

Notice of Non-key Executive Decision

Subject Heading:	Approval to uplift rates for residential and nursing care home placements that are not placed at the usual rates for the financial year 2020-2021
Cabinet Member:	Councillor Jason Frost, Cabinet member for Health and Adult Care Services
SLT Lead:	Barbara Nicholls, Director for Adult Services and Health
Report Author and contact details:	Paul Burgin, Senior Commissioner and Project Manager
Policy context:	<p>The Council has a duty under the Care Act 2014 to shape the social care market and includes the responsibility to ensure:</p> <ul style="list-style-type: none"> • Services are of good quality, operate with a valued and well trained workforce and are appropriately resourced; • Service provisions are sustainable.
Financial summary:	Based on the projected forecast for 2019/20, the changes to rates outlined in this paper will cost up to an estimated £314,258 balanced by a projected increase in income of £16,919 making the net cost £297,339.
Relevant OSC:	Individuals
Is this decision exempt from being called-in?	Yes, it is a non-key decision by a member of staff

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The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

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Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

1. The Senior Leadership Team Director with responsibility for Adult Social Care is asked to approve the following in line with the evidence presented in this report:
2. Approval to uplift rates for Residential and Nursing Care for those not placed at the usual rates, due to having more complex needs for the financial year 2020-2021, which is paid to service providers that support Havering service users based in these homes.

AUTHORITY UNDER WHICH DECISION IS MADE

Havering Council's Constitution:

Part 3: Responsibility for Functions, Article 3.3 Powers of Members of the Senior Leadership Team.

Members of the Senior Leadership Team (SLT) have delegated authority to act as follows within the assigned service service/portfolio of responsibilities, subject to the general provisions and limitations set out in section 3.1 above.

General powers

(a) To take any steps necessary for proper management and administration of allocated portfolios.

(b) To exercise all the powers delegated to them personally and those powers delegated to Second Tier Managers and other staff members in their directorate where circumstances require and so far as legally permissible. Exercise of such powers should be recorded where appropriate. Where possible, a SLT member should give notice to a relevant staff member that he or she intends to exercise a specified power that is delegated to that staff member.

(c) To make arrangements to secure continuous improvement in the way the Council's functions are exercised having regard to a combination of economy, efficiency and effectiveness etc. as required by external regulatory agencies.

(e) To restructure within existing service budgets and/or if budgetary provision is already made in the budget.

(f) Each member of SLT shall ensure that the rules of procedure set out in Part 4 of this constitution are observed throughout their service.

Financial responsibilities

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(a) To incur expenditure within the revenue and capital budgets for their allocated portfolio as approved by the Council, or as otherwise approved, subject to any variation permitted by the Council's contract and financial procedure rules.

(b) To oversee the delivery of programmes agreed by Council and Cabinet.

At the Cabinet meeting of 12th February 2020, cabinet members delegated authority to the Directors of Children's and Adults authority to agree inflation rates with social care providers for the financial year 2020/21.

STATEMENT OF THE REASONS FOR THE DECISION

Background

1. The local authority has a duty under the Care Act (2014) to ensure services that support vulnerable service users are of good quality and sustainable. The Council has taken in previous reviews with regard to addressing and interacting with the market, this paper will help to address and contextualize some of the issues that providers have raised over the last financial year and the evolving national and individualised service area cost pressures.
2. This report concerns rates paid to providers for the accommodation and support of those placed above the usual rates, due to having more complex needs, and placed in Havering or outside the borough in a care home.

Benchmarking

3. As part of the consultation process, the Council contacted a number of authorities to obtain the normal rates they pay for working age care home placements and the rationale behind the rate increase (where available).
4. The rationale and benchmarking is outlined below for two other authorities in order to compare approach and cost. These were the only authorities from whom we were able to identify proposals for 2020-21:

Norfolk

5. Norfolk Council undertook a cost exercise with the market in 2018/19. Following consultation it was agreed a cost of care increase would be delivered over a two-year period of 2019-20 and 2020-21. This was to be applied independent of any inflationary uplift.
6. The cost model was developed with providers. Actual costs of care were considered by applying relevant inflationary uplifts to pay and non-pay elements in the cost model. Adjustments were made for potential increased staffing due

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to complexity and regulation among other factors

West Sussex

7. The decision was taken increase rates and fees paid to independent providers of adults' social care provision in the community and care homes. The Council earmarked funding from its 2019-20 budget to offset the effect of inflation and the increase in the National Living wage. The proposal was to support the sustainability of the care market and to ensure that it met its statutory duty to ensure that there was sufficient supply to meet the needs of adults eligible for care funded by the local authority.
8. In 2020-21, assumptions were made that by not being a member of the EU it would adversely affect the availability of care workers especially in markets where demand often exceeds supply.

WAA Benchmarking Uplift							
2018-19			2019-20			2020-21	
Area	Uplift Rate		Area	Uplift Rate		Area	Uplift Rate
Norfolk	4.11%		Norfolk	3.79%		Norfolk	4.40%
West Sussex	3.80%		West Sussex	4.15%		West Sussex	N/a
Havering	0%		Havering	4%		Havering	2%

9. On an average the two comparators have been able to offer uplifts of between 3.8% and 4% in the last two years preceding 2020/21. For the same period, Havering was able to offer 4% in total, with an additional uplift of 2% proposed in 2020-21.

Consultation with the market

10. The Council opened a private consultation with the market and asked for feedback based on the questions below:

- In the management and delivery of your service what are the pressures you are experiencing and why?
- With the imminent prospect of the United Kingdom leaving Europe has this presented you with any unique challenges that have had an impact on your service?
- Are you experiencing any challenges around the recruitment and retention of staff, could you tell us what these challenges are?
- When looking at running your service and speaking in broad terms what percentage of your costs are incurred in paying for staff and non-staff items?

11. Responses to the above questions have been provided below:

- Providers have reported that pressures are financial, due increasing

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staffing costs (such as increases in National Living/Minimum Wage).

- At present from this sector has limited concerns about the impact of Brexit.
- There are challenges about the recruitment, retention of staff, finding staff that are reliable and the right calibre.
- There is an average split of 65% for staffing costs and 28% running costs/overheads.

12. The next financial years, current year and previous years National Living Wage and National Minimum Wage have been outlined in the table below:

Age range	2019/2020	2020/2021
25+	£8.21	£8.72
21 to 24	£7.70	£8.20
Under 18	£4.35	£4.55
Apprentice	£3.90	£4.15

13. Rates for 2020/2021 have been published on the GOV.UK website in line with recommendations by the independent Low Pay Commission. The increase in National Living Wage of 6.2% is higher than what was previously anticipated (around 5%), the biggest rise yet, placing additional cost pressures on service providers.

14. As of October 2019, the Consumer Price Index (including owner/occupier housing) is at 1.5%.

15. The issues and risks with leaving the rates as they are and providing no uplifts have been outlined below:

Risks and Mitigations

- Risk of service interruption due to financial failure. Services are facing increases in national and running costs as mentioned above. If rates are not uplifted businesses will find it difficult to remain sustainable.
- Risk of lack of capacity and choice in the market. A sustainable market promotes growth and encourages new business opportunities.
- Risk to recruitment and retention of staff. Service providers need to have a well-trained and motivated workforce and need to be able to compete with other sectors with rates that staff are paid.
- Increasing gap between inflation increase to cost and Council rates. This will be mitigated by the uplift.

Quality

16. These services offers support to those in a residential and Nursing Care Home for those not placed at the non-usual rate, due to having more complex needs.

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17. These services are regulated by the Care Quality Commission who monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety and publish what they find, including performance ratings to help people choose care.

18. In Havering LD & MH care homes are rated by CQC, as follows:

- 6.9% are rated as requiring improvement
- 93.1% are rated as good

19. All care homes in Havering are monitored by Havering's Quality Outcomes team.

Current position

20. Snapshot data shows there were 285 placements as of 4th March 2020; the majority of these (123) were for service users with a Learning Disability.

Recommendations

21. The 4% uplift in 2019/20, was a significant investment from the Council to recognise the financial pressures on residential and nursing placements for complex needs, particularly with the increase to National Living and Minimum Wage. The proposed uplift for 2020/21 of 2% will maintain support for the market. Many of these placements are high cost. Increases to the National Minimum Wage and National Living Wage will impact the entire wage structure but it does not have the same direct impact as other parts of the market. For individual placements where the provider feels the rate is not sustainable the Council will discuss and negotiate on an individual basis.

22. This cohort also includes split health funded placements therefore we are working closely with the Clinical Commissioning Group and North East London Foundation Trust to ensure we manage the impact of our individual uplifts appropriately on jointly funded cases; which includes aligning uplift rate when feasible.

23. Based on the projected forecast for 2019/20, the changes to rates outlined in this paper will cost up to an estimated £314,258 balanced by a projected increase in income of £16,919 making the net cost £297,339.

OTHER OPTIONS CONSIDERED AND REJECTED

Option 1 – Do nothing and continue to pay the current rate.

The current rates supplied to providers are not sustainable and would pose a risk to the longevity, growth and quality of the current market. Alternatively, it would mean a larger uplift is required for future year creating a greater cost pressure for the Council in that year

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Option 2 – Provide a greater uplift than 2%.

It is thought that a 2% uplift balances the need to sustain the market against the Council's limited resources.

PRE-DECISION CONSULTATION

Internally we have consulted with Finance, Legal, Adult Social Care, Financial Assessment, Business Systems and Performance. Externally the Council consulted with providers who operate in Havering and outside the borough.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: John Green

Designation: Head of Joint Commissioning

Signature:



Date:23/03/2020

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. This report seeks the approval of the Director for Adults Social Care and Health an uplift to rates paid to the providers of supported living for residential and nursing care home placements that are not placed at the usual rates for the financial year 2020-2021 (1st April 2020 to 31st March 2021).
2. The Care Act 2014 places a duty on the Council to assess and support frail and disabled adults with their eligible care needs. The Act also introduced duties on local authorities to facilitate a vibrant, diverse and sustainable market for high quality care and support in their area, for the benefit of their whole local population, regardless of how the services are funded.
3. The Care Act 2014 also identifies the right for individuals to exercise choice in the care that they receive, which clearly extends to a nursing care establishment given that this will be the person's home. The implementation of a cost rate increase supports local providers to meet the requirements of the National Living Wage and cost of living increases falls within the remit of the Care Act 2014.
4. The Council's Contract Procedure Rule 19 (**VARIATIONS, EXTENSIONS AND MODIFICATIONS OF CONTRACTS**) at 19.1 states that "subject to the authority given under the Council's Scheme of Delegation and CPRs 3 and 4, an officer who has responsibility for the day to day management and performance of an awarded contract may (subject to having the authority to do so) approve a variation or modification by way of additional works, services or supplies by the original contractor that have become necessary and were not included in the original procurement provided that one of the following applies:
 - i. The modifications have been provided for in the initial procurement documentation;
 - ii. A change in contractor cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or, would cause significant inconvenience or substantial duplication of costs for the Council provided that an increase in price does not exceed 50% of the value of the original contract;
 - iii. Where the need for modification has been brought about by circumstances which the Council could not have foreseen, the modification does not alter the overall nature of the contract, any increase does not exceed 50% of the value of the original contract or framework agreement;
 - iv. Where a new contractor replaces the one to which the Council had initially awarded the contract as a consequence of universal or partial succession into the position of the initial contractor."
5. The body of the report sets out the particulars of the proposed contract 2% uplifts and its compliance with CPR 19.1 and Regulation 72 of the Public Contracts Regulations 2015 as it relates to the proposed contract modification/variations.

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FINANCIAL IMPLICATIONS AND RISKS

1. The recommendation in this report is to uplift the current complex placement rate for commissioned residential and nursing care home placements that are not placed at the usual rates, by 2% for the financial year 2020/21. This is reflective of various factors which have been outlined earlier in this report, including National living/minimum wage considerations and to aid recruitment and retention. Data has been compared with two authorities for their 2019/20 and 2020/21 rates, as outlined earlier in this report.
2. The estimated impact of this proposal is an annual increase of £314,258 per annum, and after a projected increase in income of £16,919 the net impact is expected to be £297,339 per annum. This is based on a snapshot of placements on 31st December 2019. The estimated costs and income assumes that current client numbers will continue at the same level.
3. Since the actual financial impact is linked to the number of clients at the time of the uplift, the figure could increase or decrease, depending on actual client numbers during the 2020/21 financial year.
4. A summary of the snapshot data and the assumptions behind this uplift are summarised in Table 1 below.

Table 1: Costs of Uplift based on December 2019 client numbers

Overall number of clients	Average current cost per week	Average uplift at 2% (per week)	Average cost after uplift per week	Estimated annual impact for a 2% increase	Estimated annual impact after including increase in income
295	£1,021.56	£20.43	£1,041.99	£314,258	£297,339

5. The estimated annual costs of the proposed inflationary uplift has been based on current client data. Table 2 provides a breakdown of the current unit costs by placement type. Table 3 then applies the 2% uplift to provide the proposed unit cost, by placement type, based on current client data, and assuming all other factors remain the same.

Table 2: Complex Rates for Residential and Nursing Placement - Unit Cost per week prior to uplift (based on December 2019 Client data)

Age and Location	Learning Disability	Memory and Cognition	Mental Health	Physical Support	Total
18-64					
In Borough	1,332	1,571	764	1,017	1,255

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Out of Borough	1,449	1,105	648	1,097	1,262
18-64 Total	1,395	1,260	672	1,067	1,259
65+					
In Borough	1,108	723	637	763	822
Out of Borough	1,218	685	555	634	680
65+ Total	1,118	700	615	718	765
Grand Total	1,348	729	648	839	1,022

Table 3: Complex Rates for Residential and Nursing Placement - Unit Cost per week following uplift (based on December 2019 Client data)

Age and Location	Learning Disability	Memory and Cognition	Mental Health	Physical Support (All)	Total
18-64					
In Borough	1,359	1,602	779	1,037	1,280
Out of Borough	1,478	1,128	661	1,119	1,288
18-64 Total	1,423	1,286	685	1,088	1,285
65+					
In Borough	1,130	738	650	778	839
Out of Borough	1,243	699	567	647	694
65+ Total	1,141	714	627	733	781
Grand Total	1,375	744	660	855	1,042

6. The uplift of £297,339 for 2020/21 will be partly funded by additional inflationary budget provision of £913k for Adult Social Services as a whole. The current inflation costs for all Adult Social Care contracts for 2020/21 are currently estimated at £1.155m, leaving a current estimated shortfall of £242k. This is based on current client numbers and any additional inflationary shortfalls, including this budget pressure, will need to be met from within existing Adult Social Services budgets.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would directly or indirectly affect either the Council or its workforce.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

1. The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:
 - (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
 - (iii) foster good relations between those who have protected characteristics and those who do not.
2. Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.
3. The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.
4. If the recommendation to uplift what we pay providers is agreed, it should only have a positive impact on equality groups. It will mean the Council remains competitive in the market giving residents more choice and better quality care. It will also help support the development of the local workforce.

BACKGROUND PAPERS

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Details of decision maker

Signed



Name: Barbara Nicholls

Cabinet Portfolio held:

CMT Member title: Director of Adult Social Care

Head of Service title

Other manager title:

Date: 23rd March 2020

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____