



**Open Report on behalf of Glen Garrod, Executive Director - Adult Care and Community Wellbeing**

Report to:	<b>Executive</b>
Date:	<b>1 March 2022</b>
Subject:	<b>Residential and Nursing Care Fee Levels within Adult Social Care</b>
Decision Reference:	<b>I023033</b>
Key decision?	<b>Yes</b>

**Summary:**

On 22 February 2018 the Executive Councillor approved the setting of a number of usual costs for residential accommodation for the three-year period to 6 April 2021. A full-scale review of the Council's framework contract was underway in early 2020 in order to establish a new three-year agreement, together with revised Usual Costs. However, the advent of the COVID-19 pandemic meant that it was not possible to complete this review. As part of a wider set of COVID measures, approval was secured to issue a one-year contract spanning financial year 2021/22 at the existing Usual Costs with an inflationary uplift as an interim measure. While the impact of the pandemic is still having a major effect on council business and the market, it has been possible to complete an analysis of the market which will allow the council to move forward with a new framework agreement and Usual Costs in 2022.

In this context this report makes a recommendation which will set a Usual Cost for 3 levels of service: residential, nursing, and high dependency across all types of need (older people, physical disability, learning disability and mental health). However, due to ongoing uncertainties impacting the market, costs, and future funding, it is proposed that the new 3-year framework cycle will have an important distinction in that the Usual Costs will be set for the first 12 months only, this being intended to allow for greater flexibility and sensitivity in rate setting for subsequent years once there is greater clarity in developing market conditions and future funding, based on planned social care reforms.

The setting of the Council's Usual Costs for residential care 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 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.

As such any change to the rates paid for services will have a material impact on the effectiveness of services both in the short term and for the future. The aim of the exercise then is to establish a new set of contracts and associated rates for Residential services that are both affordable to the Council, and meets the Council's legal duties along with the necessary changes and improvements to the contract that will allow for successful operation of services over the next contract duration.

It is important to bear in mind that the Council must ensure two things. The first is due process the second is the reasonableness and logic underpinning the Usual Cost. The detail in the report should reassure the Executive that the process employed has been progressed having full regard to what is considered best practice. The report details what that process was, who was involved and the full details of consultation responses alongside views given by officers of the Council to address and respond to these.

In informing a Usual Cost, a model has been constructed which draws on both national and local (to Lincolnshire) data which provides a sophisticated approach to understanding costs to providers.

The recommendation in this report is that a Usual Cost should be set for the next 12 months taking into account the likely effect of changes to providers' costs, both National living Wage and forecast inflation to address non-pay costs. Given the volatility of market cost of care following the pandemic and in lieu of full details of the anticipated social care reforms, to help ensure the level of risk to the residential market is reduced and provide assurance about future income from the largest single purchaser of such care in Lincolnshire (the Council), a three-year contract with an annual rate review for years two and three is recommended to avoid Usual Costs losing pace going forward.

In addition to the changes to the Usual Cost there is a further recommendation to build on and update the framework agreement in 2022 as follows:

- Service specification updates and improvements
- Contractual changes necessary to address the planned and agreed move to gross payment during 2022
- A plan for undertaking a broader programme of 'block purchasing'

Finally there is a recommendation to implement an interim measure whereby providers can apply to a Council operated hardship fund for financial support with those uncertain and volatile utilities and insurance costs

**Recommendation(s):**

That the Executive:

1. Approves the rates set out in the table at paragraph 5.6.1 of the Report as the Council's Usual Costs for both new and existing Learning Disability service users in respect of residential and nursing care with effect from 1 April 2022 for the

financial year 2022/23

2. Approves the rates set out in the table at paragraph 5.6.2 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 2022 for the year 2022/23
3. Approves the rates set out in the table at paragraph 5.6.3 of the Report as the Council's Usual Costs for both new and existing Physical Disability service users in respect of residential and nursing care with effect from 1 April 2022 for the year 2022/23
4. Approves the rates set out in the table at paragraph 5.6.4 of the Report as the Council's Usual Costs for both new and existing Mental Health service users (aged 18-65) in respect of residential and nursing care with effect from 1 April 2022 for the year 2022/23
5. Notes the proposed contractual updates set out in section 6 of the Report.
6. Approves the use of £1m from the Adult Care Grant Reserve to establish a fund for the making of payments to providers of residential care and residential with nursing care in Lincolnshire suffering hardship as a result of cost volatility relating to utilities costs and insurances
7. Delegates 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 fund including the criteria for the making of payments.

**Alternatives Considered:**

1. Issuing another one year, interim, contract that may allow for greater clarity in how market conditions may settle post pandemic.

This is not an attractive option due to the following factors

- The market has already tolerated a one-year contract that only offers an interim, short term, solution. Given the volatility in the market it is highly likely the number of providers that would not sign up to a one-year contract would be higher than would be acceptable.
- It is not clear that a further year would in fact offer a sufficient level of clarity as pandemic impacts continue to be felt and will likely not settle within a one-year period.

2. No increases in Usual Costs are applied in April 2022 and that usual costs remain at their current level.

This option would cost the council £5.873m million less than the recommended options in 2022-23 and would allow the authority to reinvest this funding in alternative services. However, in light of the evidence available to the Council a failure to increase usual costs would leave the Council open to significant risk of legal challenge. It would greatly increase the risk of providers going out of business and would potentially lead to a fall in the overall quality of care in the county.

3. Increasing the Usual Costs by more than is set out in the Report.

Some of the feedback called for this and suggested that the proposed Usual Costs fail to address the true impact of business inflation being experienced by the sector. However, the Council has taken steps to establish costs within Lincolnshire, has engaged with and consulted the market on its model, taking account of feedback following consultation, and believes that the proposed Usual Costs accord with the cost of providing care within Lincolnshire. The proposed hardship fund allows the Council to step in and assist where appropriate in response to volatility in specific costs relating to utilities and insurance.

**Reasons for Recommendation:**

Adopting the recommendation will support providers' costs and see an increase in the rates paid whilst taking into account many of the points raised by providers in the consultation. It will provide assurance that the Council will be able to continue to meet its statutory obligation to meet assessed eligible need for vulnerable service users and will help facilitate the provision of care that meets the necessary CQC standards. It also meets the Council's legal obligation in establishing its Usual Costs.

As the economy emerges from Covid-19 the market for Adult Care services will continue to see volatility in costs. The unknown scale and varying impact by provider cannot be accommodated so as to identify an appropriate 3-year Usual Cost using the model. A one-year Usual Cost is proposed partly to address this issue. It is also proposed to contribute towards providers in-year additional costs, on an open book basis, through the development of a Hardship Fund whilst the market settles. Costs will be monitored throughout 2022-23.

In addition, the Adult Social Care (ASC) White Paper 'People at the Heart of Care: adult social care reform' stated additional funding to support the adult social care workforce would be made available. The intention is to continue to support providers, aligned to the conditions of the associated, as we have done throughout the pandemic.

**1. Background**

1.1. Residential and Nursing services represent one of the Council's highest spend and highest risk areas with an annual total of approx. £125m gross spend. As such any

change to the rates paid for services will have a material impact on the effectiveness of services both in the short term and for the future.

- 1.2. The ultimate aim is to establish a new set of contracts for Residential services that is both affordable to the Council, and meets the Council's legal duties, along with the necessary changes and improvements that will allow for successful operation of services over the next contract duration.
- 1.3. In order to reach this point a number of key activities have been undertaken by officers of the Council
  - (a) Commissioning and completing an independent review of the Residential market in Lincolnshire resulting in a set of reports issued to the Council for its consideration.
  - (b) Analysis of these reports to inform the decision-making process for establishing what the new Usual Costs may be.
  - (c) Consideration of any changes identified as necessary or beneficial to the current Usual Cost model.
  - (d) Consideration of the systematic impact of COVID-19 and an appreciation of the future direction of the market.
  - (e) A review of and identification of changes to the contract that are necessary or represent an improvement.
  - (f) Consideration of new contracting models that better fit the segments of the local care market.
  - (g) Development of a proposal for the new Usual Costs for each service based upon the analysis undertaken and the required changes to manage emerging market conditions.
  - (h) Engagement with the market throughout the process but specifically to share the proposed model, receive feedback and take this into consideration as is necessary.
- 1.4. The work undertaken has addressed the following services separately and distinctly
  - Older People (Residential, Nursing, High Dependency)
  - Learning Disabilities (Residential & Nursing)
  - Physical Disabilities (Residential & Nursing)
  - Mental Health (18 to 65) (Residential & Nursing)
- 1.5. The work undertaken via the market review phase has produced two reports, one for Care Home Costs relating to Working Age Adults and another on Older Adults.

Each of these reports has been considered and analysed to help produce a set of Usual Costs that share many fundamental similarities but will also be distinct for each service.

- 1.6. The review and changes to any contract terms of the Residential Framework agreement have been taken as a whole and applicable to all service streams.
- 1.7. There are no fundamental changes to the Specification or Contract which would result in a change of service or a restriction of service user choice. In fact, it is anticipated that through the changes to the contract the provision for Residential Care in Lincolnshire will improve and will also be in a stronger position to manage challenges in the future.
- 1.8. The proposed set of Usual Costs have been shared with the market. This engagement activity has included LinCA as the representative body of Lincolnshire's care market, to inform them of the proposed changes. This has allowed for feedback from providers and sector representatives which has then been taken into consideration for the purposes of the Council in making its final determination of Usual Costs. Comments from the market have been recorded, considered and can be found in Appendix D.

## 2. THE COUNCIL'S USUAL COST MODEL PROCESS

- 2.1. The Council last set Usual Costs in March 2021 for a period of one year. The Usual Costs per resident per week for new and existing placements during this period are set out in Tables A and B below.

Category of Care	2021/22 Weekly Cost
Older People Standard Residential	£533
Older People Higher Dependency	£587
Older People Nursing	£588
Physical Disability	£687
Mental Health Standard	£555
Mental Health Nursing	£587

*Table A – Older People, Physical Disability, Mental Health Usual Cost 2021-22*

Complexity Band	2021-22 Weekly Cost		
	Standard 13+ Beds	Smaller 7-12 Beds	Smallest 1-6 beds
Band 1	£651	£697	£743
Band 2	£749	£795	£841
Band 3	£944	£990	£1,035

*Table B - Learning Disability Usual Cost 2021-22*

## **Fee Setting Methodology**

- 2.2. The Council's fee setting methodology adopted in 2017 was informed by a cost model based on but not identical with the economic model created for the Joseph Rowntree Foundation in 2002 by Laing and Buisson healthcare consultancy, 'Calculating a Fair Price for Care: A Toolkit for Residential and Nursing Care Costs', ('the JRF toolkit'). This was based on the operating costs of efficient care homes for older people in England.
- 2.3. The Council undertook an assessment of the market during 2021 (described at sections 2.4 and 2.5) which enabled a review of the components of the County Council's 2017 cost model. This exercise has enabled the Council to further develop its cost model reflecting the data gathered by Care Analytics on its behalf.

## **Engagement of Care Analytics to collect and analyse Lincolnshire Data**

- 2.4. To assist with the engagement of residential and nursing care providers for the purposes of collecting Lincolnshire specific data, the Council has worked with local market and the Lincolnshire Care Association, which represents some of the providers, to ensure a better shared understanding of costs, cost pressures, opportunities and market conditions within the market. In addition to the broader market engagement the Council also commissioned Care Analytics Ltd to undertake an independent assessment of the residential care market. This took the form of an assessment of revenue costs of care home places for older people and young disabled adults in Lincolnshire, based in large part on responses to a survey sent to all care homes in Lincolnshire. 216 homes were surveyed with a 50% return. The instruction to Care Analytics was to appraise residential costs and market conditions, with the following specific areas of focus:
  - Overall appraisal of Residential Care Market showing a profile of providers, by number, type, scale, bed capacity and use, costs and charges. This should include cost pressures on providers as a result of market conditions, legislation, inspection and registration requirements.
  - Separate and distinct analysis was requested for all service user groups including
    - (a) Older People (Residential, Nursing, High Dependency)
    - (b) Physical Disabilities (Residential & Nursing)
    - (c) Mental Health 18 to 65 (Residential & Nursing)
    - (d) Learning Disabilities (Residential & Nursing)
  - Trends in Residential Care provision and demand such as growth or contraction.

- Benchmarking local provision with regional and national provision as well as costs and funding levels.
- 2.5. Care Analytics Ltd. reports produced in October and November 2021 are attached at Appendix A and Appendix B. Highlights from the reports are as follows:
- 2.5.1. For the Older Adults Market - Survey results were representative with 43% of all Older Adults homes submitting data. This is a strong sample size for the whole market, although there was a lower response rate from independent providers which has skewed the average costs. There was good geographic coverage too, presenting a much stronger evidence base than 2017.
  - 2.5.2. Growth in the sector has come exclusively from larger organisations with a focus on self-funders. Available capacity based on the usual cost tends to be from smaller, older homes with sunk capital costs.
  - 2.5.3. The existing basis for rate construction remains feasible but this could have consequences for the way in which the Council commissions care over the next three years. For example, it will require a greater focus on utilising the smaller independents with no corporate costs, which may result in an increased rate of Top Ups and a lack of new growth.
  - 2.5.4. The sector of the Older Adults market geared towards accepting Usual Costs are smaller homes which tend to be older and will find it more difficult to invest or improve the property. Therefore, if the council desires to mitigate the impact of increased Third Party Top Ups and/or improve the growth of new capacity, then further investment will be required.
  - 2.5.5. For the Physical Disability (PD) Market – The submission rate was 50%, but the local specialist PD market is extremely small. Commissioning practice tends to make specialist PD placements to out of county services because there are no similar in county services. Therefore, in future it may be beneficial to consider having a PD supplement to the standard Older People rate rather than a separate rate.
  - 2.5.6. For the Mental Health (MH) Market – The submission rate was low even after multiple attempts at engagement and extensions of deadlines, with 33% giving a return. Unfortunately, these returns were also limited in scope, and as a result the scope for analysis of this sector was also limited. That said, local MH providers are generally able to accept packages at the Usual Cost, excepting for lower numbers of complex packages. Almost all MH capacity in the local market is focused on providing care at, or around, the Usual Cost rate, and there remains capacity in the local MH market.
  - 2.5.7. Because the local ‘markets’ for MH and PD are too small for market-generalised analysis, it was recommended that the Council work towards a separate settlement with this part of the market with a longer term and open book approach for cost setting. This will require detailed and close work with these providers over a period of time.



- 2.5.8. For the Learning Disability (LD) Market - The submission rate was high at 74%. The variance in complexity and associated cost profiles within this sector of the market is too complex for the current 9 banded model to fully accommodate. On the whole, the local LD market is showing that it does not run at high profits, and there are good opportunities within the structure and capacity of the market to make the model work. Although the Council does not have the same monopsony buying power as in other sectors of the market, it does have a number of strategically important providers with whom it is a monopsony purchaser. The Council should therefore give consideration to additional or distinct purchasing models for highly used strategic providers.
- 2.5.9. Overall, there remain several factors that remain complex and difficult to predict, including the continued impact of Covid-19, wage increases and inflation, the governments new proposals relating to ASC funding and escalating workforce vacancies. The reports conclude that with the level of change and uncertainty in the system, it may be beneficial for the Council to consider publishing Usual Costs on an annual basis.

### **The Actual Cost Modelling Process**

- 2.6. The Covid-19 pandemic has driven unprecedented pressure, not least in the adult social care sector. To support additional costs arising through the pandemic, LCC has passported government grants through to providers to cover additional costs associated with workforce, infection control, testing and vaccinations.
- 2.7. As we emerge from the pandemic, the sector continues to face significant challenges in recruitment and volatility of costs.
- 2.8. The Council recognises the challenges within this financial landscape and the market assessment undertaken enabled a review of the components of the existing 2017 model. The market assessment highlights that differences in operating policies and practices between providers (such as size of home, layout) add complexity when seeking to produce a standard cost model for the marketplace. However, the surveys and associated data gathered by Care Analytics as part of the 2021 market assessment exercise have enabled the further development of the cost model, which is representative of both the median of results and the trimmed mean.
- 2.9. The Council must assure itself that the fees are appropriate to provide the amount of care required to an agreed quality, including allowing for a reasonable rate of return that is sufficient to allow the overall pool of efficient providers to remain sustainable in the long term.
- 2.10. The Council recognises that the wage rates assumed in the previous model had lost pace with the market. This was to be expected given the 3-year rate for care was

established at the start of the contract. The wages in the 2022-23 model build on the median results and are increased further to reflect the 6.6% increase in National Living Wage from April 2022. The hourly rate includes public holiday premiums and whilst the survey indicated not all homes are paying this, this premium has been built in as standard in recognition of the pressures on workforce across the sector.

- 2.11. The Council is investing in wider initiatives targeted to improve recruitment into Lincolnshire. It is supporting local care providers by investing in a county-wide campaign to attract and retain staff into the care sector. This work will complement actions already identified through the Council's Workforce Strategy. The organisation commissioned to deliver this work is taking a partnership approach, working with key stakeholders including LinCA. They will deliver an attraction campaign that promotes care as a career across our main social care sectors; Homecare, Residential & Nursing Care and Community Supported Living. The campaign will align and build on national recruitment campaigns launched by the Department of Health and Social Care, such as 'Made with Care'. The work will also provide the sector with a range of creative design assets that can be used beyond the initial commission, including social media content, adverts, print materials, outdoor media, gifs, and localisation of national campaign materials.
- 2.12. The 2021 survey results highlighted the majority of non-pay areas are consistent with averages from 2017 assuming 2.0% annual uplift. The proposal increases the non-pay costs in the 2022-23 model by 4% in line with Provisional Spending Review published by the Government in December 2021. The volatility in the energy market has emerged since the survey was completed and since the Council published its proposed rates for consultation. This is addressed in section 5 below, which contains the Council's approach to supporting providers with these costs.
- 2.13. The model needs to include a reasonable rate of return. The methodology adopted and agreed previously continues into the 2022-23 model. The main asset deployed is the building used to deliver the service. Therefore, the number to feed into the calculation will be the capital cost of a room in Lincolnshire (£47,060) multiplied by the chosen rate of return.
- 2.14. In establishing what cost should be attributed to the Provider's use of assets, the rate of return used should reflect the relative risk of the investment. As the Council buys a substantial amount of placements (48% based on the Care Analytics Lincolnshire survey) which it has the resources to pay for, this significantly reduces the risk to providers businesses and the beneficial impact of this should be reflected through a return which reflects a low/medium business risk for providers.
- 2.15. The market indicators utilised previously are still valid and a 6% rate of return is applied. This represents an annual payment per room of £3,137 indicating the initial investment would be recouped over a 15-year period. This is a reasonable timescale for a business such as adult social care.

2.16. The market assessment highlighted areas the Council would like to undertake a deeper review of in the coming financial year. These areas, which will form part of the work programme to develop the future commissioning of residential and nursing care in Lincolnshire referenced at section 6.3 below, include:

- the financial structure of the learning disabilities rates currently shown in bandings.
- a joint piece of work with health colleagues to provide assurance that the higher cost care (e.g., nursing) is supported by the appropriate rates paid by both health and social care.
- where parts of the market were unable to respond to the survey and/or responses were disproportionate, a programme of work is to be agreed for 2022-23 to enable the identification of a fair cost of care e.g., mental health and physical disabilities rate construct

2.17. The ASC White Paper 'People at the Heart of Care: adult social care reform' confirmed additional funding announcements, a workforce fund being one. At the time of writing this report, the details of local allocations and access to the funds are still awaited. It is the intention of LCC to continue to support its providers in accordance with the conditions of the funds.

2.18. In addition, the Council has already agreed to move its residential payments onto a gross payment basis. This is scheduled to transition during the summer of 2022. This will support providers to reduce the significant administrative burden and will provide residential homes with one flow of income for the care delivered.

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

3.1. As a result of the work carried out to and referred to above, the Council proposed, for consultation with the market in December 2021, the rates set out in the tables below at paragraphs 3.2, 3.3 and 3.4 as the Council's Usual Costs for both new and existing service users as of 1 April 2022.

#### **3.2. Learning Disability Services**

3.2.1. The market analysis exercise concluded that the 9 banded Usual Cost model is functionally effective and works well overall, with 87% of core placement prices and over 50% of total placement prices being at one of the respective bands. However, this market is much more segmented than the Older Persons market, reflecting the wide range of needs being managed and support being delivered, and the limitations to the flexibility and sensitivity of the model necessitate bespoke pricing in more complex cases. In this respect it will be beneficial for the Council to undertake further analysis and engagement with the sector to develop its approach to Usual Costs, including consideration of alternatives to a standardised approach in appropriate

circumstances, for example use of provider specific cost models for high-cost high-need providers and block purchasing with strategically significant providers to improve leverage. With this in mind, the existing usual cost model was adjusted and updated in line with the methodology described at paragraphs 2.6 to 2.16 to arrive at the proposed costs for 2022-23, as shown below in table C, and shared with the market in the consultation exercise described at section 4. It is also proposed, as part of a future work programme to be initiated in 2022, to undertake further analysis and engagement with specialist sectors in order to develop the council's approach to purchasing and cost setting for future years.

Complexity Band	Standard 13+ Beds		Smaller 7-12 Beds		Smallest 1-6 beds	
	Current 2021/22	Proposed 2022/23	Current 2021/22	Proposed 2022/23	Current 2021/22	Proposed 2022/23
Band 1	£651	£675	£697	£722	£743	£769
Band 2	£749	£780	£795	£827	£841	£874
Band 3	£944	£987	£990	£1,033	£1,035	£1,080

Table C: Learning Disability Usual Costs, Current and 2022-23 proposed as part of December 2021 Market Consultation

### 3.3. Adult Frailty and Long-Term Conditions

#### 3.3.1. Older Persons

The Survey results were representative with a strong sample size for the whole market providing a good level of evidence used for the review of the model for 2022-23. However, as there remain factors that are complex and difficult to predict in future years (i.e. continued impact of Covid-19, wage increases and inflation, the governments new proposals relating to ASC funding and escalating workforce vacancies), it is proposed that, in line with the review conclusions, usual costs are set for the next 12 months only at this stage. On this basis, and as the existing basis for rate construction remains feasible, the existing usual cost model has been adjusted and updated in line with the methodology described at paragraphs 2.6 to 2.16 to arrive at the proposed costs for 2022-23, as shown below in table D, and shared with the market in the consultation exercise described at section 4.

Category of Care	Current 2021/22	Proposed 2022/23
Older People Standard Residential	£533	£563
Older People Nursing	£588	£622
Older People Higher Dependence	£587	£621

*Table D: Older Adults Usual Costs, Current and 2022-23 proposed as part of December 2021 Market Consultation*

### 3.3.2. Physical Disability

There are low residential care placement numbers for this client group and close to 60% of those commissioned are in homes classified as predominantly supporting older adults. Analysis concluded that the local PD care home market is too small to lend itself to meaningful market-level cost analysis, so the anonymous survey approach will not be an effective mechanism to achieve this moving forward. Alternative strategies will need to be employed for future market engagements. This will form part of the future work programme to be initiated in 2022, with a view to developing an appropriate cost modelling approach for Physical Disabilities in future years, taking account of the local market structure, for example, consideration of potential to supplement the older peoples rate for more standard cases, unless or until there is development of more specialist Physical Disabilities services in Lincolnshire. For 2022-23, the existing usual cost model has been adjusted and updated in line with the methodology described at paragraphs 2.6 to 2.16 to arrive at the proposed costs for 2022-23, as shown below in table E, and shared with the market in the consultation exercise described at section 4.

<b>Category of Care</b>	<b>Current 2021/22</b>	<b>Proposed 2022/23</b>
Physical Disability	£687	£725

*Table E: Physical Disability Usual Costs, Current and 2022-23 proposed as part of December 2021 Market Consultation*

### 3.4. Mental Health

3.4.1. The market analysis identified that 58% of mental health placements in Lincolnshire are commissioned at the Usual Cost level, however this rate is not effectively used out-county, where the majority of the more complex cases are supported, largely due to a lack of specialist provision in county. There is recognition that a single-rate solution for Mental Health placements is not sustainable given the range of client needs it has to cater for, and there is an ambition to develop a more systematic solution to address more complex cases where needs cannot be met within the Usual Cost levels. However, the level of feedback and data received was insufficient to enable comprehensive remodelling of the Usual Cost setting approach for this part of the sector. As a result, the existing usual cost model was adjusted and updated in line with the methodology described at paragraphs 2.6 to 2.16 to arrive at the proposed costs for 2022-23, as shown below in table F, and shared with the market in the consultation exercise described at section 4. Further targeted engagement with and analysis of this market will form part of the future work programme to be initiated in 2022, to support the

development of a more inclusive pricing approach and cost modelling for this sector in future years.

Category of Care	Current 2021/22	Proposed 2022/23
Mental Health Standard	£555	£586
Mental Health Nursing	£587	£620

*Table F: Mental Health Usual Costs, Current and 2022-23 proposed as part of December 2021 Market Consultation*

#### **4. Market Consultation**

- 4.1. As indicated above the Council has worked with the market to support this process. Market engagement has taken place through December 2021 and January 2022, to share the proposed changes to the Usual Cost model with the provider market.
- 4.2. The Care Analytics Ltd Reports and the proposed cost models and supporting documents were released to all providers for their feedback and comments at the start of the engagement period.
- 4.3. Following this period of engagement, Providers have had an opportunity to present feedback and commentary on the proposed changes
- 4.4. Comments were received from 23 individual providers, representing 14.5% of total contracted providers who between them manage 34% of Lincolnshire’s registered care homes, and one coordinated response from the Lincolnshire Care Association which represents over 130 Care Providers in the county. Detailed feedback, and the Council’s responses to this feedback can be seen in appendix D, however key themes from the feedback are as follows:
  - 4.4.1 Utilities – There is significant concern regarding the rising costs of utilities and the extent to which these costs have been factored into the 2022-23 Usual Cost proposals from providers in all market sectors.
  - 4.4.2 Insurance – The Sector has become a high-risk sector for the Insurance Industry and the narrowing of choice has resulted in an increase in costs.
  - 4.4.3 National Insurance – A key factor associated with the sufficiency of the proposal associated with wages is the NI contributions increase, which are set to rise by 1.25% in April 2022.
  - 4.4.4 Workforce issues – Strong competition from other sectors where pay, conditions and incentives have led to workers leaving health and social care, combined effect of the pandemic and Brexit reducing the staff available to work in the sector.

#### **5. The Council's Response to the Feedback and Recent Developments**

- 5.1 The consultation on the rates was brought forward to provide the market with sufficient time for review. This meant that the provisional Local Government Settlement had not been published when the rates were shared. Since the market assessment was carried out, the settlement has been published and two material developments have occurred which, alongside the market feedback from the engagement have been considered in addition to the rates published:
- 5.1.1. The publication of the Market Sustainability and Fair Cost of Care Fund
  - 5.1.2. Volatility in energy prices which won't be reflected in the modelling due to timing. The impact will vary between providers with those on a variable tariff likely to see the largest financial impact.
- 5.2. The Market Sustainability and Fair Cost Fund is to enable preparation across local markets for the announced social care reforms. The fund will be released over the next 3 years to support us to move towards paying a fair cost of care across residential and non-residential care. The Council has received £2.273m for the financial year 2022-23. Working through the conditions of the fund, and in consideration of feedback provided by the market as part of the consultation process, we are able to propose an increase to the rates published in December to take account of some of the additional pressures highlighted by the market. The proposed new rates include the increase in national insurance contributions and are shown in paragraph 5.6 below and (for Older People and Learning Disability) in Appendix E and F.
- 5.3. These rates will see the full £2.273m fund committed to ASC providers.
- 5.4. In addressing the volatility in energy prices, the model proposed as part of the consultation builds in utilities costs based on the median response from the surveys. Since the surveys were received energy prices have changed significantly and we recognise the anxiety resulting from this volatility. We also recognise the scale of its impact will vary from provider to provider. It is therefore proposed to create a 'Hardship Fund' during 2022-23. The fund will provide a contribution to providers for additional utility costs incurred. The mechanics of this fund are being worked through with the intention to publish further detail to providers during March 2022. In addition, the Council's commercial team is exploring an opportunity to facilitate collaborative energy buying on behalf of care homes through the Eastern Shires Purchasing Organisation (ESPO), of which the Council is a member authority. Enabling care homes to access energy at tariffs secured with the combined buying power of a wide range of public and private sector organisations offers potential to reduce their utilities costs and help mitigate the impact of the current market volatility.

5.5. As a result of the work carried out to date and following feedback in the consultation the recommendation is that the rates set out in section 5.6 are adopted as the Council's Usual Costs for both new and existing service users as of 1 April 2022. The cost of implementing this proposal in the first of the new 3-year contract is approximately £5.873 million. The governance processes surrounding third party top ups and bespoke packages of care for those with severe complexities for example are not included in the proposed 'usual cost' rates. These costs will continue to be managed through our existing processes.

5.6. The tables below show the updated rates proposal

5.6.1. Learning Disabilities:

Complexity Band	Standard 13+ Beds		Smaller 7-12 Beds		Smallest 1-6 beds	
	Current 2021/22	Proposed 2022/23	Current 2021/22	Proposed 2022/23	Current 2021/22	Proposed 2022/23
Band 1	£651	£678	£697	£725	£743	£772
Band 2	£749	£784	£795	£831	£841	£878
Band 3	£944	£993	£990	£1,039	£1,035	£1,086

5.6.2. Older Persons:

Category of Care	Current 2021/22	Proposed 2022/23
Older People Standard Residential	£533	£567
Older People Nursing	£588	£627
Older People Higher Dependence	£587	£626

5.6.3. Physical Disabilities:

Category of Care	Current 2021/22	Proposed 2022/23
Physical Disability	£687	£731

5.6.4. Mental Health:

Category of Care	Current 2021/22	Proposed 2022/23
Mental Health Standard	£555	£590
Mental Health Nursing	£587	£624

5.7. The Council's cost model including the assumptions made for the recommended proposal are attached at Appendices E and F. This has been used to form a view on



the actual costs of care in Lincolnshire using much of the information collected in the Care Analytics Lincolnshire Survey.

## **6. CONTRACTUAL UPDATES**

6.1 A number of updates and improvements have been made to the service specification following a thorough review of current documentation by a working group consisting of a wide range of stakeholders, and benchmarking against other local authority specifications. It has been concluded that the existing specification is fit for purpose, comprehensive and in line with best practice. Minor updates and improvements have been made to reflect best practice, including addressing requirements around covid and flu vaccination; reinforcing care planning practice, in particular a Strengths Based Approach in relation to supporting individuals to remain as independent as possible; and developments in the digital agenda such as the use of NHS Mail and health monitoring technology.

6.2 Contractual changes have been necessary to address the planned and agreed move to gross payment in 2022, which as noted at section 2.18, will support providers to reduce the significant administrative burden and will provide residential homes with one flow of income for the care delivered, as well as procedural and practice changes regarding the effective management of Third-Party Top Ups.

### **6.3 Future work programme**

A work programme to develop the future commissioning of residential and nursing care will follow the establishment of the new framework in 2022 and the initial 1-year rate setting, to enable development time for a more strategic approach in a number of important areas highlighted through the 2021 review. This will include:

6.3.1 Block purchasing – To better account for market conditions, exploration, planning and implementation of a broader programme of ‘block purchasing’ of residential and nursing beds to support market management, cost management and assurance of supply. Further work will be needed to establish categories of care, locations and volumes required.

6.3.2 Further work with specialist sectors, including learning disabilities, Mental Health and Physical Disabilities to ensure the usual cost model methodology and approach remains sustainable and effective in future years. Subject to the outcome of the further work and analysis, this could include appropriate revisions and adaptations to the existing model.

6.3.3 Developments towards fair cost of care and Usual Cost setting for 23-24 in line with the governments social care reforms.

## **7. Legal Issues:**

### Legal Background

- 7.1. 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").
- 7.2. 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.
- 7.3. 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.
- 7.4. 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 Council must give the individual an explanation in writing. (para 17)
- 7.5. 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.
- 7.6. 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
- 7.7. 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 are able to deliver high quality services (relevant skills and appropriate working conditions)
- 7.8. 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.
- 7.9. Chapter 4 of the Guidance (Market Shaping) provides guidance on s.5 of the Act in particular 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..."

7.10. 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

7.11. 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.

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

7.13. Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- \* Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic

- \* Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
  - \* Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
- 7.14. 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
- 7.15. 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
- 7.16. Compliance with the duties in section 149 may involve treating some persons more favourably than others
- 7.17. 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 2022-23 which addresses the risk of adverse impact on service users which can be found as Appendix C 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 or not 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, so as 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 considered to be 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.

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

7.18. 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.

### Crime and Disorder

7.19. 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 taken into account 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.

## **8. Conclusion**

8.1. The Council has worked with the sector to establish the costs of care within Lincolnshire. As part of that work the Council has consulted the sector on proposed rates set out in section 3 of the Report.

8.2 In the light of the feedback concerning the cost pressures within the sector and more recent developments especially the announcement of the Market Sustainability and Fair Cost Fund, it is recommended that the rates set out in paragraphs 5.6.1, 5.6.2, 5.6.3 and 5.6.4 are approved. These are rates for 2022/23 and will be further reviewed prior to the 2023/24 year to ensure that the Council's rates remain responsive to market fluctuations.

8.3 To further support the sector it is proposed to create a Hardship Fund to help manage fluctuations in utility and insurance costs.

8.4. 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.

#### **9. Legal Comments:**

The Council has the power to adopt the Usual Costs and establish the Hardship Fund 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.

#### **10. 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 it believes the Council should adopt for 2022-23. The cost to the authority of implementing the proposed rates is estimated to be £5.873m over one year. The additional funding requirement for the first year of the agreement is within the financial envelope identified during the 2022-23 budget setting process. In the subsequent two years of the agreement there is some uncertainty around the delivery method for future funding of social care, which means it would not be reasonable to adopt the Usual Costs for a full three-year period at present. The review and setting of Usual Costs once future funding is clear will support the ongoing sustainability of the market and the Council's own longer term financial planning.

#### **11. 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 Adult Care and Community Wellbeing Scrutiny Committee at its meeting on 23 February 2022 and the comments of the Committee will be reported to the Executive

### d) Risks and Impact Analysis

See the body of the Report

## 12. Appendices

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

Appendix A – Report for LCC on Older Adult Care Home Market 2021  
Appendix B – Report for LCC on Learning Disability Care Home Market 2021  
Appendix C – Equality Impact Assessment  
Appendix D – Market Consultation Feedback and Responses  
Appendix E – Residential Rate Model Adult Frailty and Long-Term Conditions  
Appendix F – Residential Rate Model Specialist Adults Services

## 13. Background Papers

The following Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of the Report

Document title	Where the document can be viewed
Residential and Nursing Care Fee Levels within Adult Care 2018	<a href="#">Issue details - Residential and Nursing Care Fee Levels within Adult Social Care (moderngov.co.uk)</a>

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