

Consultation on proposals for future fee setting and commissioning framework for residential care

Published: 12 February 2018
Consultation closes: 26 March 2018

1. Introduction

This document is being made available to the provider market in Newcastle upon Tyne to commence formal consultation between the sector and the Council over establishing a Commissioning Framework for older peoples' residential care. It is intended to support consultation on setting fee rates for residential care in Newcastle for financial years 2018/19, 2019/20 and 2020/21 and 2021/22. The information in this report is presented for public consultation between the dates above.

The purpose of the consultation is to:

- seek feedback about whether providers broadly agree with each of the principles we have used to arrive at the proposed fees; and whether there are any additional factors that need to be considered;
- understand providers' views on the likely impact of the proposed fees on the financial viability of their care home; and
- understand the views of providers and voluntary sector stakeholders on the likely impact of the proposals on residents.

2. How to participate

Consultation responses can be made via the Let's Talk portal www.letstalknewcastle.co.uk or can be emailed to pauline.puntin@newcastle.gov.uk

Alternatively, you can write to:

Angela Jamson
Commissioner, Social Care,
People Directorate
Newcastle City Council

4th Floor
Civic Centre
Newcastle
NE1 8EQ

All feedback to the consultation must be received by close of business on 26th March 2018.

Two consultation events will be held for providers and other interested stakeholders. These will take place on:

- Thursday 1st March 2018, 10.30am to 12.30pm; and
- Monday 12th March 2018, 2.00pm to 3.30pm

These events are offered to ensure feedback from providers is actively sought. Both will use the consultation documents as the basis for the discussion, as such providers need not feel it necessary to attend both events.

Both events will be held at the Civic Centre, Newcastle. Please email Pauline Puntin at the address above to book a place.

3. Care system strategic objectives

Residential care forms part of an overall system of care and supports delivery which is at the heart of the adult social care offer.

There are a number of key delivery elements within the system, which must be funded from the available resources. Firstly, we must fund a professional social work service. We must then fund a range of service offers, which can be summarised at a high level as:

- Preventative services
- Reablement
- Assistive technology
- Daytime support
- Homecare
- Extra care/assisted living/ Housing with care
- Residential care and residential and nursing care

The service offers above are listed in order of their preventative impact, from services expressly focused on prevention and reablement, through to residential and residential and nursing care which have limited preventative impact.

Our strategic objective, in line with the Care Act 2014, is to focus on an approach to support people in service types as near to the top of this list as possible. This is often referred to as “prevent, reduce and delay”. Doing so is critical to delivering the Council’s four priorities:

- We want to help people to continue to contribute to community life for as long as possible, and to help them have confidence in their community and neighbourhood. This is a key part of our work to deliver **decent neighbourhoods**.
- We want to help people to continue to access work and volunteering opportunities and meaningful daytime activities for as long as possible, because we know that these types of opportunities are key contributors to establishing and maintaining wellbeing. Helping people stay at home and access daytime support therefore contributes to our **working city** priority.
- We want to make sure that people with care needs are enabled to participate in community life on the same level as everyone else. We can achieve this best by helping them to stay in their own homes for longer. This is a key part of our work to **tackle inequalities**.
- We want to make sure that the Council's funding is allocated fairly across all types of services, including but not limited to care. This is part of our commitment to being a **fit for purpose Council**. Creating a care system that is focused on prevention and reablement is the best way of managing costs within the care system, and this in turn enables us to maintain other important services for the whole community.

4. The Legal Framework

4.1 The legal framework governing care and support in England is the Care Act 2014.

The Act amongst many other things, gives statutory effect to the following:

- Section 5 requires that a local authority must promote the efficient and effective operation of a market of services for meeting care and support needs. The Act places duties on local authorities to facilitate and shape their market for adult care and support as a whole, so that it meets the needs of all people in their area who need care and support, whether arranged or funded by the state, by the individual themselves, or in other ways.
- Section 26 specifies the requirements of a personal budget prepared for each adult needing care or support itemising the cost of meeting assessed need and individual financial assessment in terms of actual payment.
- Section 30 entitles an adult to express a preference for particular accommodation

In addition, "The Care and Support Statutory Guidance" was issued under the Care Act 2014 by Department of Health, October 2014 ("the Guidance") updated August 2017. The Guidance is statutory guidance and consequently when performing its functions, a local authority must "act under" that Guidance. The Guidance explains that local authorities must focus on

outcomes when pursuing market shaping and commissioning. Section 4 of the Guidance further describes activity and behaviours that are pertinent to this consultation including:

- local authorities should commission services having regard to the cost-effectiveness and value for money services offer for public funds;
- local authorities should assure themselves and have evidence that service providers deliver services through staff remunerated so as to retain an effective workforce. Remuneration must be at least sufficient to comply with the national minimum wage legislation for hourly pay or equivalent salary;
- when commissioning services local authorities should assure themselves and have evidence that contract terms, conditions and fee levels are appropriate to provide the delivery of the agreed care packages with the agreed quality of care. ... Local authorities should have regard to guidance on minimum fee levels necessary to provide this assurance;
- local authorities must not undertake any actions which may threaten the sustainability of the market as a whole, for example by setting fee levels below an amount which is sustainable for providers in the long term.

4.2 Further legislative provision is also found in regulations made under the Act. In this context the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 ("the Choice Regulations") are relevant. The Choice Regulations prescribe the circumstances in which a local authority has to meet the provision of preferred accommodation, including in appropriate circumstances where "additional cost" is met by the adult or a third party on their behalf (a third-party top-up).

4.3 The effect of the Act, Choice Regulations and Guidance is to require the Council to facilitate and shape their market for adult care and support as a whole. In turn, adults are entitled to express a preference for accommodation of their choice and provided that accommodation meets certain criteria and is in accordance with assessed need, local authorities are then required to facilitate that choice.

4.4 As described above the Council's new responsibility for market shaping is prescribed by the Act (Sections 5, 18 and 20) however it is worth noting that, neither the Act nor the Guidance contain any specified mechanism by which the Council takes into account the usual cost of care when setting rates they are prepared to pay to providers, although the Council has sought to establish this.

4.5 The Choice Regulations

The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 ("the Choice Regulations") replace the National Assistance Act 1948 (Choice of Accommodation) Directions 1992 ("the Choice Directions") with

effect from 1 April 2015. Under the Choice Directions the Council was not required to place a person in their preferred accommodation if (amongst other things) to do so would cost the Council more than it would usually expect to pay for accommodation for someone with the individual's assessed needs.

Under the Choice Regulations the Council is not required to place a person in their preferred accommodation if (amongst other things) the cost to the local authority of providing or arranging for the provision of the preferred accommodation is greater than the amount specified in the adult's personal budget that relates to the provision of accommodation of that type.

A personal budget for an individual must specify the following;

- the cost to the local authority of meeting those of the adult's needs which it is required or decides to meet;
- the amount which, on the basis of the financial assessment, the adult must pay towards that cost; and
- if on that basis the local authority must itself-pay towards the cost, the amount which it must pay. (Section 26 of the Act)

The Regulations state choice must not be limited to those settings or individual providers with which the local authority already contracts or operates, or those that are within the local authority's geographical boundary. It must be a genuine choice across the appropriate provisions subject to the provider of the accommodation agreeing to provide the same on the local authority's terms.

Annex A of the Guidance states that the Council must have regard to the cost of good quality care in deciding the personal budget to ensure that the rate is one that reflects local market conditions. The Council should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.

Although there is no requirement on the Council to set a Usual Cost of Care, the Council has the power to do so and it is a useful tool both for shaping the market and managing the Council's obligations under the Choice Regulations.

5. The cost of care

5.1 Determining the usual cost of care

In 2016, we worked closely with providers to agree the cost of care across the City, ensuring we considered sustainability, risk to the providers, risks to the service users and costs pressures on the Council's budget. This work culminated with our fee setting arrangements being agreed by the market in 2016 for the financial years 2015/16, 2016/17 and 2017/18.

In September 2017 we wrote to all providers to ask them to engage in an open book accounting exercise to enable us to establish the cost of care. Of the 27 providers we wrote to, 22 responded; 14 stating they are represented

by CNE (Newcastle) and would not engage in such an exercise; 8 providers agreed to engage with the exercise.

As the response was limited, we have utilised for this proposal the same approach that we adopted in 2016 as this was agreed by the market, but have made some minor amendments to our indices calculations to reflect additional discussions with Care North East (Newcastle).

Accordingly, the fee levels which we propose for 2018/19 are as follows:

	Current Fee Levels 2017/18		Proposed fee levels 2018/19	
	non-EMI	EMI	non-EMI	EMI
Grade 1	£562.36	£584.59	£592.59	£616.01
Grade 2	£538.86	£561.12	£567.83	£591.29
Grade 3	£511.67	£533.93	£539.18	£562.63
Grade 4	£485.72	£505.51	£511.83	£532.69

Please refer to section 8 for details of our rationale and our proposal for 2019/20 and 2020/21 and 2021/22.

5.2 The cost of nursing care

The Council is **not** legally responsible for funding any costs related to nursing care or nurse led tasks. All costs for nursing care should be met by the NHS and the Council cannot mitigate any perceived shortfall in such funding.

As such, this consultation is only able to consider the social care element of any residential or residential and nursing care placement.

6 Relevant Factors

6.1 Risks to the sustainability of the market

- **There have been no failures in the market** which relate to the level of fees paid to date. During 2017/18, Newcastle was the highest paying Authority for Grade 1 general residential and nursing care in the Northumberland, Tyne and Wear sub-region, based on information gathered from other authorities.
- **There is an excess of capacity in the market** in our opinion as our market currently has an average 85% occupancy¹. This is lower than the 90% occupancy figure which is usually referred to when defining a sustainable market. We do however recognise that occupancy figures within this market can be cyclical and can fluctuate rapidly.

¹ This figure is based on those returns received from Newcastle providers in January 2018 and is an average market occupancy

- **There has been a recent expansion in capacity in the market.**
Newcastle appears to continue to be an attractive location in which to develop residential and nursing care provision. There are 2342 registered care home beds within the City. In the last year we have had one service transfer its operation from one site to another and one new service open, bringing an additional 63 beds to the market.
- **Nearly all homes are demonstrably and routinely compliant with quality standards required by the CQC** which are also incorporated within the Council's own quality monitoring framework.

The Council's market position in relation to fees, together with the increasing capacity within the market would therefore indicate that the market is, and continues to be sustainable.

6.2 Risks to providers

We have considered potential financial risks to providers and have determined they may fall broadly within the following areas:

- increased pension costs;
- National Living Wage increases; and
- increases in non-direct revenue costs: e.g. food and utilities

we believe we have addressed these in section 8 below. **Providers are invited to suggest any further risks that we have not considered.**

6.3 Risks to service users

We have considered risks to residents as a result of either a fall in quality standards or the need to move home because of a closure, however as:

- there have been no home closures;
- there is no detectable failure in quality standards across the market;
- there is excess capacity in the market; and
- the market is continuing to expand,

we do not consider that there is or will be a risk to residents. **Providers are invited to suggest any further risks that we have not considered.**

7. Costs pressures on the Council's Budget

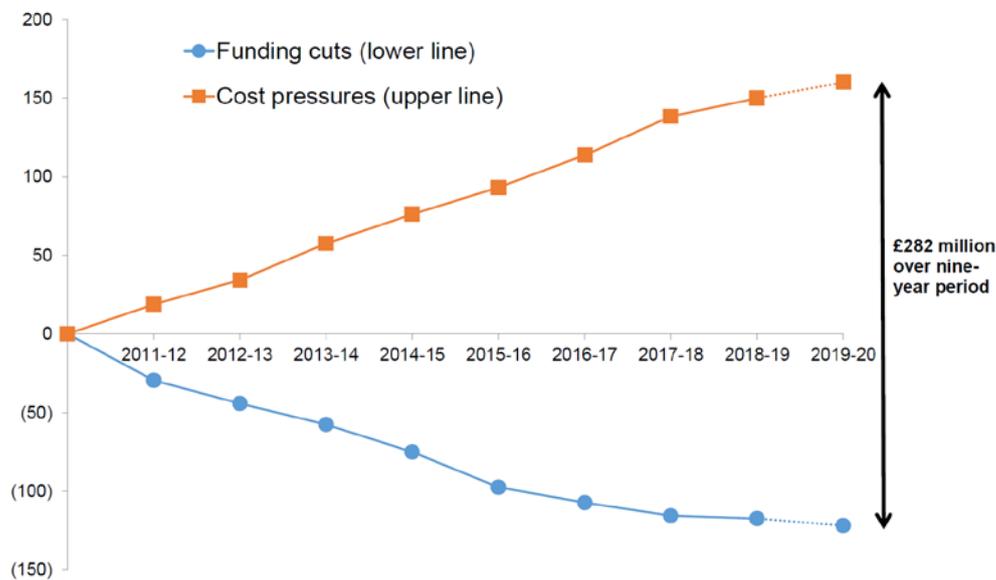
7.1 Context

Councils are legally required to set a balanced budget at the start of every year to meet financial responsibilities. Last year (2017/18) we published a three-year plan which set out the steps we need to take to bridge the funding gap created by continued government cuts and uncontrollable cost pressures for 2017/18 to 2019/20.

In 2018/19 we need to save £13.3 million in order to set a balanced budget. This means our city will have lost £282 million by 2020.

The graph and table below outline the cumulative impact of funding cuts and unavoidable cost increases (referred to as “cost pressures”) from 2010 and looking ahead to 2019/20. Further details on the Council’s budget proposals for 2018/19 can be found [here](#).

Chart – savings achieved / required from 2011-12 to 2019-20 (cumulative)



The Council must take into account its resources when setting fees to be paid to providers. When doing so it will need to balance the sustainability of any proposed rates against its ability to fund ongoing placements as necessary to meet assessed need. In this context the Council should reflect on the very difficult and unprecedented financial circumstances it finds itself in.

At the same time the Council faces pressures due to increased costs such as the City’s increasing population and in particular, the impact on the Council’s social care budgets of the increasing numbers of older people.

8. Fee proposal

8.1 Fees for 2018/19

As set out in section 5, above, our initial goal was to determine the usual costs of care. We have utilised the fee setting methodology accepted by providers in 2016 as we believe this describes the Usual Costs of Care experienced across the City. The Council recognises that providers are also under increasing financial pressures as described in section 6.2 above therefore, although we continue to be the highest paying Council in the region we are committed to securing stability in the market and supporting quality provision, we are proposing to increase rates paid to providers as follows:

	Proposed fee levels	
	non-EMI	EMI
Grade 1	£592.59	£616.01
Grade 2	£567.83	£591.29
Grade 3	£539.18	£562.63
Grade 4	£511.83	£532.69

This represents an increase of 5.376%. This consists of inflationary uplifts for both the National Living Wage at 3.171% and inflation at 2.205%. For the purposes of calculating the increase for National Living Wage, we have assumed 70% of the fee is attributed to direct staffing costs.

8.2 Fees for 2019/20, 2020/21 and 2021/22

We are proposing to use this consultation to also establish our approach to setting fees for 2019/20, 2020/21 and 2021/22. We believe that current rates represent value for money, and that any rates need to be set within the financial context the Council works in, we are proposing the following inflationary uplift as part of our annual increase:

- 2019/20 - 2.205%
- 2020/21 - 2.205%
- 2021/22 - 2.205%

In addition, any increase to the National Living Wage will attract a separate uplift. This will be calculated following its announcement and added to the previous year's fee prior to the addition of inflationary uplift for the coming year. This will then provide the total annual increase for the coming year. As the increase in National Living Wage changes each year, we are unable to offer providers any indication of the increase in advance of the announcement by Government.

As described above in section 6.2, we believe there are some risks to providers which fall broadly into the following areas:

- increased pension costs – we are of the opinion that any additional costs in this area can be borne by providers from within the proposed fee structure;
- National Living Wage increases – we believe our approach described above will ensure our fees accommodate any changes to the rate set;
- increases in non-direct revenue costs: e.g. food and utilities - we are of the opinion that any additional costs in this area can be borne by providers from within the proposed fee structure.

As detailed at section 5.2 above, the Council cannot and will not take responsibility for any shortfall identified in relation to nursing care costs as part of this consultation. The Council will act as payment agent for nursing care costs but will not accept responsibility for the assessment of eligibility for nursing care.

8.3 It is important to note that this decision process is at proposal stage only and that providers and other stakeholders are free to comment as they see fit, and to identify any other factors which the Council should take into account in arriving at its decision.

9. The Equality Act 2010

An Integrated Impact Assessment is attached in Appendix 1.

10. Request for feedback

Throughout this consultation document, the Council has raised questions around the risks that have been identified. The Council seeks feedback not only to the questions raised but would invite any other risks or issues to be part of the feedback that are believed to be relevant to the Council in making its final decision.