

Report to Cabinet

Monday 24 May 2021

Subject:	Care Home Fees – Standard Rate 2021/22
Cabinet Member:	Cllr Shaeen Cabinet Member for Living Health Lives
Director:	Katharine Willmette
Key Decision:	Yes
Contact Officer:	Daljit Bhangal – Operations Manager daljit_bhangal@sandwell.gov.uk

1 Recommendations

It is recommended that Cabinet;

1. Approve the proposed fees detailed in paragraph 2 below that are calculated in accordance with the agreed model, to be effective from 1 April 2021 and that the Director of Adult Social Care be authorised to communicate this to the relevant providers and implement the fee increase accordingly.
2. Recommended Revised Fees for 2021/22 are set out below:

	Residential	Dementia Residential	Nursing	Dementia Nursing
	£ /week	£ /week	£ /week	£ /week
2020/21 Fees	455.90	513.10	633.90	641.88
Increase in SMBC Fees	4.57	5.15	5.14	5.24
Change in 2021/22 NHS RNC	N/A	N/A	Not announced based on 2020/21 rates*	
Notional 2021/22 fee including FNC contribution*	460.47	518.25	639.04	647.12





* The NHS Registered Nursing Care (FNC) 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 2020 -21 rate, any changes will be passported to Nursing Home providers once known.

3. That Adult Social Care review the proposed rates in 6 months once the position on additional government funding has been ascertained, and if necessary, put another paper recommending revisions to the rates in year should they be necessitated.

2.0 Reasons for Recommendations

- 2.1 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.
- 2.2 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 2021-22. 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 2021.
- 2.3 As a result of the continuation of the global pandemic, adult social care providers continue to encounter an unprecedented impact on their fees, and in some cases a high level of voids. The council is separately supporting the sector on those additional costs through a Provider Offer and distributing funds provided by the Department of Health and Social Care.

3 How does this deliver objectives of the Corporate Plan?

	<p>People live well and age well Sandwell Council will support adults with social care needs who are no longer able to live at home by providing cost effective residential services.</p>
	<p>A strong and inclusive economy Given the nature of the service and delivery of it to vulnerable people who reside in Sandwell, the successful organisations are very likely to employ people from the local area, supporting the local economy.</p>



4. Context and Key Issues

- 4.1 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.
- 4.2 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.
- 4.3 On 31 August 2016, (Key Decision Ref. No. SC03), 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 at the time, 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 to request the information and a final response was received on 24 May 2016.
- 4.4 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.
- 4.5 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.



While there is current uncertainty about the cost pressures that the market is enduring, it is not yet known what the market will look like post pandemic, and therefore there are no material reasons to change the agreed costing model.

- 4.6 The model 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.
- 4.7 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.
- 4.8 It is noted that the WMCA response to consultation identifies dissatisfaction with the base fee, however as described in 4.3 and 4.4 above, this matter has previously been considered and no further supporting information has been provided to the council by the WMCA.
- 4.9 Unfortunately, the FNC rate for 2021/22 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 2020/21. Any change in the FNC rate will be fully passported on to Nursing Home providers when announced.
- 4.10 The model has been used to calculate the proposed Care Home Fees for 2021/22.

5 Alternative Options

- 5.1 If the recommendations to increase fees for 2021/22 are not approved, there is a risk that care home providers, and therefore the supply chain may become less resilient particularly because of the challenges that the sector has faced due to the pandemic.
- 5.2 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 will be assessed, and ongoing contact both with care home providers and residents.



- 5.3 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.
- 5.4 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.

Consultation

- 5.5 The Chief Executive of the WMCA was notified by email on 4 March 2021 of the outcome of the calculation and was asked to consult all care home providers that are subject to standard rate fees, with comments requested by 17 March 2021.
- 5.6 Feedback received from the WMCA was as follows:
- The response to the consultation from care home providers has been less than in previous years which is put down to care providers meeting the demands on their services as best they can through the pandemic. They have also had to process significant amounts of information, including rapidly changed government guidance, which has meant some important communications may have been missed or not prioritised.
 - The responses received were from seventeen different Providers, including HC-One and SCCT who have all said similar things. On the whole Providers feel let down by the increase.
 - They don't feel that the National Insurance and Pensions increases have been taken into account, as they increase with the minimum wage. The amount of increases Providers have said have varied between 2% and 2.5%.



- Care Homes have not seen a reduction in the costs of their Electricity and Gas. This has varied with Providers, as some have fixed price contracts which will not come up until later in the year, but their costs have not dropped. A request was made for this part of the calculation to be revisited.
- Insurance has gone up for those who have renewed since July 2020, between 17% and 200% because of Covid, and many insurance companies are talking about pulling out of the market. Providers are shocked by the increase proposed to cover this as it does not seem to consider the realities of the market, which is unrealistic and unfair. This could also affect the sustainability of many Providers. The Care Associations around the Country are talking to the Government to ensure money is sent to Councils to cover this, but they have been told it has already sent it within other funding, but it is unclear which. A request was made to look at the reality of this in Sandwell as it is believed 0.5% is not correct?
- The tool for inflation should be a good indicator of the increase in costs of Care, but it is on the premise that it starts from the right place. All the Providers are clear that the figure is too low. Providers want to be able to develop their services to be more flexible and supportive of the needs of Sandwell citizens. What they do not like is people needing to go out of Borough to get the increased levels of care required.
- The sector understands the Covid costs and they hope the Government will continue to fund the additional amounts, even though it will add to the burden of Care Providers to fill in forms. What is requested is that this is monitored if the funding stops before the need to incur the extra costs that we consider ways we can work together.
- Providers have asked that a 'Cost of Care Exercise' is carried out to make sure the respective parties all understand the costs in Sandwell. Sandwell does have a different demographic compared to other areas of the West Midlands and understanding the care costs and the ability to provide a flexible market fit for the future is essential.



5.7 Separate to the consultation, one corporate care home provider with 6 homes in Sandwell had already written to the council and highlighted what they described as a gap between current fee levels and the sector's view of what the real cost of providing care is. Equally important though they contended is the pressure they face from April 2021, which they estimate to be in the region of 9.4%. This is the increase across all standard fee levels for both existing Residents and new admissions that they need to maintain the operation. Roughly 5.5% of this is pre-COVID-19 pressures associated with workforce (projected on increases to the NLW) and general sector-wide inflation. The additional 3.9% relates to new costs associated with infection control measures; the new operating model which involves cohorting, supporting Residents in isolation, weekly testing and the safe facilitation of visiting.

They included a cost of care and indicated they considered 20/21 fees should be uplifted as follows:

Residential	Dementia Residential	Nursing	Dementia Nursing
58.4%	49.2%	35.1%	41.6%

5.8 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.

5.9 The suggested fair cost of care uplifts that have been identified by the corporate provider 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. However 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 subsidise the apparent poor rates paid by the Council. It is also worth noting that the pandemic has created unexpected financial pressures to the sector, but these pressures have been mitigated by the Council's Provider Offer and additional funding that has been distributed from funding received by the Department of Health and Social Care.



- 5.10 The feedback from the consultation exercise conducted by the West Midlands Care Association raises several key points and it is acknowledged that the sector feels let down, particularly given the extraordinary climate they are working in. The Council's offer does not reflect its perception of the valuable work done by care homes during the pandemic. Since the consultation feedback was provided, the government has now announced further funding to cover the additional cost pressures because of rapid flow testing and infection prevention until at least the end of June 2021, and this should go some way in supporting care home providers to meet the increased costs. The Association has fed back that providers have not seen reductions in their energy costs, however the agreed costing model uses the inflationary figure from September the previous year, which resulted in a negative percentage because the pandemic led to reductions in the price of oil. The feedback also reflected that national insurance and pensions increase with National Minimum Wage increases but the costing model calculates the change in percentage based on government guidance in relation to increases in national insurance and increases in employer's contributions to pensions. The Council acknowledges that there is considerable uncertainty about increases in insurance and understands the feedback provided by the sector regarding this area. The market remains in a state of turmoil and the picture remains unstable; it is unclear when things stabilise whether insurance premiums will return to expected rates.
- 5.11 The government has provided and continues to support the additional cost pressures associated with the management of the pandemic. The market remains unstable and uncertain and Adult Social Care will review the proposed rates should they be approved in 6 months to see whether the rates should be uplifted further when there is greater clarity about the ongoing costs and government intentions on additional funding. The picture is too uncertain to make any definitive changes to the base rate at this point that would endure indefinitely.



6 Implications

<p>Resources:</p>	<p>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 2021/22. It is estimated that the proposed rates will increase the annual cost of care by £296,070.</p> <p>The additional costs can be met from the 2021/22 budgets earmarked for this purpose within the Adult Social Care budget strategy.</p> <p>There are no workforce implications as a result of recommendations made within this report.</p>
<p>Legal and Governance</p>	<p>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)).</p> <p>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.</p> <p>Under the Care Act 2014, the amount specified in a person’s 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 adult’s 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.</p>



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.

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.

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.

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.



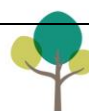
The local authority may be the most significant purchaser of care and support in an area, and therefore its approach to commissioning will have an impact beyond those services which it contracts. Local authorities must not undertake any actions which may threaten the sustainability of the market as a 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.

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. 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

Section 149 of the Equalities Act 2010 provides as follows:

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:

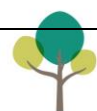
Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to

- 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.

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.

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.

In the assessment of officers, the recommended increase to council funding of 1% in residential and 1.14% in Nursing homes will enable care home providers to meet their costs, make a reasonable profit overall and continue to provide good quality care.



	<p>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.</p> <p>It should be noted that the Council's assessment identified in the above paragraph is subject to the increased costs associated with the pandemic being offset by additional funding continuing to be provided to the sector. Should the government cease funding those additional costs, Adult Social Care will assess the impact and construct an appropriate response.</p>
Risk:	<p>The risks identified in the separately completed Risk Assessment include;</p> <ul style="list-style-type: none"> • Insufficiency of care home placements if fees are not agreed to be uplifted • Care home providers becoming less resilient if fees are not uplifted • The standard rate is insufficient to attract a market that has a good supply of standard rate provisions • Financial pressures as a result of the pandemic • The government ceasing additional funding to support the pandemic pressures <p>These risks have been assessed and sufficient actions have been identified in a separate risk assessment, to ensure the risks are mitigated to an acceptable level. It is considered that sufficient mitigation is in place so that the proposed contracts deliver against the specification.</p>
Equality:	<p>An Equality Impact Assessment has been undertaken, there are no negative or adverse impacts on any protected groups.</p> <p>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.</p>



Health and Wellbeing:	The implementation of revised fee levels will assist the market to continue to deliver good quality services to the residents of Sandwell.
Social Value:	Providers are supported and encouraged to recruit locally and engage with Colleges/Universities, and also to procure local goods and services to support local communities.

