resultant Fees to the relevant providers and implement the revised fees with effect from 1 April 2020.

6 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

- 6.1 The Chief Executive of the WMCA was notified by email on 24 January 2020 of the outcome of the calculation and asked to consult all care home providers that are subject to standard rate fees, with comments requested by 7 February 2020. To ensure that all providers were contacted, a list was requested of those contacted and this revealed that there were a few who had not been contacted and this was remedied, and they were subsequently contacted.
- 6.2 The feedback from the sector consultation by the WMCA was as follows:
 - Occupancy is an issue which causes problems for Providers and makes the increase further below the fair cost of care than it seems at first glance.
 - All the providers were concerned that the way of calculating the fee which is not based on a realistic price, means that every year the situation gets worse.
 - One of the main issues is the minimum wage increase which the costing model does take into account, but as it wasn't based originally on the wage bills of Providers, it is getting further adrift.

- All the providers expressed a wish to pay their staff more and would be open to the idea of an increase, based on a sign up to increased wages for staff.
- Providers asked if it is possible to consider doing a cost of care exercise as carried out by Birmingham – see 6.5 below
- The Council pays less for Nursing Care than Residential without FNC – please see 6.3 below
- 3 Homes expressed the opinion that the rate is not sufficient to keep their businesses viable – the identity of these homes has been requested twice but providers do not want to share the information with the council at this stage
- A home writing separately indicated that the wages will be increasing by 6.2% from April and the increases the council is offering does not even maintain the status quo. The provider states the past few years have pushed most operators in the area to the brink and because of higher operating costs not being matched by increase in fees and how they strongly believe this may become the final straw and asked the council to reconsider this
- Figures provided to the WMCA by providers through the consultation were:
 - Increase required – 7.5%
 - 23 to 38% behind the cost of care (a spreadsheet with figures has been offered if the council wants it) – see 2.8 below
 - Nursing should be £615.54 excluding FNC
 - Residential will be £455.90 and Nursing £449.98

6.3 It should be noted that the Free Nursing Contribution (FNC) has not been announced for 20/21 by the Department of Health and Social Care, and therefore the same FNC contribution used in 2019/20 has been used to calculate the proposed uplift. Given this, the comments made through the consultation are likely to therefore explain why the nursing rate is less than the residential rate when the FNC is deducted. In the event that the FNC rate is increased, this will be passed on in full to care providers in 20/21. If it is not, a further paper will be presented to the Board to address the anomaly, but it is not recommended that any changes are made until the outcome is known.

6.4 Separate to the consultation, one corporate care home provider with 6 homes in Sandwell had already written to the council and stated they had forecast in-year pressures in relation to staff, non-staff costs and technology investment from April 2020 to be 7.5%. They identified that the increase they received for 19/20, when weighted against actual occupancy, delivered a 3.6% increase across all of their care categories despite their cost pressures being 5.5%, which meant they had to absorb pressures themselves in relation to the difference, which they argued inhibited sustainability and investment.

This provider argued that the gap between the current standard base fees in Sandwell and their view of the real cost of providing care according to the Laing and Buisson methodology continued to grow, and they indicate the fee increase that should therefore be paid is as follows:

Residential	Dementia Residential	Nursing	Dementia Nursing
44%	36.1%	26.4%	32.7%

The provider also noted that those residents who are subject to 'negotiated' rates where there is no third party paying a top up have not had the benefit of an increase to standard rates. They requested that this anomaly be remedied, so in these scenarios, they assert that providers should benefit from an inflationary linked uplift to be applied to the standard rate component of the fee as a minimum, as they have no way of building in inflation to the initial fee. It is noted that the assessment of £1,175,920.00 to uplift standard rates, which is within projected budget, includes both negotiated fees and where there is a third party paying the top up. While only 1 care home provider has raised this formally, the CCBU receives contact from care providers when they implement rates each year to ask why there is a discrepancy where only those top ups paid by third parties have standard rates increased. It is likely to become an issue more so in future years as the number of care homes charging standard rate alone has diminished and therefore the council is likely to pay more and more 'negotiated' rates i.e. where they pay the top up. They have asked for a separate meeting with senior officers and elected members.

- 6.5 A cost of care exercise with providers has been attempted a number of times however providers have been reluctant to share details of their accounts and exercises have had to be aborted.
- 6.6 The suggested fair cost of care uplifts that have been identified through the consultation are outside of the scope of the available budget that is to be used to pay for the uplifts. The level of costs that have been suggested to reflect a fair cost of care have been mentioned in previous years, and it is suggested that if fees needed to be at these rates to reflect a true cost of care, no care homes have gone out of business as a result of the rates being paid not mirroring the purported fair rates, although that notwithstanding, it is acknowledged that care home providers may argue that the rates they charge self-funders subsidises the apparent poor rates paid by the Council.

7 ALTERNATIVE OPTIONS

- 7.1 If the recommendations to increase fees for 2020/21 are not approved, there is a risk that care home providers, and therefore the supply chain may become less resilient.

- 7.2 If the recommendations are not approved there may be an adverse impact on the elderly and vulnerable care home residents if care home providers are not able to maintain good quality standards of provision, or if fewer of them agree to contract with the council or if some are unable to continue in business. Officers have assessed the impact of this risk as being high and will monitor any impact. Monitoring will be conducted via regular communication with staff in relation to placement availability and quality monitoring will be undertaken through contract monitoring and ongoing contact both with care home providers and residents.
- 7.3 If the sector feels that the level of fee offered is not acceptable, there is a risk they will pursue a judicial challenge, which has implications for the council's finances. However, it is considered the risk is mitigated because the sector has engaged in the fee model process.
- 7.4 There remains a risk in respect of whether there are sufficient placements in the sector which accept the council's standard rate, which could imply that the rate the council pays is not sufficient, however it is considered this is mitigated because the council would be obliged to meet any shortfall in the event there were no placements available at standard rate.

8 STRATEGIC RESOURCE IMPLICATIONS

- 8.1 The financial impact of the proposed increase in weekly rates of those placements subject to standard fee will be dependent upon the volume and mix of commissioned care during 2020/21. It is estimated that the proposed rates will increase the annual cost of care by £1,175,920.00.
- 8.2 The additional costs can be met from the 2020/21 budgets earmarked for this purpose within the Adult Social Care budget strategy. These resources are funded from corporate allocations for inflation, redirection from planned budget savings and from the 2020/21 council tax precept ring-fenced for adult social care.
- 8.3 There are no workforce implications as a result of recommendations made within this report.
- 8.4 The corporate risk management strategy has been complied with to identify and assess the risks associated with the decisions being sought. If approved, the recommendations will assist in the continued mitigation of the directorate risk 025 in respect of supply chain resilience. This risk is currently assessed as amber based upon the current measures in place which include the regular review of and increased rates of pay to providers.

As a result, if the recommendations are not approved, this may result in the risk being reassessed to red, thereby increasing the fragility of the service and potential for significant implications and unplanned financial consequences for the council if the providers of those services cease operations.

9 LEGAL AND GOVERNANCE CONSIDERATIONS

- 9.1 The Care Act requires that a local authority, where it assesses there to be some eligible needs, must consider what could be done to meet those eligible needs (section 13(3)) and then meet those needs (sections 18-20) - it may meet those eligible needs for care and support by the provision of accommodation in a care home or in premises of some other type (section 8(1)(a)).
- 9.2 Statutory guidance on section 5 of the Care Act 2014 places duties on local authorities to facilitate a healthy market of quality services through market shaping. Therefore, councils are responsible for sustaining the market and not paying below market levels in fees.
- 9.3 Under the Care Act 2014, the amount specified in a person's personal budget. The amount specified in the personal budget must be an amount sufficient to meet the person's care and support needs. Regulation 3 of The Care and Support and After-care (Choice of accommodation) Regulations 2014 ("the Regulations") sets out that where the cost of an adults preferred accommodation is more than the amount specified for the accommodation in the adult's personal budget (under section 26 of the Care Act 2014) the local authority is not required to provide that accommodation unless the additional cost (or "top-up") condition is met.
- 9.4 The Regulations (and paragraph 8.36 of the statutory guidance) confirm that where the care planning process has determined that a person's needs are best met in a specific placement, the local authority must provide for their preferred choice of accommodation subject to certain conditions.
- 9.5 Chapter 4 of the Care Act Statutory guidance provides direction on market shaping and commissioning of adult care and support. The Council has paid due regard to this and considered the guidance provided.
- 9.6 Statutory Guidance updated in October 2018 on The Care Act 2014, specifically, paragraph 4.31, identifies when commissioning services, local authorities should assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care.

This should support and promote the wellbeing of people who receive care and support and allow for the service provider's ability to meet statutory obligations to pay at least the national minimum wage and provide effective training and development of staff. It should also allow retention of staff commensurate with delivering services to the agreed quality and encourage innovation and improvement. Local authorities should have regard to guidance on minimum fee levels necessary to provide this assurance, taking account of the local economic environment. The Council has had regard to the tools referred to in the guidance and has worked with the sector to identify a baseline cost of service, this resulted in the Cabinet report to members in August 2016. The council subsequently worked with the WMCA and representatives to construct the cost model described in this report.

- 9.7 Paragraph 4.35 of the Statutory Guidance on The Care Act 2014 identifies that 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 fee levels below an amount which is not sustainable for providers in the long-term.
- 9.8 Paragraph 4.36 of the Statutory Guidance on The Care Act 2014 identifies that local authorities should have effective communications and relationships with providers in their area that should minimise risks of unexpected closures and failures and have effective interaction and communication with the Care Quality Commission (CQC) about the larger and most difficult to replace providers that the CQC will provide financial oversight for. Local authorities should review the intelligence they have about the sustainability of care providers drawn from market shaping, commissioning and contract management activities. Where the authority believes there is a significant risk to a provider's financial viability, and where they consider it would be in the best interests of service users, the authority should consider what assistance may be provided or brokered to help the provider return to viability and consider what actions might be needed were that provider to fail. For example, where a local authority has arranged services for people with a provider that appears to be at risk, undertaking early planning to identify potential replacement service capacity.

9.9 Where it is apparent to a local authority that a provider is likely to imminently fail financially, either through its own intelligence or through information from the CQC, the authority should prepare to step in to ensure continuity of care and support for people who have their care and support provided by that provider

9.10 Section 149 of the Equalities Act 2010 provides as follows:

149 Public sector equality duty

- A public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the following matters : .

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:-

- tackle prejudice, and
- promote understanding.

Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

The relevant protected characteristics are:

- age;
- disability;
- gender;
- reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

9.10.1 A reference to conduct that is prohibited by or under this Act includes a reference to

- a breach of an equality clause or rule;
- a breach of a non-discrimination rule.

9.11 The essential point is that councillors are required carefully to consider the important needs of elderly and/or disabled vulnerable care home residents and whether the proposal may adversely impact on them given the importance of (i) advancing equality between such persons and others, (ii) reducing the disadvantages that such persons suffer from, (iii) meeting the needs that they have that are different from the needs of other children and (iv) encouraging them to take part in public life, including in particular social, recreational and leisure activities in social and group settings.

9.12 In the assessment of officers, the recommended increase to council funding of 4.50% in residential and 3.80% in Nursing homes will enable care home providers to meet their costs, make a reasonable profit overall and continue to provide good quality care, and a market with an adequate amount of choice at the council's standard rates and that the risk of any adverse consequences is very low. If the council's assessment is incorrect for any reason, the risk is that some care home providers may

provide less good quality care than currently, that fewer may offer places at the council's standard rates and that some may even leave the market causing a need for residents to be rehoused. Although officers assess these risks as being very low, they will monitor them through contract monitoring and ongoing contact with care home providers and residents, with a view to alerting the council should any such risks or any other similar risks come to pass.

10 EQUALITY IMPACT ASSESSMENT

10.1 An Equality Impact Assessment has been undertaken, there are no negative or adverse impacts on any protected groups.

10.2 There are no significant equality issues arising from this report. The proposed increase in fees will ensure that adults with social care needs who are no longer able to live at home are supported by the Council through the provision of cost effective residential services.

11 DATA PROTECTION IMPACT ASSESSMENT

11.1 Data protection is addressed within the Council's contract for the service.

12 CRIME AND DISORDER AND RISK ASSESSMENT

12.1 There are no implications from this proposal on crime and disorder.

13 SUSTAINABILITY OF PROPOSALS

13.1 The proposed increases reflect cost pressures experienced by care providers and the additional cost to Adult Social Care can be funded from recurring sources of finance; including the ring-fenced council tax precept.

14 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)

14.1 The implementation of revised fee levels will assist the market to continue to deliver high quality services to the residents of Sandwell.

15 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND

15.1 There are no implications for the council's material assets (including the Asset Management Strategy) as a result of this report.

16 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

16.1 Approval of the proposed fees is in accordance with previous Cabinet approvals and in line with the actions agreed with the West Midlands Care Association.

17 BACKGROUND PAPERS

17.1 None

18 APPENDICES:

None

Stuart Lackenby
Director of Adult Social Care