

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

Report to:	Executive
Date:	07 March 2023
Subject:	Community Supported Living, Residential Care and Residential with Nursing Care Usual Costs
Decision Reference:	I028791
Key decision?	Yes

Summary:

On 1 March 2022 the Executive approved the setting of a number of usual costs for residential accommodation for a one-year period to 31 March 2023. These rates were established following a comprehensive market assessment carried out in 2021. The rates underpinned the Council's framework contract for the three-year period to 31 March 2025, with the proposal and subsequent agreement of an annual rate review for years two and three. An annual review was agreed to avoid Usual Costs losing pace going forward due to ongoing uncertainties impacting the market, costs, and future funding.

In addition to the proposed residential rates effective 1 April 2023, this paper proposes a move from a single rate structure to a multiple rate structure for both new and existing Learning Disability service users accessing Community Supported Living services.

The setting of the Council's Usual Costs 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 for services both in the short term and for the future. The aim of the rate setting exercise is to establish rates for Residential and Community Supported Living services that are both affordable to the Council, meets the Council's legal duties, and sets a 'fair' rate to the market along with the necessary changes and improvements to the contract that will allow for successful operation of services over the next contract duration.

In addition to the proposed rates, there is a further recommendation to continue the Council's Hardship Fund instigated during 2022-23. This fund provides a financial contribution to adult care providers impacted by the more volatile costs including energy and insurance.

Recommendation(s):

That the Executive:-

- 1) Approves the rates set out in the first table at paragraph 4.4a 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 2023 for the year 2023/24
- 2) Approves the rates set out in the tables at paragraph 4.4b 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 2023 for the financial year 2023/24
- 3) Approves the rates set out in the table at paragraph 4.4c of the Report as the Council's Usual Costs for both new and existing Mental Health service users in respect of residential and nursing care with effect from 1 April 2023 for the year 2023/24
- 4) Approves the rates set out in the table at paragraph 4.4d of the Report as the Council's Usual Costs for both new and existing Physical Disability service users with effect from 1 April 2023 for the year 2023/24
- 5) Approves the rates set out in the table at paragraph 4.4e of the Report as the Council's Usual Costs for both new and existing Learning Disability service users in respect of Community Supported Living with effect from 1 April 2023 for the year 2023/24
- 6) Approves the continuation of a Hardship Fund for 2023-24 for commissioned providers on a targeted, evidence-based basis as set out in section 3 of the report.
- 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 Hardship fund contained in section 3 of the report including the criteria for the making of payments.
- 8) 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 use of the Market Sustainability and Improvement fund aligned to the grant conditions once published and the principle recommended in section 5 of the report.

Alternatives Considered:

1. No increases in Usual Costs are applied in April 2023 and that usual costs remain at their current level.

This option would cost the council £10.200m million less than the recommended options and would allow the authority to reinvest this funding in alternative services. However, failure to increase usual costs would leave the Council open to challenge under the Care Act. 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.

2. 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.

Reasons for Recommendation:

Adopting the recommendation will support providers' costs and see an increase in the rates paid. 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.

1. Background

- 1.1 Residential, Nursing and community supported living services represent one of the Council's highest spend and highest risk areas with an annual total of approx. £182m gross spend. As such any change to the rates paid for services will have a material impact on the effectiveness for services both in the short term and for the future.
- 1.2 The ultimate aim is to uplift the rates for Residential, Nursing and community supported living services that is both affordable to the Council, meets the Council's legal duties, and sets a 'fair' rate to the market along with the necessary changes and improvements that will allow for successful operation of services over the next contract duration.
- 1.3 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.
- 1.4 The Council undertook a comprehensive assessment of the market during 2021 which enabled a review of the components of the County Council's 2017 cost model. This exercise enabled the Council to further develop its cost model reflecting the data gathered by Care Analytics on its behalf.
- 1.5 To assist with the engagement of residential and nursing care providers for the purposes of collecting Lincolnshire specific data in 2021, the Council 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. 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 Older People (Residential, Nursing, High Dependency), Physical Disabilities (Residential & Nursing) and Mental Health 18 to 65 (Residential & Nursing)
- Trends in Residential Care provision and demand such as growth or contraction.
- Benchmarking local provision with regional and national provision.

Residential Market Assessment Survey Results

1.6 Overall, 216 homes were surveyed with a 50% return. For the older peoples market and the learning disabilities market, survey responses provided a strong sample size at 43% and 74% respectively.

1.7 The older peoples market responses did however see a lower response rate from independent providers which skewed the average costs. There was good geographic coverage too, presenting a much stronger evidence base than 2017. Growth in the sector continues to 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. The existing basis for rate construction therefore remains feasible.

1.8 The market analysis exercise concluded that the existing learning disabilities 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 the one of the respective bands

1.9 The models in place for both these sectors of the market are therefore proposed to continue into 2023-24.

1.10 For the higher in complexity markets, either the market overall is extremely small (physical disabilities) or the response rate (mental health) was low even after multiple attempts at engagement and extensions of deadlines.

1.11 The proposal is therefore to continue to utilise these models into 2023-24, uplifting the rates to reflect increases to the National Living Wage and forecast inflationary increases. Market engagement for the 2023-24 rates commenced in January with an initial meeting with Lincolnshire Care Association and wider market engagement commences 8 February 2023.

Community Supported Living (CSL) Services

1.12 50% of existing providers have raised concerns with the CSL rate with at least 5, including three of the top four, quoting an inability to take on new clients if the rates are not increased. Many are citing pressure resulting from increasing complexity of people's needs. Specifically for floating support, key concerns cited include insufficient recognition of travel time/fuel costs in the rate given the rurality of the county.

1.13 An independent market assessment has been commissioned for CSL to determine the cost of care compared to the rates paid. The assessment and subsequent options will be completed during quarter one of 2023-24. Whilst the market assessment is undertaken, the proposal is to introduce an interim rate to reflect the feedback from the market concerning the additional cost of delivering services where the person is not residing in shared accommodation, the floating service. Given the findings from the Homecare market assessment, a multi-tier rate is anticipated to remain.

1.14 The £0.72m cost of introducing a multi-tier rate is included in the 2023-24 budget proposal currently going through the Council. ACCW was unable to utilise the Market Sustainability and FCC grant (referenced below) for CSL services as the grant conditions excluded this sector.

2 Fair Cost of Care Exercise

2.1 The government published the Market sustainability and fair cost of care fund in 2022-23. Its primary purpose was to support local authorities to prepare markets for reform, including the Council commissioning care for individuals who have financial resources above the assessment criteria thresholds under section 18(3) of the Care Act, and to support local authorities to move towards paying providers a fair cost of care. To support this fund, the government released £162m to local authorities for 2022-23.

2.2 As a condition of the Grant local authorities needed to submit a cost of care return based on engagement with local providers. The return incorporated a set template which calculated the median of the operating costs which was termed a 'Fair Cost of Care'

2.3 It is important to

- highlight that adult social care charging reforms, including section 18(3) have now been delayed until October 2025. This means that self-funders are not expected to approach the Council to access local authority rates for a further two years. The market will therefore continue to see providers reliant on self-funder rates.
- distinguish the outcome of the cost of care exercise from the fee setting process referred to in this section. In particular, the cost of care return made on the 14 October 2022 does not in itself determine what is a fair cost of care in a local area and does not determine the fee rates that the Council sets.

2.4 The DHSC have recognised that the mechanical application of a median calculation to costs drawn from market engagement will not necessarily result in a Fair Cost of Care in any given locality and cannot be determinative of the fee rates to be set by the Council which

must be developed in accordance with the general law governing the setting of rates including having regard to but not being bound by the results of the Cost of Care exercise. This is recognised in the Guidance accompanying the Fund and even more so in a DHSC Policy Note which states

- “We know the median actual operating costs from which LAs arrive at a FCC in their area will not reflect the costs of each individual provider in their local area”
- “We recognize also that outlining median figures for the broad service types...may oversimplify what is a complex picture of care and support needs”
- “The outcome of the cost of care exercise is not therefore intended to be a replacement for the fee-setting ... or individual contract negotiation.”

2.5 The Council has many years' experience of setting residential rates in compliance with its legal responsibilities and as a result of that experience knows that the Cost of Care survey output based on a median of provider survey responses is not an appropriate basis to inform council commissioning.

2.6 In particular:-

- staffing costs are whole home staffing, only excluding care workers explicitly identified as providing one-to-one support to residents. Some of the staff costs included will be covered by higher fees/enhancements paid by health and other residents for need-based and other reasons. There is no way of stripping these costs out of the FCOC model.
- staffing levels vary enormously between homes, and it is not just for need-based reasons. Many homes include a level of ancillary staffing that is aimed at self-funders (paying much higher prices) and is not necessary for safe and legally compliant care. Even if these homes all have costs that are above the median, the resulting median can be dragged up to be in the higher end of costs for standard-rated care.
- some cost categories are highly variable. The median can therefore be somewhat arbitrary and easily moved. This is especially true of head-office costs (or equivalent), which vary from £5 to £200+ per resident week. There is no practical way of scrutinising central overheads of groups for these types of exercises.
- 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.
- whilst overall the response rate provided a strong sample size for the whole market, there was a lower response rate from independent providers which has inflated the average costs
- occupancy levels are not a feature of the calculation. Homes with low occupancy usually have unit costs which are sometimes much higher. Lincolnshire's figure show that the number of vacant beds is approx. 15%, 3-7% higher than pre covid-19 levels.

- there is no assumption that homes should be reasonably efficient (as there should be when configuring council usual-rate cost models). Whilst the DHSC recommends that outliers should be queried with care homes, there is no clear dividing line between a cost being inefficient or being an outlier.

2.7 We can use the provider survey responses to better reflect some of the challenges above in the resulting cost but not all. This means that the Council's approach to negotiation of rates will be based not on the Cost of Care exercise but on the more nuanced position exemplified by the points made above.

3. Financial Uncertainty

3.1 Whilst fuel prices are reducing, it is expected that other volatile costs will continue at a higher level for longer. A Hardship Fund was created during 2022-23 to support commissioned providers with volatile costs forecast to spike temporarily specifically energy, insurance and fuel.

3.2 The claims/feedback received into the Hardship Fund during 2022-23 highlighted significant variation in impact across the market from £2 per bed per week to £18+. This indicates that a blanket rate increase approach into the commissioned rate is not suitable. The main reasons for the variations between providers are differing agreements with suppliers and differing end dates for fixed term arrangements.

3.3 The government announced in December, details of how people without a direct relationship to a domestic energy supplier, including many care home residents, will receive a £400 discount on their fuel bills through the Energy Bills Support Scheme Alternative Funding (EBSS Alternative Funding). It isn't yet clear if this funding will be able to be directed to the care home themselves, further guidance is awaited.

3.4 The Council does not have sufficient funding to sustain every provider nor is it the responsibility of the council to do so. The proposal is therefore to

- carry forward any unused Hardship Fund allocated in ASC reserve into 2023-24 and use adult social care reserve to provide up to a further £1.7m for 2023-24
- to continue to operate the fund for commissioned providers on a targeted, evidence-based basis. A framework is in development by commercial and financial colleagues which will provide a proactive insight into those providers most at risk of failure.

4. The Council's Proposed Rates

4.1 The Council last set Usual Costs in March 2022 for a period of one year. The 2023-24 rates proposed are informed by the market assessments completed to date, the announcements contained within the Funding Settlement published 19 December 2022 and feedback from the market from the various mechanisms in place.

4.2 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. Feedback received includes

- National living wage is not sufficient to keep pace with other market sectors
- Support for the continuation of the Hardship Fund although will await the detail of how they access it
- Concerns that inflation will be higher than forecast

4.3 All proposed rates include

- £10.42 national living wage confirmed in the funding settlement from 1 April 2023
- 1.25% National Insurance increase seen in 2022-23 has been removed
- 8.3% average inflation forecast by the CPI for the financial year 2023-24 to those elements of the rate where inflation applies

4.4 The tables below show the proposed rates for 2023-24 compared to 2022-23. Note EBITDA stands for earnings before interest, taxes, depreciation and amortisation and includes the rate of return calculation agreed in the existing model which came to Executive in March 2022.

4.4a Older Persons	2022-23			2023-24			Uplift
	Std	Nrsg	High Dep	Std	Nrsg	HighDep	
Staffing	385	437	443	418	474	481	8.5%
Non Staffing	109	117	109	122	130	122	12.0%
EBITDA	74	74	74	84	84	84	14.2%
Unit Cost	567	626	625	624	689	687	

4.4b Learning Disabilities	2022-23			2023-24			Uplift
	Band 3	Band 2	Band 1	Band 3	Band 2	Band 1	
Staffing	693	483	379	752	525	411	8.5%
Non Staffing	168	168	168	188	188	188	12.0%
EBITDA	130	130	130	134	134	134	2.6%
Standard	993	784	678	1,074	848	733	

Smaller	1,039	831	725	1,126	901	786
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Smallest	1,086	878	772	1,178	953	838
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4.4c Mental Health	2022-23		2023-24		Uplift
	Std	Nrsg	Std	Nrsg	
	590	624	646	683	9.5%

4.4d Physical Disabilities	2022-23	2023-24	Uplift
	Std	Std	
	731	801	9.5%

4.4e CSL for Learning Disabilities	2022-23	2023-24	Uplift
Shared	17.60	19.15	8.6%
Floating		19.70	

5. Market Sustainability and Improvement Fund

5.1 The Local Government Settlement published 19 December 2022 included the introduction of the Adult Social Care Market Sustainability and Improvement Funding Grant. The grant is provided to upper tier authorities to enable tangible improvements to be made to adult social care.

5.2 For Lincolnshire, the proposed allocation is £7,886,615. This includes the continuation of the £2,273,366 received by Lincolnshire in 2022-23.

5.3 Residential providers received a new set of rates based on a market assessment for 2022/23 as a result of the Executive's decision in March 2022. By contrast Home Care providers were awaiting the completion of our market assessment. This was delivered during the summer of 2022 and the outcome resulted in the introduction of a new four tier rate for homecare which utilised the 2022-23 fund in full.

5.4 As highlighted in the Fair Cost of Care section above and a theme throughout the market assessment, differing business structures across the residential sector means a one size rate doesn't fit all. For those providers the Council commissions a significant volume of care from, strategic partnerships will be further developed during 2023-24 to enable this fund to be targeted as those areas of the market the Council needs to ensure sustainability of care for the long term.

5.5 With 2022-23 allocation continuing, the four-tier homecare rate structure is also continuing. It is therefore proposed to utilise the £5,613,249 increase in 2023-24 funding to support the residential market.

5.6 At the time of writing this report the conditions of use of the funding have not been published therefore we are unable to detail its proposed use beyond recommending the principle that it will go towards supporting the residential rate of care.

6. Legal Issues:

6.1 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").

6.2 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.

6.3 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.

6.4 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)

6.5 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.

6.6 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 are able to deliver high quality services (relevant skills and appropriate working conditions)

6.7 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.

6.8 The background to the section 5 provisions includes the following statement in paragraph 6.2 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 is in conflict with the Government's Best Value Policy. And it can destabilise the system, causing unplanned exits from the market. Fee setting must take into account 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..."

6.9 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..."

6.10 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

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.

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

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

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

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

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

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 2023-24 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 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)

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

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.

7. Conclusion

The 2023-24 rates detailed above further build upon the 2022-23 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.

Continued financial volatility and its varying impact on the sector indicates the continued need for financial support from the Council aligned to its duties contained in the Care Act 2014. A continuation of the Hardship Fund is recommended however, based on its operation during 2022-23, a more targeted approach is recommended.

8. 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.

9. 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

2023-24. The cost to the authority of implementing the proposed rates is estimated to be £10.200m 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 2023-24 budget setting process.

10. 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 22 February 2023 and the comments of the Committee will be reported to the Executive.

d) Risks and Impact Analysis

Contained in the body of the report

11. Appendices

These are listed below and attached at the back of the report:	
Appendix A	Equality Impact Assessment
Appendix B	Provider Feedback

12. 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 1 March 2022 – "Residential and Nursing Care Fee Levels within Adult Social Care"	Agenda for Executive on Tuesday, 1st March, 2022, 10.30 am (moderngov.co.uk)
Appendix A, Report on Older Adult Care Home Market 2021	
Appendix B, Report on Learning Disability Care Home Market 2021	
Appendix C, Equality Impact Assessment	
Appendix D, Provider Feedback	
Appendix E, Residential Rates Adult Frailty and Long-Term Conditions	
Appendix F – Residential Rate Model Specialist Adults Services	

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