

**Open Report on behalf of Martin Samuels,  
Executive Director - Adult Care and Community Wellbeing**

Report to:	<b>Executive</b>
Date:	<b>05 March 2024</b>
Subject:	<b>Residential Care and Residential with Nursing Care Usual Costs</b>
Decision Reference:	<b>I030837</b>
Key decision?	<b>Yes</b>

**Summary:**

On the 1 March 2023, the Executive approved the setting of Usual Costs (also referred to as Expected Costs) for residential accommodation for a one-year period to 31 March 2024. These rates were established following a comprehensive market assessment carried out in 2021. The rates underpin the Council's framework contract for the three-year period to 31 March 2025. The framework contract incorporates an annual review to minimise the risk of the rates losing pace with the economy especially with the increases in national living wage.

The setting of the Council's Usual Cost is central to its compliance with statutory obligations. In particular, the rate that the Council establishes as its Usual Cost will contribute significantly to the viability and sustainability of the market which provides sufficient places capable of meeting need. The Usual Cost will also determine in many cases the personal budget against which the choice of accommodation provision will be assessed. As such any change to the rates paid for services will have a material impact on the effectiveness for services.

The aim of the rate setting exercise is to establish rates for residential services that are both affordable to the Council, meets the Council's legal duties, and sets a rate for the market reflecting any other necessary changes and improvements to the contract that will enable the successful operation of service over the next year.

**Recommendation(s):**

That the Executive: -

- 1) Approves the rates set out in Table 1 in paragraph 2.6 of the report as the Council's Usual Costs for both new and existing Older People service users in respect of residential, nursing and high dependency care with effect from 1 April 2024 for the year 2024/25.
- 2) Approves the rates set out in Table 2 in paragraph 2.6 of the report as the Council's Usual Costs for both new and existing Learning Disability service users in respect of Band 1, Band 2 and Band 3 with effect from 1 April 2024 for the year 2024/25.

- 3) Approves the rates set out in Table 1 in paragraph 2.6 of the report as the Council's Usual Costs for both new and existing Mental Health service users in respect of standard and nursing care with effect from 1 April 2024 for the year 2024/25.
- 4) Approve the rates set out in Table 1 in paragraph 2.6 of the report as the Council's Usual Costs for both new and existing Physical Disability service users with effect from 1 April 2024 for the year 2024/25.
- 5) Approve the rates set out in Table 1 in paragraph 2.6 of the report as the Council's Usual Costs for service users needed 1:1 care with effect from 1 April 2024 for the year 2024/25.
- 6) Approve the replacement of the Hardship Fund that operated in 2023/24 with a Hardship Process with effect from 1 April 2024 for the year 2024/25.
- 7) Delegate to the Executive Director, Adult Care and Community Wellbeing in consultation with the Executive Councillor for Adult Care and Public Health, authority to determine the detailed conditions governing the Hardship process contained in section 3 including the criteria for making of payments.

**Alternatives Considered:**

1. No increase in Usual Costs is applied in April 2024 and that usual costs remain at the current level.

This option would cost the council £9.4m less than the recommended options and would allow the authority to reinvest this funding elsewhere. However, failure to increase usual costs to reflect inflationary pressures across the sector would leave the Council open to challenge under the Care Act. It would significantly lessen providers' ability to recruit in a competitive labour market as well as increase the risk of providers going out of business and potentially lead to a fall in the quality of care provided.

2. Increase the Usual Costs by more than is set out in the report.

During the term of this contract the Council has taken steps to establish cost of delivery across Lincolnshire, has engaged with the market on its model as a result and considered the feedback. Although feedback from providers through the consultation period on the 2024-25 rates suggested that the increase in the proposed usual costs isn't sufficient to reflect the true impact of financial pressures being experienced across the sector, the Council believes that the proposed Usual Costs accord with the cost of providing care within Lincolnshire.

**Reasons for Recommendation:**

Approving the recommendations within this report will see an increase in the rates paid aligned to the level of inflation which will support providers' costs. It will provide assurance that the Council will be able to continue to meet its statutory obligation to meet assessed eligible need for service users.

## **1. Background**

- 1.1 Residential and Nursing services represent one of the Council's highest spend areas with a gross annual cost £180m. As such, any changes to the rates paid will have a material financial impact to the council.
- 1.2 The aim is to uplift the rates for Residential and Nursing services to a degree that is affordable to the Council, meets the Council's legal duties, and sets a rate to the market that will allow for the successful operation of services over the contract duration.
- 1.3 The Council undertook a comprehensive assessment of the market during 2021. This assessment was carried out working with the local market and the Lincolnshire Care Association. The Council commissioned Care Analytics Ltd to undertake an independent assessment of the residential care market. This took the form of an assessment of revenue costs for older people and working age adults. This assessment enabled a review of previous rate setting approaches and provided the ability to further develop the Council's cost model to reflect the data gathered by Care Analytics on the Council's behalf.
- 1.4 The outcome of the market assessment was shared with the market and has informed the rates model since 2022-23.

## **2. The Council's Proposed Rates**

- 2.1 The Council last set Usual Costs in March 2023 for the financial year 1 April 2023 – 31 March 2024. The 2024-25 rates proposed continue to be informed by the market assessments completed. Market assessments have been completed for residential care, homecare, and community supported living services. All assessments have followed the same principles, and the outcomes of the assessments underpin the Council's rates for all these services.
- 2.2 All proposed rates include: -
- 9.8% increase in the staffing cost elements of the model reflecting the % increase to £11.44 of the national living wage confirmed in the Autumn Statement published 22 November 2023.
  - 3.1% average inflation forecast for the financial year 2024-25 for the non-pay elements of the rates.
- 2.3 The changes in rate structure actioned most recently are listed below and have been funded through the Market Sustainability and Improvement funding (MSIF) released by the government. The 2024-25 Local Government Settlement announced a continuation of the MSIF grant funding enabling the structures introduced to continue.
- a higher than inflation increase to residential care actioned in 2023,
  - a floating support rate introduced for community supported living services actioned in 2023,
  - a four-tier homecare rate structure replacing the previous three-tier actioned in 2022,

2.4 The proposed set of Usual Costs have been shared with market as part of the market consultation exercise. This consultation closed 5 February 2024 and the questions and responses can be seen in appendix C.

2.5 Feedback from the market focussed on the following: -

- National living wage (NLW) is not sufficient to enable the sector to compete with other market sectors: -
  - *Response: The rates are constructed based on the average rates paid across the sector in 2021-22 as determined by the market assessment carried out. All these rates have been uplifted annual by the same % increase in the national living wage. LCC rate structure therefore continues to recognise that the rates paid are at least at NLW.*
- The forecast reduction in inflation is optimistic: -
  - *Response: The rates are constructed based on the average rates paid across the sector in 2021-22 as determined by the market assessment carried out. As costs increased significantly during the cost-of-living crisis, LCC operated an evidence-based hardship fund for providers to claim against as a mechanism to receive a contribution towards the cost of energy, insurance and/or fuel. For 2024-25 the Council will continue to monitor the inflationary trends. This paper proposes a move towards a Hardship Process rather than a Hardship Fund. This is detailed in section 3 of this paper.*
- The fairness of the Council's expectation that third party top up values are set by providers at the outset of the contract period and fixed for the full three year contract cycle when they do not have visibility of the Council's proposed usual costs for the full duration of the contract cycle has been questioned, with a request that a proportionate increase in third party top-ups equivalent to the council's expected cost increase be permitted.
  - Response: This seems to be based on a misunderstanding of how the contract works. Where a provider charges a price above the council's Usual Cost the provider is entitled to payment of that price as long as a third party makes up the difference between that price and the Usual Cost. The contract works to ensure that if the Usual Cost is increased the provider's price also increases by the same amount. In this way the full value of the Council's increase is passed through to the provider without increasing the value of the top up. So, although it is true to say that providers could not foresee what increases the Council would make to the Usual Cost in future years, they are protected against this in any event by the fact that the providers price automatically rises with an increase in the Usual Cost. In this way the differential is always maintained, and therefore the request for a proportionate increase is in effect already happening.*

2.6 The tables below show the proposed rates for 2024-25 compared to 2023-24.

Table 1

<b>Older Peoples, Mental Health and Physical Disabilities</b>			
<b>Care</b>	<b>Current 2023/24</b>	<b>Proposed 2024/25</b>	<b>% Uplift</b>
Older People Standard Residential	£646	£693	7.3%
Older People Higher Dependence	£712	£764	7.3%
Older People Nursing	£713	£765	7.3%
Mental Health Standard	£669	£718	7.3%
Mental Health Nursing	£710	£762	7.3%
Physical Disability	£831	£892	7.3%

Table 2

<b>Learning Disabilities</b>									
<b>Band</b>	<b>Standard</b>			<b>Smaller</b>			<b>Smallest</b>		
	<b>Current 2023/24</b>	<b>Proposed 2024/25</b>	<b>% Uplift</b>	<b>Current 2023/24</b>	<b>Proposed 2024/25</b>	<b>% Uplift</b>	<b>Current 2023/24</b>	<b>Proposed 2024/25</b>	<b>% Uplift</b>
Band 1	£757	£812	7.3%	£810	£869	7.3%	£863	£926	7.3%
Band 2	£876	£940	7.3%	£929	£997	7.3%	£982	£1,054	7.3%
Band 3	£1,110	£1,191	7.3%	£1,163	£1,248	7.3%	£1,216	£1,305	7.3%

Table 3

<b>Residential 1:1</b>		
<b>Current 2023/24</b>	<b>Proposed 2024/25</b>	<b>% Uplift</b>
£14.15	£15.18	7.3%

### 3. Financial Hardship Process

3.1 As the sector tackled the Covid-19 pandemic, providers of adult social care experienced costs far more than its business as usual and the council provided a Hardship Fund to reimburse evidenced costs incurred. Costs predominantly related to infection control measures and workforce.

- 3.2 We emerged from the pandemic into a cost-of-living crisis with businesses and families experiencing significant cost increases. The adult social care sector was impacted significantly by fuel, energy, and insurance cost increases. The Council reviewed the terms of the Hardship Fund to support providers with these evidenced costs recognising the increased financial pressure.
- 3.3 As the volatility of costs change again, the proposal is to move away from a Hardship Fund and replace with a Hardship Process. This process will be open to commissioned providers to approach the council where they are at risk of closure due to financial loss. An open book assessment will be completed between the Council and the provider, which will consider the financial viability of the provider including cashflow and reserves held as well as available capacity across Lincolnshire for the services they provide to inform a decision about whether and to what extent it would be appropriate for the council to offer financial support.
- 3.4 Any financial support provided will be time limited with a recovery plan agreed between both parties which will encourage future sustainability of the home.
- 3.5 The Council's responsibility is to ensure sufficient adult social care provision to meet demand and that the rate paid for care overall appropriately reflects the cost of its provision. The capacity review contained within the assessment may conclude that there is sufficient capacity in the market and no financial support can be provided.

#### **4. Risk**

- 4.1 There is a material risk that inflation does not fall as forecast. The finance team will continue to monitor the CPI on a quarterly basis and work with Adult Care and Community Wellbeing Directorate Leadership Team to assess the impact, consequences and actions needed should this risk materialise.
- 4.2 There is a risk that the providers will not sign up to the 2024-25 rates because of the Council's approach to top ups. As noted at paragraph 2.5, the contract works to ensure the full value of the Council's increase is passed through to the provider by maintaining the value of the top up in addition to the Council's Usual Cost fee increase. The value of the top up was fixed at the outset of the contract period to protect the families and other third parties from significant increase in costs during the contract period. So, whilst providers could not foresee what increases the Council would make to the Usual Cost in future years, they were protected against the uncertainty of the councils' rates in future years by the fact that their total price automatically rises with an increase in the Usual Cost. This appropriately balances the impact of the risk across the council, the provider and the third party.

In each relevant contract year (i.e. 2022-23, 2023-24), the Council has followed a process of review and due diligence to satisfy itself of the suitability and sufficiency of its inflationary

increases to the Usual Cost thereby mitigating the risk that an increase in the third-party top-up is necessary to meet the costs of care.

## 5. Legal Issues:

5.1 The legal framework governing Care and Support in England is provided for by the Care Act 2014 (the Act), detailed secondary legislation by means of Regulations and the Care and Support Statutory Guidance to the Care Act 2014 ("the Guidance").

5.2 Under the Care Act the Council has a primary obligation to assess the needs of those that appear to have needs for care and support and to meet those needs where they meet eligibility criteria. One of the main ways that the Council meets need is through the provision of residential care and residential care with nursing across a range of needs.

5.3 The Care and Support and After Care (Choice of Accommodation) Regulations 2014 enable a person to have the right to choose a particular provider subject to certain conditions. Where the accommodation is of the same type as specified in the adult's care and support plan, the preferred accommodation is suitable and available and where the provider agrees to provide the accommodation on the local authority's terms, the local authority must provide or arrange the accommodation. The preferred accommodation must not cost the local authority more than the amount specified in the personal budget of the adult. Where a person chooses a setting that is more expensive than the amount identified for their provision and set out in their Personal Budget, an arrangement needs to be made to meet the difference in cost. This is known as a "top up" payment or additional cost. In such cases, the local authority must arrange for them to be placed there, provided a third party, or in certain circumstances the person in need of care and support, is willing and able to meet the additional cost.

5.4 Annex A of the Guidance provides that: -

- The Council must have regard to the actual cost of good quality care in deciding the personal budget to ensure that the amount is one that reflects local market conditions (para 11)
- The Council should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care (para 11)
- A person must not be asked to pay a top up because of market inadequacies or commissioning failures and must ensure there is a genuine choice (para 12)
- The Council must ensure that at least one option is available that is affordable within a person's personal budget and should ensure that there is more than one (para 12)
- If no suitable accommodation is available and no preference expressed the Council must arrange care in a more expensive home and adjust the budget accordingly (para 12)
- The Council has a duty to shape and facilitate the market including ensuring sufficient supply (para 13)
- Where choice cannot be met the individual must give the individual an explanation in writing. (para 17)

5.5 The setting of the Council's Usual Costs is central to its compliance with these obligations. In particular the rate that the Council establishes as its Usual Cost will contribute significantly to the viability and sustainability of a market which provides sufficient places capable of

meeting need. The Usual Cost will also determine in many cases the personal budget against which the choice of accommodation provisions will be assessed.

5.6 In addition, the Council has general obligations under the Care Act. The most important of these in the current context is section 5 which states: -

"s.5(1) A local authority must promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishing to access services in the market.

(a) has a variety of providers to choose from who (taken together) provide a variety of services

(b) has a variety of high-quality services to choose from

(c) has sufficient information to make an informed decision about how to meet the needs in question

Under section 5(2), when the council is considering the duty set out above, the Council must have regard to: -

- The need to ensure information is made available about the providers and the types of services they provide,
- The current and likely future demand and how providers might meet that demand,
- The importance of enabling, those that wish to do so, to participate in work, education, or training,
- The importance of ensuring sustainability of the market (in circumstances where it is effective as well as in circumstances where it is not)
- The importance of fostering continuous improvement in the quality, efficiency and effectiveness of the services and the encouragement of innovation
- The importance of fostering a workforce who can deliver high quality services (relevant skills and appropriate working conditions)

5.7 The Council must, when considering current and likely future demand ensure that there are sufficient services available to meet need and have regard to the importance of promoting wellbeing.

5.8 The background to the section 5 provisions includes the following statement in paragraph 5.2. of "Building Capacity and Partnership in Care: An agreement between the statutory and independent social care, health care and housing sectors" which was published by the Department of Health in October 2001: -

"Providers have become increasingly concerned that some commissioners have used their dominant position to drive down or hold down fees to a level that recognises neither the costs to the providers nor the inevitable reduction in the quality-of-service provision that follows. This is short sighted and may put individuals at risk. It conflicts with the Government's Best Value Policy. And it can destabilise the system, causing unplanned exits from the market. Fee setting must consider the legitimate and current and future costs faced by providers as well as factors that affect those costs, and the potential for improved performance and more cost-effective ways of working..."



5.9 Chapter 4 of the Guidance (Market Shaping) provides guidance on s.5 of the Act in the following paragraphs: -

"4.11 This statutory guidance describes, at a high level, the themes and Issues that local authorities should have regard to when carrying out duties to shape their local markets and commission services Market shaping, commissioning, procurement and contracting are inter-related activities and the themes of this guidance will apply to each to a greater or lesser extent depending on the specific activity..."

"4.27 Local authorities should commission services having regard to the cost effectiveness and value for money that the services offer for public funds. The Local Government Association Adult Social Care Efficiency Programme (...) has advice on these issues and may be helpful ..."

"4.31 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 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, taking account of the local economic environment. This assurance should understand that reasonable fee levels allow for a reasonable rate of return by independent providers that is sufficient to allow the overall pool of efficient providers to remain sustainable in the long term..."

5.10 The Usual Costs in this Report will continue to support a market within Lincolnshire that provides a choice of good quality care for Lincolnshire service users in a way which is sustainable both in terms of the businesses themselves but also in terms of a skilled workforce.

#### Equality Act 2010

5.11 Under section 149 of the Equality Act 2010, the Council 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 the 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.

5.12 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

5.13 Having due regard to the need to advance equality of opportunity involves having due regard 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

5.14 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.

5.15 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.

5.16 Compliance with the duties in section 149 may involve treating some persons more favourably than others.

5.17 The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision-making process

If the Usual Cost is set at a level which is too low to cover costs then it is possible that there would be an adverse impact on people in residential care who are particularly vulnerable either by way of age or disability or both. This could happen because the rate paid by the Council was too low to maintain quality at current levels and as a consequence for example the number of activities available to residents could fall along with the catering standards or the amount of care hours available to individuals. In the event that rates were so low that providers could not maintain their business and homes closed residents would have to move. This could cause distress and upheaval particularly for those well settled residents with friends amongst the staff and other residents. Unless well managed it could also be injurious to health for the most vulnerable and cause confusion to dementia sufferers.

An Impact Analysis has been completed for Residential and Nursing Care rates for Adult Care which addresses the risk of adverse impact on service users which can be found as Appendix A and should be carefully considered along with the statutory duty itself as set out above. Two potential types of adverse impacts are identified. Firstly, that the quality of service may be reduced and secondly that more Homes may close. The extent of each risk depends principally on a consideration as to whether the Council's Usual Costs are at or above the actual costs of care. The work the Council has done to get data from the market and model the actual costs means that in the view of the Council the Usual Cost is at or above the actual cost of care.

The recommended proposal does increase all Usual Costs and does cover the providers' costs. The risk arising out of a fall in quality in these circumstances is therefore considered to be low. The proposed rate is above that residential care providers are currently paid and therefore there should be little economic need for providers to reduce the quality currently provided.

In any event the Council has procedures in place so that it can monitor the situation, to be able to manage both risks if they arise and thereby mitigate the risk of adverse impact arising out of either circumstance. In relation to quality the Council will specify the minimum quality requirements in its contracts which Homes will be required to sign. This will be monitored through contract management meetings with all providers to discuss performance; issues raised by the homes; workforce development; commissioning plans; operational quality assurance and other matters as appropriate. The meetings will take place in the homes and will vary in frequency, large providers will have monthly meetings with the smaller providers having less but they will take place at least annually. The Council works closely with the Care Quality Commission and has a structured approach to quality data maintaining a current history on each home. This enables any quality issues to be quickly recognised. Where Safeguarding issues are raised a multi-party investigation is undertaken and the Assistant Director or Head of Strategic Safeguarding will suspend all new placements where appropriate. In those cases, the Council will then work with the home to develop an improvement plan and will monitor the improvements. The suspension will only be lifted when satisfactory progress has been made.

As far as potential home closures are concerned, the risk of a home closing will be monitored through contract management meeting and the Contract Risk Matrix. The Council would expect that homes starting to find themselves in difficulty would raise concerns with the Council. In the unusual and unlikely event that a home was going to close, rather than be sold as a going concern, there is sufficient capacity within the market to find alternative provision for residents. The Council has in place a "Loss of Provider Process" which enables action to be taken quickly and efficiently to enable a smooth transition. The Loss of Provider Process requires that a team of practitioners is set up to be dedicated to working with the home, residents, and relatives to find suitable alternative placements. This team will work closely with NHS colleagues and the contracts, quality, and safeguarding teams in the County Council to manage the transition of arrangements.

In addition to this and as part of the Council's general market shaping work the Council continually monitors capacity in the market and addresses issues through its commissioning methodologies.

It is considered that the adoption of the recommended proposal addresses the risks and adverse effects that might arise if the alternative option was adopted. The remaining potential for adverse effects is low and can be mitigated and managed as set out above. Adoption of the recommended proposal is therefore considered to be consistent with the Council's obligations under the Equality Act 2010.

#### 5.18 Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

The JSNA for Lincolnshire is an overarching needs assessment. A wide range of data and information was reviewed to identify key issues for the population to be used in planning, commissioning, and providing programmes and services to meet identified needs. This assessment underpins the JHWS which has the following themes: -

- i. Promoting healthier lifestyles
- ii. Improving the health and wellbeing of older people
- iii. Delivering high quality systematic care for major causes of ill health and disability
- iv. Improving health and social outcomes and reducing inequalities for children
- v. Tackling the social determinants of health

Under the strategic theme of improving the health and wellbeing of older people in Lincolnshire there are 3 relevant priorities; -

- Spend a greater proportion of our money on helping older people to stay safe and well at home,
- Develop a network of services to help older people lead a more healthy and active life and cope with frailty,
- Increase respect and support for older people within their communities.

The proposed increases to Residential and Nursing Care Fee Levels will contribute directly to the delivery of these priorities by helping to ensure that services for recipients of Adult's social care services are locally based, cost effective and sustainable.

#### 5.19 Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

Section 17 matters have been considered in preparing the Report. The Proposals in this Report do not directly contribute to the furtherance of the section 17 matters and there is no risk of adverse impact identified.

### **6. Conclusion**

The 2024-25 rates detailed above further build upon the 2023-24 rates established following the market assessment carried out in 2021, uplifted to reflect the increase in national living wage and forecast inflationary increase.

For the reasons outlined in the report, the Usual Costs identified above represent an appropriate rate to enable the continued viability of the residential care market in Lincolnshire and the continued provision of choice in good quality care for the residents of Lincolnshire and it is recommended that the Usual Costs are approved.

### **7. Legal Comments:**

The Council has the power to adopt the Usual Costs and establish the Hardship Process as set out in the Report. The proposed rates are considered to have been arrived at through a

lawful process which reflects case law, the Council's obligations under the Care Act and associated Guidance and which has appropriate regard to all relevant considerations. Further detailed discussion of the legal implications of the decision are dealt with in the Report. The decision is consistent with the Policy Framework and within the remit of the Executive.

#### **8. Resource Comments:**

To ensure compliance with its current and future legal obligations the Council must ensure it has a full understanding of the market provision of residential and nursing care and the cost at which such care can be made available by the market on a sustained basis. This will enable the Council to set a Usual Cost which it expects to pay for residential services in Lincolnshire to ensure a supply of service to meet identified need and to enable choice.

This report details a proposed set of rates at which it believes the Council should adopt for 2024-25. The cost to the authority of implementing the proposed rates is estimated to be £9.4m over one year. The additional funding requirement for the first year of the agreement is contained within the financial envelope identified as part of the 2024-25/ budget setting process.

#### **9. Consultation**

##### **a) Has Local Member Been Consulted?**

n/a

##### **b) Has Executive Councillor Been Consulted?**

Yes

##### **c) Scrutiny Comments**

This report will be considered by the Adults and Community Wellbeing Scrutiny Committee at its meeting on 28 February 2024 and the comments of the Committee will be reported to the Executive.

##### **d) Risks and Impact Analysis**

Contained in the body of the report

#### **10. Appendices**

These are listed below and attached at the back of the report:

Appendix A	Equality Impact Assessment
Appendix B	Provider responses to Consultation

## 11. Background Papers

The following background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

Background Paper	Where it can be viewed
Report to Executive dated 7 March 2023 – "Community Supported Living, Residential and Nursing Care usual Costs"	<a href="#">Agenda for Executive on Tuesday, 7th March, 2023, 10.30 am (moderngov.co.uk)</a>
Report to Executive dated 1 March 2022 – "Residential and Nursing Care Fee Levels within Adult Social Care"	<a href="#">Agenda for Executive on Tuesday, 1st March, 2022, 10.30 am (moderngov.co.uk)</a>

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## Equality Impact Analysis to enable informed decisions

### The purpose of this document is to:-

- I. help decision makers fulfil their duties under the Equality Act 2010 and
- II. for you to evidence the positive and adverse impacts of the proposed change on people with protected characteristics and ways to mitigate or eliminate any adverse impacts.

### Using this form

This form must be updated and reviewed as your evidence on a proposal for a project/service change/policy/commissioning of a service or decommissioning of a service evolves taking into account any consultation feedback, significant changes to the proposals and data to support impacts of proposed changes. The key findings of the most up to date version of the Equality Impact Analysis must be explained in the report to the decision maker and the Equality Impact Analysis must be attached to the decision making report.

**\*\*Please make sure you read the information below so that you understand what is required under the Equality Act 2010\*\***

### Equality Act 2010

The Equality Act 2010 applies to both our workforce and our customers. Under the Equality Act 2010, decision makers are under a personal duty, to have due (that is proportionate) regard to the need to protect and promote the interests of persons with protected characteristics.

### Protected characteristics

The protected characteristics under the Act are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

### Section 149 of the Equality Act 2010

Section 149 requires a public authority to have due regard to the need to:

- Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by/or under the Act
- Advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share those characteristics
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The purpose of Section 149 is to get decision makers to consider the impact their decisions may or will have on those with protected characteristics and by evidencing the impacts on people with protected characteristics decision makers should be able to demonstrate 'due regard'.

### **Decision makers duty under the Act**

Having had careful regard to the Equality Impact Analysis, and also the consultation responses, decision makers are under a personal duty to have due regard to the need to protect and promote the interests of persons with protected characteristics (see above) and to:-

- (i) consider and analyse how the decision is likely to affect those with protected characteristics, in practical terms,
- (ii) remove any unlawful discrimination, harassment, victimisation and other prohibited conduct,
- (iii) consider whether practical steps should be taken to mitigate or avoid any adverse consequences that the decision is likely to have, for persons with protected characteristics and, indeed, to consider whether the decision should not be taken at all, in the interests of persons with protected characteristics,
- (iv) consider whether steps should be taken to advance equality, foster good relations and generally promote the interests of persons with protected characteristics, either by varying the recommended decision or by taking some other decision.

## **Conducting an Impact Analysis**

The Equality Impact Analysis is a process to identify the impact or likely impact a project, proposed service change, commissioning, decommissioning or policy will have on people with protected characteristics listed above. It should be considered at the beginning of the decision making process.

### **The Lead Officer responsibility**

This is the person writing the report for the decision maker. It is the responsibility of the Lead Officer to make sure that the Equality Impact Analysis is robust and proportionate to the decision being taken.

### **Summary of findings**

You must provide a clear and concise summary of the key findings of this Equality Impact Analysis in the decision making report and attach this Equality Impact Analysis to the report.



## Impact – definition

An impact is an intentional or unintentional lasting consequence or significant change to people's lives brought about by an action or series of actions.

### How much detail to include?

The Equality Impact Analysis should be proportionate to the impact of proposed change. In deciding this asking simple questions “Who might be affected by this decision?” “Which protected characteristics might be affected?” and “How might they be affected?” will help you consider the extent to which you already have evidence, information and data, and where there are gaps that you will need to explore. Ensure the source and date of any existing data is referenced.

You must consider both obvious and any less obvious impacts. Engaging with people with the protected characteristics will help you to identify less obvious impacts as these groups share their perspectives with you.

A given proposal may have a positive impact on one or more protected characteristics and have an adverse impact on others. You must capture these differences in this form to help decision makers to arrive at a view as to where the balance of advantage or disadvantage lies. If an adverse impact is unavoidable then it must be clearly justified and recorded as such, with an explanation as to why no steps can be taken to avoid the impact. Consequences must be included.

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**Proposals for more than one option** If more than one option is being proposed you must ensure that the Equality Impact Analysis covers all options. Depending on the circumstances, it may be more appropriate to complete an Equality Impact Analysis for each option.

**The information you provide in this form must be sufficient to allow the decision maker to fulfil their role as above. You must include the latest version of the Equality Impact Analysis with the report to the decision maker. Please be aware that the information in this form must be able to stand up to legal challenge.**

## Background Information

<b>Title of the policy / project / service being considered</b>	Residential Review Programme	<b>Person / people completing analysis</b>									
<b>Service Area</b>	Adult Care & Community Wellbeing	<b>Lead Officer</b>	Justin Hackney and Julie Davidson								
<b>Who is the decision maker?</b>	Executive	<b>How was the Equality Impact Analysis undertaken?</b>	Desktop Exercise								
<b>Date of meeting when decision will be made</b>	05/03/2024	<b>Version control</b>	v1								
<b>Is this proposed change to an existing policy/service/project or is it new?</b>	Existing policy/service/project	<b>LCC directly delivered, commissioned, re-commissioned or de-commissioned?</b>	Re-commissioned								
<b>Describe the proposed change</b>	<p>Lincolnshire County Council needs to ensure that it delivers its statutory obligations to people who are eligible for social care.</p> <p>ASC supports people who have had their care needs assessed as substantial or critical. When those care needs are to be met by residential or nursing placements the care provider should offer a quality service. Quality is determined as providing a service which is safe, effective and delivers a positive experience of care. This is encompassed within regulatory standards.</p> <p>We have approx 2,969 people paced in long term care:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Service Users By Age Band</th> <th style="text-align: center;">Female</th> <th style="text-align: center;">Male</th> <th style="text-align: center;">Grand Total</th> </tr> </thead> <tbody> <tr> <td>18 - 24</td> <td style="text-align: center;">6</td> <td style="text-align: center;">19</td> <td style="text-align: center;">25</td> </tr> </tbody> </table>			Service Users By Age Band	Female	Male	Grand Total	18 - 24	6	19	25
Service Users By Age Band	Female	Male	Grand Total								
18 - 24	6	19	25								

25 - 34	28	64	92
35 - 44	48	71	119
45 - 54	67	97	164
55 - 64	105	151	256
65+	1613	700	2312
Grand Total	1867	1102	2969

Service User by Service Type	LTC Nursing	LTC Residential	Grand Total
A - Learning Disability Support	43	420	463
A - Mental Health Support	85	290	375
A - Physical Support: Access & mobility only	36	217	253
A - Physical Support: Personal care support	283	1301	1584
A - Sensory Support: Support for dual impairment		5	5
A - Sensory Support: Support for hearing impairment		3	3
A - Sensory Support: Support for visual impairment		5	5
A - Social Support: Support for social isolation / other	1	14	15
A - Support with Memory and Cognition	51	215	266
Grand Total	499	2470	2969

Lincolnshire County Council currently holds contracts with 160 different provider organisations, covering 273 Care Homes within Lincolnshire.

LCC is required to set Expected Costs for each year with an amount set per category of care.

The current fee levels were set for the period 1 April 2023 – 31 March 2024.

New fee rates are required from April 2024, in line with the current Residential Framework Agreement 1 April 2022 – 31 March 2025.

In setting rates the Council must have due regard for the cost of providing care in Lincolnshire and the existing market conditions.

#### **Proposed Changes**

A proposed increase in residential fees will support Care Home providers in Lincolnshire to continue to provide a good quality service to residents.

The following uplift is proposed.

Older Persons	2023-24			2024-25			Uplift
	Std	Nrsg	High Dep	Std	Nrsg	HighDep	
Weekly Rate	646	713	712	693	765	764	7.3%

Learning Disabilities	2023-24			2024-25			Uplift
	Band 3	Band 2	Band 1	Band 3	Band 2	Band 1	
Standard - Weekly rate	1,110	876	757	1,191	940	812	7.3%

Smaller - Weekly rate	1,163	929	810	1,248	997	869	7.3%
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Smallest - Weekly rate	1,216	982	863	1,305	1,054	926	7.3%
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Mental Health	2023-24		2024-25		Uplift
	Std	Nrsg	Std	Nrsg	
Weekly Rate	669	710	718	762	7.3%

Physical Disabilities	2023-24	2024-25	Uplift
	Std	Std	
Weekly Rate	831	892	7.3%

The market for Adult Care services continues to face significant challenges. Given the unpredictability of the markets cost of care following the pandemic and the current cost of living crisis, the Council has implemented a three-year contract with an annual rate review.



### **Evidencing the impacts**

In this section you will explain the difference that proposed changes are likely to make on people with protected characteristics. To help you do this first consider the impacts the proposed changes may have on people without protected characteristics before then considering the impacts the proposed changes may have on people with protected characteristics.

You must evidence here who will benefit and how they will benefit. If there are no benefits that you can identify please state 'No perceived benefit' under the relevant protected characteristic. You can add sub categories under the protected characteristics to make clear the impacts. For example under Age you may have considered the impact on 0-5 year olds or people aged 65 and over, under Race you may have considered Eastern European migrants, under Sex you may have considered specific impacts on men.

### **Data to support impacts of proposed changes**

When considering the equality impact of a decision it is important to know who the people are that will be affected by any change.

#### Population data and the Joint Strategic Needs Assessment

The Lincolnshire Research Observatory (LRO) holds a range of population data by the protected characteristics. This can help put a decision into context. Visit the LRO website and its population theme page by following this link: <http://www.research-lincs.org.uk> If you cannot find what you are looking for, or need more information, please contact the LRO team. You will also find information about the Joint Strategic Needs Assessment on the LRO website.

#### Workforce profiles

You can obtain information by many of the protected characteristics for the Council's workforce and comparisons with the labour market on the [Council's website](#). As of 1<sup>st</sup> April 2015, managers can obtain workforce profile data by the protected characteristics for their specific areas using Agresso.

**Positive impacts**

The proposed change may have the following positive impacts on persons with protected characteristics – If no positive impact, please state 'no positive impact'.

<b>Age</b>	The increased funding to care providers should provide additional assurance that there is sufficient capacity within Lincolnshire for quality residential services.
<b>Disability</b>	The increased funding to care providers should provide additional assurance that there is sufficient capacity within Lincolnshire for quality residential services. In addition, the existing rate model recognises the key challenges within LD provision, namely the high variability of complexity in care needs, which will further support providers as well as allow the Council to undertake new initiatives.
<b>Gender reassignment</b>	<i>No unique positive impact for this protected characteristic</i>
<b>Marriage and civil partnership</b>	<i>No unique positive impact for this protected characteristic</i>
<b>Pregnancy and maternity</b>	<i>No unique positive impact for this protected characteristic</i>
<b>Race</b>	<i>No unique positive impact for this protected characteristic</i>
<b>Religion or belief</b>	<i>No unique positive impact for this protected characteristic</i>

<b>Sex</b>	<i>No unique positive impact for this protected characteristic</i>
<b>Sexual orientation</b>	<i>No unique positive impact for this protected characteristic</i>

**If you have identified positive impacts for other groups not specifically covered by the protected characteristics in the Equality Act 2010 you can include them here if it will help the decision maker to make an informed decision.**

During 2023-24 we have commenced the process of transitioning to gross payments for residential and nursing care services, with the necessary upgrade to our financial systems and a pilot transition programme having been successfully completed, as well as the subsequent scheduling and initiation of the wider programme roll out.

Currently Lincolnshire County Council operates a net payment basis which see the provider receiving one flow of funding from the Council and potentially two flows of funding from the service user for their cost of care and/or their third party.

Once we move to gross, the provider would receive one payment for all residents for whom Lincolnshire County Council pays a financial contribution towards their care. The provider would no longer need to collect funding directly from people in their care or their third parties. This is a significant change in process.



**Adverse/negative impacts**

You must evidence how people with protected characteristics will be adversely impacted and any proposed mitigation to reduce or eliminate adverse impacts. An adverse impact causes disadvantage or exclusion. If such an impact is identified please state how, as far as possible, it is justified; eliminated; minimised or counter balanced by other measures.

If there are no adverse impacts that you can identify please state 'No perceived adverse impact' under the relevant protected characteristic.

**Negative impacts of the proposed change and practical steps to mitigate or avoid any adverse consequences on people with protected characteristics are detailed below. If you have not identified any mitigating action to reduce an adverse impact please state 'No mitigating action identified'.**

<p><b>Age</b></p>	<p>Adult Care services and budgets continue to be pressured and while the measures in the new contracts awarded in 2022 have been put in place to directly address this there are concerns that ongoing pressures in the wider Health and Social Care system, the fee rate may impact on the availability and quality of the care which is provided</p> <p>There are concerns that the fee rate impacts on the viability of the providers.</p> <p>If Providers decide to increase their prices above expected costs then there is the risk that service users could be required to find a third party to pay the additional amount.</p> <p>If there is no third party available then service users could be asked to move to an alternative home which could cause distress.</p> <p>The increased funding, the proposed hardship process and the rate structure minimises the negative impacts.</p>
<p><b>Disability</b></p>	<p>Adult Care services and budgets continue to be pressured and while the measures in the new contracts awarded in 2022 have been put in place to directly address this there are concerns that ongoing pressures in the wider Health and Social Care system, the fee rate may impact on the availability and quality of the care which is provided</p> <p>There are concerns that the fee rate impacts on the viability on some of the Council's providers to deliver services.</p> <p>If Providers decide to increase their prices above expected costs then there is the risk that service users could be required to find a third party to pay the additional amount.</p>

	<p>If there is no third party available then service users could be asked to move to an alternative home which could cause distress.</p> <p>The increased funding, the proposed hardship process and the rate structure minimises the negative impacts.</p>
<b>Gender reassignment</b>	[This proposal is related to the residential care rate for Lincolnshire which is not specific to gender reassignment]
<b>Marriage and civil partnership</b>	[This proposal is related to the residential care rate for Lincolnshire which is not specific to marriage or civil partnership]
<b>Pregnancy and maternity</b>	[This proposal is related to the residential care rate for Lincolnshire which is not specific to pregnancy or maternity]
<b>Race</b>	[This proposal is related to the residential care rate for Lincolnshire which impacts on all placements and not specific to person's race.]
<b>Religion or belief</b>	[This proposal is related to the residential care rate for Lincolnshire which impacts on all placements and is not specific to a person's religion/belief.]
<b>Sex</b>	[This proposal is related to the care fee rate for Lincolnshire, which is not specific to sex. However data also shows that the rate will have a greater impact on woman as they have a longer life expectancy and therefore proportionality more likely to receive residential or nursing care.]
<b>Sexual orientation</b>	[This proposal is related to the residential care rate for Lincolnshire which impacts on all placements and is not specific to a person's sexual orientation]

**If you have identified negative impacts for other groups not specifically covered by the protected characteristics under the Equality Act 2010 you can include them here if it will help the decision maker to make an informed decision.**

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## Stakeholders

Stake holders are people or groups who may be directly affected (primary stakeholders) and indirectly affected (secondary stakeholders)

You must evidence here who you involved in gathering your evidence about benefits, adverse impacts and practical steps to mitigate or avoid any adverse consequences. You must be confident that any engagement was meaningful. The Community engagement team can help you to do this and you can contact them at [engagement@lincolnshire.gov.uk](mailto:engagement@lincolnshire.gov.uk)

State clearly what (if any) consultation or engagement activity took place by stating who you involved when compiling this EIA under the protected characteristics. Include organisations you invited and organisations who attended, the date(s) they were involved and method of involvement i.e. Equality Impact Analysis workshop/email/telephone conversation/meeting/consultation. State clearly the objectives of the EIA consultation and findings from the EIA consultation under each of the protected characteristics. If you have not covered any of the protected characteristics please state the reasons why they were not consulted/engaged.

## Objective(s) of the EIA consultation/engagement activity

Engagement on the new model was undertaken directly with Care Providers during 2021 aligned to the award on a new three-year contract. Consultation on the 2024-25 rates has commenced with the market through Lincolnshire Care Association. There are no proposed changes on how Service Users will access or receive care services differently and it is hoped that with the increased funding available through the proposal services in both Specialist Adults Services and Adult Frailty and Long-Term Conditions shall improve.

**Who was involved in the EIA consultation/engagement activity? Detail any findings identified by the protected characteristic**

<b>Age</b>	
<b>Disability</b>	
<b>Gender reassignment</b>	
<b>Marriage and civil partnership</b>	
<b>Pregnancy and maternity</b>	
<b>Race</b>	
<b>Religion or belief</b>	

<b>Sex</b>	
<b>Sexual orientation</b>	
<b>Are you confident that everyone who should have been involved in producing this version of the Equality Impact Analysis has been involved in a meaningful way?</b> The purpose is to make sure you have got the perspective of all the protected characteristics.	Yes
<b>Once the changes have been implemented how will you undertake evaluation of the benefits and how effective the actions to reduce adverse impacts have been?</b>	Formal communications structures are in place between the Council and providers. These meetings will continue to consider whether there are any emerging impacts against individual service users, particularly those who are protected under the Equality Act 2010.

## Further Details

**Are you handling personal data?**

No

If yes, please give details.

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**Actions required**

Include any actions identified in this analysis for on-going monitoring of impacts.

**Action**

**Lead officer**

**Timescale**

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**Version**

**Description**

**Created/amended by**

**Date created/amended**

**Approved by**

**Date approved**

V0.1

Version issued to support decision making in the setting of Usual Costs for Residential, Nursing Care & Community Supported Living Services for financial year 2024-25

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**Examples of a Description:**

'Version issued as part of procurement documentation'

'Issued following discussion with community groups'

'Issued following requirement for a service change; Issued following discussion with supplier'

**PROVIDER FEEDBACK**

Provider Feedback	LCC Response
<p><b>Provider A</b></p> <p>Thank you for the attached letter sent 16.01.2024.</p> <p>I have spoken to our Regional Business Support Manager, Community Engagement &amp; Development Manager, and the Head of Sustainable Funding Team regarding the 7.3% proposed 24/25 uplift for our Lincolnshire residential services.</p> <p>We understand that the formal offer will be made is the percentage is approved 05.03.2023 at the budget setting meeting.</p> <p>Prior to the budget setting meeting Provider A would like to feedback that the 7.3% is not acceptable, it is an inadequate offer which would leave us with an unsustainable rate for our 24/25 services.</p> <p>Please can you take our concerns with this rate into consideration whilst the Council engages in their budget setting procedure?</p> <p>We hope to receive a more sustainable and sufficient offer after our feedback has been considered.</p>	<p>LCC recognises the scale of increase in the National Living Wage and has applied that increase to the pay components of all care rates in place with providers. For the non-pay elements of the care rates, LCC will continue to apply the consumer price index forecast inflation for the year ahead. For 2023-24 this was 8.3% and whilst inflation in April and May 2023 was 8.7%, each month dropped to the current 4%. LCC has not reduced the 8.3% in the 2023-24 rate structure. With a proposed average inflation of 3% for 2024-25 in addition to the 2023-24 rate, the 2024-25 offer of 7.3% is a fair reflection.</p> <p>Should you be in the position that your organisation can't sustain the rates proposed and face the risk of financial failure, LCC has a Hardship Process in place. This process will work with you, on an open book basis, to understand what actions may be needed to move forward.</p>
<p><b>Provider B</b></p> <p>Thank you for setting out a proposed uplift of 7.3% from 1 April 2024 and the factors which have been used to determine this rate. Whilst the factors used reflect current market conditions to some extent, the calculation uses National Living Wage rather than Real Living Wage. Provider B has been a Real Living Wage provider since April 2022 because we recognise the importance and value of the work our colleagues do, and how important it is that our residents benefit from having the best experienced professionals caring for them at all times. Provider B absorbs the differential between the Real Living Wage and National Living Wage increases into the reserves of the Charity, which becomes increasingly difficult to do year on year when fee settlements are only considering the National Living Wage. We hope that LCC will reconsider the level of pay included in the calculation for fee settlements for 2024/25 in recognition of giving employees an appropriate remuneration for the work they do.</p>	<p><b>Rate Uplift</b></p> <p>LCC recognises the scale of increase in the National Living Wage and has applied that increase to the pay components of all care rates in place with providers. The data submitted during the market assessment completed in 2021 highlighted that some roles were paid above the national living wage and therefore the average paid across the sector was reflected in the rates. The assessment and rates were shared with the sector as part of the exercise. Each year we increase the rates by the national living wage % uplift to reflect a fair and consistent approach.</p> <p><b>Digital Social Care Record (DSCR)</b></p> <p>For each of the 3 years from 22/23 23/24 and 24/25, the Department of Health &amp; Social Care (DHSC) provide grant funding to each Integrated Care System (ICS) area, which is paid to the Integrated Care Board (ICB). The total amount granted is based on relative needs formula and is intended to assist with the promotion of DSCR and support care providers with the costs of the first year of implementing</p>



<p>We would also ask for consideration to be given to the additional operating costs associated with operating a digital care record system. The Government made a commitment that 80% of care providers would be operating a digital care record system by the end of March 2024. Whilst funding provision has been made to support the implementation of this system, there needs to be further support from the DHSC to support this national initiative on an ongoing basis.</p> <p>We are grateful to the Lincolnshire ICB for the funding support which is enabling Provider B to implement the Nourish digital care record system during the 2023/24 financial year. The licence costs associated with the system are an incremental cost burden which all providers need to cover and I would ask this is covered in the fee for 2024/25. In simple terms, the cost per registered bed is £110 for the next financial year. This equates to £2.11 per week which we would ask to be added to the fee settlement for 2024/25. Whilst this seems like a negligible increase, it is another operating cost care providers need to cover and financial support from local authorities towards this is appreciated.</p>	<p>and running a DSCR. Care providers can apply for funding support to the ICS if they have selected a DHSC approved system and are wanting to implement.</p> <p>In Lincolnshire, Lincolnshire County Council (LCC) work in partnership with NHS Lincolnshire ICB and Lincolnshire Care Association (LinCA) to promote and manage the grant.</p> <ul style="list-style-type: none"> <li>• NHS Lincs ICB transfer the DHSC grant funding to LCC.</li> <li>• Any applications made by care providers operating in Lincolnshire are directed to LinCA</li> <li>• LinCA work directly with care providers to promote the benefits of DSCR, receive expressions of interest and give assistance for care providers to select and implement a solution</li> <li>• LCC, ICB and LinCA make up a DSCR panel which considers funding applications from care providers once they have decided to invest in a DSCR</li> <li>• Approved applications are paid to the care provider by LCC through a grant funding agreement, which is shaped by the terms of the DHSC programme. The grant fund outlines that the funding shall be used for; <i>Software Licence and hardware leasing for DSCR, plus implementation and transfer of records to a digital format, and backfill of staff time for system training, with a maximum contribution equal to the lower of 50% of cost or £200 per registered bed supported for the first 12 months of use.</i></li> </ul>
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Provider Feedback	LCC Response
<p><b>Provider C</b></p> <p>Provider C is an 83 bed nursing home specialising in dementia, learning disabilities and mental health for young adults and the elderly. The majority i.e. over 80% of residents are funded by LCC, the remaining through CCG, other local authorities and a very small number of self-funders. Therefore, we heavily rely on LCC and vice versa.</p> <p>Following LCC’s proposed Adult Social Care fees, I would like to add the following which highlights the cost pressures Provider C are facing:</p> <p><b>Occupancy</b></p>	<p>LCC recognises the 9.8% increase in the National Living Wage and has applied that increase to the pay components of all care rates in place with providers. For the non-pay elements of the care rates, LCC will continue to apply the consumer price index forecast inflation for the year ahead. With a proposed average inflation of 3% for 2024-25, the 2024-25 offer of 7.3% is a fair reflection. LCC will continue to track the CPI through 2024-25 to monitor the pace of progress towards the forecast 3.1%.</p>

- Our occupancy has decreased since Covid-19 and has not returned to pre-pandemic levels.

#### Staffing

- Our biggest inflationary pressure is staff cost.
- NLW will increase from £11.44 from £10.42 i.e. 9.8% plus associated cost of National Insurance and Pension: i.e. in real terms an increase of 11%
- We are finding it increasingly difficult to recruit and retain staff given that other competitors to the Care Sector offer higher wages with added welcome bonuses, which we simply cannot compete with given that funding has/is been below par.
- We must factor in our rural location and lack of public transport in recruiting staff. Such added barriers require new employees to drive.
- Agency Staff: usage and costs remain high. We heavily rely on Agency Nurses specifically the Night shift. We hope that the Scottish Model of nurses on night shift is adopted in England to help ease pressure.

#### Other cost pressures:

- Utilities: Energy Gas and Electricity: increased by 132%
- Insurance cost: increased by 68%
- Cleaning & Medical: increased by 21%
- Increasing base rate: Mortgage repayments: 28% increase

To conclude: we know that NLW will increase by 11% in real terms from April 2024. Staffing is the biggest cost pressure for all Care Homes, in addition as I have highlighted above the further cost pressures, it is wholly unreasonable that LCC's fee proposal does not take into account these percentages or cost pressures whether current or future. In the proposal, it includes 3% forecast inflation to the non-staff components of the rates: we feel this is an optimistic forecast and inflation most likely will not settle, thus a further review will be required during 2024/25 financial year.

To conclude, we do not feel that the proposed fee level would represent a fair cost of care.

The residents at Provider C are some of the most vulnerable residents within the community who need our support, in turn Provider C need the necessary support from LCC.

Increments in fee levels in previous years have not reflected inflation rates respectively, leaving a wide gap in the cost of care.

We are proud to offer excellent care to our residents and wish to continue, however if we are not financially supported by the Council with a fair increment, the quality of care is likely to diminish. Without the Council support, inevitably our services will become unsustainable. Our residents deserve the best quality of life, without your support their quality of life will suffer.

Provider Feedback	LCC Response
<p><b>Provider D</b></p> <ul style="list-style-type: none"> <li>- Lincolnshire County Council acknowledge in the attached letter the additional cost pressures associated with the National Living Wage (NLW) and inflation. Clearly the proposed uplifts will not meet the aforementioned pressures. It is not clear from the attached letter the specifics on how the uplift percentages were calculated. Could these please be made available for review?</li> <li>- When considering the National Living Wage increase we must also consider the actual effect of the Autumn Statements NI changes. The true increase is <b>10.35%</b>, as the Employer NIC threshold has remained at £175.01 per week. It is important that you build the higher figure into your inflation calculations.</li> <li>- Inflation forecast – we believe that RPI is a more appropriate measure of the increases that will affect our care services, forecasted at 5.1% for 2024. <a href="#">CP 944 – Office for Budget Responsibility – Economic and fiscal outlook – November 2023 (obr.uk)</a></li> <li>- An 1:1 hourly rate of £15.18 when the NLW is £11.44 is not sufficient. Additionally, Lincolnshire County Council will be aware of the issues with recruiting and retaining staff since the pandemic, particularly in rural services. In response to these pressures, and to ensure that we continued to deliver high quality care and support, Provider D made the decision to make significant improvements in the pay levels at these services including increasing our base pay rate to above national living wage, paying premium rates for night and weekends (50p per hour), overtime (£1 per hour) and specific bank holiday enhancements. We also maintained differentials for front line managers.</li> </ul>	<p>LCC is continuing to apply the approach to the model construct that was agreed following the market assessment in 2021. That assessment reflected the average rate paid in Lincolnshire across those homes who participated in the assessment, including where this is higher than the NLW. LCC continues to apply the NLW % uplift across the averages within the rate structure and therefore the 9.8% uplift has been included for 2024-25.</p> <p>For the non-pay elements of the care rates, LCC will continue to apply the consumer price index forecast inflation for the year ahead. With a forecast average inflation of 3.11% for 2024-25, the 2024-25 offer of 7.3% is a fair reflection. LCC will continue to track the CPI through 2024-25 to monitor the pace of progress towards the forecast 3.1%.</p>

Provider D is proud of the quality of care and support we provide, and we believe we can demonstrate commitment to maintain standards and to work creatively and positively with all our commissioning partners. We look forward to continuing to work with you to continue to deliver high quality and sustainable services for the people we support however this needs to be at a sustainable rate.

**Provider Feedback**

**Provider E**

Considering where we are as a sector, it is important for us to be open and transparent with you regarding where we are as an organisation. In short, I can confirm that our cost pressures going into 24/25 are between 8.6% to 9.2% and whilst we can limit some of the cost pressure impact through different means, i.e., reducing agency, increasing occupancy, the uplift we require this year to cover costs would be 8.4% as a minimum.

The offer from Lincolnshire County Council falls short of this at 7.3%. I'd therefore be grateful if you could look again to review if you are able to offer an increase on the proposed rates. Should there not be any ability to move further on the rates, we will likely have to look at other strategies to mitigate the cost pressures, e.g., reviewing our current top-up schedule arrangements.

Specifically, we would like to challenge the non-staffing pay related cost pressures at 3%. Whilst we acknowledge that the Council have stated they will look again at the fee rates should inflation not reduce to this level, we feel there is a need to remind you that this was also stated as part of the 2023/24 fee setting process where a 5.5% uplift was allocated to non-staffing related costs (based on CPI) and at the time of writing the average CPI from April 23 to December 23 is 6.44% but the rates have not been reviewed.

For further detail regarding our financial cost pressures should it be of use:

- Staffing costs – we are currently paying the Real Living Wage across (RLW) at each of our 6 homes and we already know the RLW increase is 10.1% this year. Staffing is always the largest cost – and therefore cost pressure – that we have, with 80% of our home costs going towards Colleagues' pay, pensions and rewards. At Board-level, we have restated our commitment to pay by reiterating it as our number one priority and are hoping that we can continue to pay RLW locally.

**LCC Response**

For the non-pay elements of the care rates, LCC will continue to apply the consumer price index forecast inflation for the year ahead. With a forecast average inflation of 3.11% for 2024-25, the 2024-25 offer of 7.3% is a fair reflection. LCC will continue to track the CPI through 2024-25 to monitor the pace of progress towards the forecast 3.1%. LCC did review the inflationary uplift early on in 2023-24 and this was increased from 5.5% to 8.3% for the full year.

LCC is continuing to apply the approach to the model construct that was agreed following the market assessment in 2021. That assessment reflected the average rate paid in Lincolnshire across those homes who participated in the assessment, including where this is higher than the NLW. LCC continues to apply the NLW % uplift across the averages within the rate structure and therefore the 9.8% uplift has been included for 2024-25.

- Non-staffing costs – admittedly these have been more difficult to estimate but we calculate them to be around 4.7% to 6.7% (excluding energy costs) accounting for approximately 20% of our overall cost pressures. Food, maintenance and insurance are our largest projected increases above inflation levels at 10%, 10% and 15% respectively. We acknowledge that CPI has fallen but this has not yet filtered through fully and accommodation-based services are more sensitive to these cost pressures, e.g., energy usage is way above that of ordinary residential properties. On energy, we are actually projecting a reduction in energy costs (which are still comparatively high in relation to 22/23 costs but lower than in 23/24) and expect this to offset other non-staffing costs by around 1 to 2%. We therefore projecting the following range in non-staffing costs:
  - Minimum: 2.7% (4.7% offset by 2% energy cost reduction)
  - Maximum: 5.7% (6.7% offset by 1% energy cost reduction)

Our projected minimum and maximum uplifts based on cost pressures are therefore:

- **Minimum**

Staffing costs:	10.1%	(80% weighting)
Non-staffing costs:	3.7%	(20% weighting)
Required uplift:	8.62%	
- **Maximum**

Staffing costs:	10.1%	(80% weighting)
Non-staffing costs:	5.7%	(20% weighting)
Required uplift:	9.22%	

Thank you in advance for considering our view as part of this process.

Provider Feedback	LCC Response
<p><b>Provider F</b></p> <p>Whilst we acknowledge the financial challenges facing Lincolnshire County Council, the proposed increase is lower than the 8.5% which the sector nationally is predicting for 2024-2025. Care providers are experiencing significant increases in</p>	<p>This seems to be based on a misunderstanding of how the contract works. Where a provider charges a price above the council's Usual Cost the provider is entitled to payment of that price as long as a third party makes up the difference between that price and the Usual Cost. The contract works to ensure that if the Usual Cost is increased the provider's price also increases by the same amount. In this way the full</p>

<p>costs beyond the impact of NLMW increase, particularly as they try to maintain the quality of the environment which the residents enjoy.</p> <p>We understand the rationale for applying the forecast inflation rate of 3% to non-staff costs but are concerned that this may be overly optimistic. If the anticipated reduction in inflation does not materialise, would Lincolnshire County Council be happy to review the impact of inflation at the end of Quarter 1?</p> <p>Given that Third Party top up rates were set when providers were unaware of the proposed rates for the future yearly periods, and given the prevailing financial climate that has ensued, providers need to be able to review these in order to maintain the contribution to costs that was anticipated when they were set. We would not expect families and other third parties who are already contributing to the fees of providers services to be faced with large increases as they are also experiencing cost of living issues. We would propose a 7.3% uplift for 2024-2025 in line with the proposed fee increase. Would you support this proposal?</p> <p>For new clients, we feel that providers should be free to re-establish a new contracted TPTU maximum rate based on their projected cost base, on a room-by-room basis. This could be added to the current schedule as a maximum per room. As now, these would be maximum values, with providers free to reduce or waive them for each new placement.</p> <p>As I am sure you appreciate, care providers continue to experience significant financial, and workforce related pressures and given the funding constraints to which you are subject, we remain concerned that some providers will find it difficult to be able to deliver the quality care that we would all like to see at the proposed rates.</p>	<p>value of the Council's increase is passed through to the provider without increasing the value of the top up. So, although it is true to say that providers could not foresee what increases the Council would make to the Usual Cost in future years, they are protected against this in any event by the fact that the providers price automatically rises with an increase in the Usual Cost. In this way the differential is always maintained, and therefore the request for a proportionate increase is in effect already happening.</p> <p>For the non-pay elements of the care rates, LCC will continue to apply the consumer price index forecast inflation for the year ahead. With a forecast average inflation of 3.11% for 2024-25, the 2024-25 offer of 7.3% is a fair reflection. LCC will continue to track the CPI through 2024-25 to monitor the pace of progress towards the forecast 3.1%.</p>
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Provider Feedback	LCC Response
<p><b>Provider G</b></p> <p>I write regarding the proposed fee settlement for the above period and have several comments I would appreciate you considering.</p> <ol style="list-style-type: none"> <li>1. The proposed fee increase will not cover our per bed wages bill increase as a result of the 9.8% rise in the minimum wage, for a number of reasons:             <ol style="list-style-type: none"> <li>a. To maintain pay differentials between staff in different roles, all staff will expect a 9.8% pay increase.</li> </ol> </li> </ol>	<p>LCC is continuing to apply the approach to the model construct that was agreed following the market assessment in 2021. That assessment reflected the average rate paid in Lincolnshire across those homes who participated in the assessment, including where this is higher than the NLW. LCC continues to apply the NLW % uplift across the averages within the rate structure and therefore the 9.8% uplift has been included for 2024-25.</p>

<p>b. Due to the inability of the care sector to recruit UK staff, many of our staff our from overseas. To enusre we are fully staffed we have no alternative than to pay visa costs and higher per hourly wages for overseas workers. These costs are not reflected in your proposed increase.</p> <p>c. The rise is based on care homes employing the bare minimum number of staff and does not take into account the costs of additional staff, such as those conducting activities, that enhance the lives of our residents.</p> <p>2. The 3% inflation increase is overly optimistic. It fails to take into account escalating conflict in the Middle East which is dispruting supply chains and increasing the costs of goods we purchase. It also fails to take into account other inflationary pressures from border checks that will soon be introduced following Brexit which will increase import costs of goods we purchase.</p>	<p>For the non-pay elements of the care rates, LCC will continue to apply the consumer price index forecast inflation for the year ahead. With a forecast average inflation of 3.11% for 2024-25, the 2024-25 offer of 7.3% is a fair reflection. LCC will continue to track the CPI through 2024-25 to monitor the pace of progress towards the forecast 3.1%.</p>
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Provider Feedback	LCC Response
<p><b>Provider H</b></p> <p>I am reaching out to express our concern regarding the fee income set for our funded residents by the council.</p> <p>As you may be aware, the cost of providing quality care has been steadily increasing, driven by factors such as rising operational expenses and upcoming national minimum wage hikes. Despite the headline inflation rate showing signs of reduction, the costs to our business have continued to rise disproportionately. Our total staff costs from April 2024 are estimated to increase by c.13%, far exceeding the 7.3% fee increase set for 2024.</p> <p>While we understand the constraints faced by councils in allocating resources, we believe that the current fee income set for our residents does not adequately account for the actual costs associated with providing outstanding care and maintaining our standards of excellence. The proposed 7.3% increase falls significantly short of covering the projected increase in staff costs alone, let alone other operational expenses.</p>	<p>LCC is continuing to apply the approach to the model construct that was agreed following the market assessment in 2021. That assessment reflected the average rate paid in Lincolnshire across those homes who participated in the assessment, including where this is higher than the NLW. LCC continues to apply the NLW % uplift across the averages within the rate structure and therefore the 9.8% uplift has been included for 2024-25.</p> <p>For the non-pay elements of the care rates, LCC will continue to apply the consumer price index forecast inflation for the year ahead. With a forecast average inflation of 3.11% for 2024-25, the 2024-25 offer of 7.3% is a fair reflection. LCC will continue to track the CPI through 2024-25 to monitor the pace of progress towards the forecast 3.1%.</p>

We urge the council to reconsider the fee income set for our residents and consider the substantial rise in costs that our facility is facing. Failing to do so may jeopardise our ability to continue delivering the level of care and support that all our residents deserve.

Additionally, we would welcome the opportunity to engage in constructive dialogue with you to explore potential solutions and ensure that the needs of both our residents and the council are met in a sustainable manner.

Provider Feedback	LCC Response
<p><b>Provider I</b></p> <p>With the NMW confirmed the rise from £10.42 to £11.44 per hour, this change, coupled with the persistent challenges of inflation, escalating energy and utility costs and unpredictable fuel prices, presents a significant financial strain on our organisation.</p> <p>We are committed to upholding the quality of care and support services we provide in Lincolnshire. However, without a meaningful increase in our contracted service fees, we foresee the sustainability of our current services becoming increasingly untenable.</p> <p>While acknowledging the intricacies of the financial landscape, we firmly assert that a substantial funding increase of approximately 14% is imperative to uphold the ongoing delivery of care and support services in your region.</p> <p>Several factors underscore the necessity of this request as stated above:</p> <ul style="list-style-type: none"> <li>• NMW Increases – The government decision to raise the NMW will significantly impact us to cover the higher labour costs associated with paying our own and agency staff at the new minimum wage rates at +£1.02ph.</li> <li>• Inflation – Inflation is currently running at 3.9% well above government targets, and is increasing the costs of goods and services, including utilities, equipment and supplies. There have been unit price increases of 8% and 5% for gas and electricity in January and indeed OPEC is warning of a rise in oil costs as production is cut. Food inflation is set to continue in 2024 and not flatten until mid-year.</li> </ul>	<p>LCC is continuing to apply the approach to the model construct that was agreed following the market assessment in 2021. That assessment reflected the average rate paid in Lincolnshire across those homes who participated in the assessment, including where this is higher than the NLW. LCC continues to apply the NLW % uplift across the averages within the rate structure and therefore the 9.8% uplift has been included for 2024-25.</p> <p>For the non-pay elements of the care rates, LCC will continue to apply the consumer price index forecast inflation for the year ahead. With a forecast average inflation of 3.11% for 2024-25, the 2024-25 offer of 7.3% is a fair reflection. LCC will continue to track the CPI through 2024-25 to monitor the pace of progress towards the forecast 3.1%.</p>



- Rising operation costs – Beyond staff costs for labour, there are additional expenses such as insurance, maintenance and administrative overheads.
- Increased complexity of need – To expand our capacity, retain and hire staff with the right level of training to deliver quality services in your region and keep people safe.
- Technology upgrades – Investment in new technologies to digitise care records (as per NHSX pilots), improve service delivery, enhance efficiency and meet regulatory requirements.

We genuinely value our partnership with Lincolnshire County Council and are dedicated to working collaboratively to find a solution to these financial challenges. Our primary concern is the health and well-being of the individuals we support and our staff.

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