

Forward Plan reference number: FP/296/02/22

Report title: <i>Uplift Proposal for AWD Supported Living Services</i>	
Report to: Councillor John Spence, Cabinet Member for Health and Adult Social Care	
Report author: Nick Presmeg, Executive Director for Adult Social Care	
Date: 7 th March 2022	For: Decision
Enquiries to: Steve Ede, Head of Procurement	
County Divisions affected: <i>All Essex</i>	

1. Everyone's Essex

- 1.1 Everyone's Essex sets out the strategic aim of health, wellbeing and independence for all ages. Within that aim is a commitment to helping individuals to live free from abuse and neglect and promoting independence.
- 1.2 One way to support this aim is through ensuring we have a sustainable care market in Essex, with a diverse range of high-quality accommodation services that residents can access to meet their care needs.
- 1.3 The purpose of this paper is to do just this by proposing to increase existing packages within the Adults with Disabilities Supported Living services. As well as being fully aligned with the commitment in Everyone's Essex around independence, this proposal will support levelling up for many people with care needs in our county.
- 1.4 The proposals in this paper do not create any additional climate impacts, which is consistent with our net zero climate commitments set out in Everyone's Essex.

2 Recommendations

- 2.1 Agree to uplift existing packages within Adults with Disabilities (AWD) Supported Living services, including adults funded under learning disabilities and physical disabilities budgets, in line with ECC's Cost of Care model, by a total of 6.2% and 5.5% for complex needs placements.
- 2.2 Agree to uplift out-ofCounty packages in line with the host authority uplift awarded for 2022/23 on request by providers.

3 Background and Proposal

- 3.1 Essex County Council (ECC) currently spends an estimated £76m per annum on AWD Supported Living Services, supporting 1,124 adults to live in independent settings with support from approved providers.

- 3.2 ECC places packages into Supported Living services either through the Supported Living Framework, or on a spot basis where the Framework is unable to provide a suitable solution. Increases are made as per the conditions of the contract with the provider, and both Framework and spot placement contracts contain clauses that allow the Council to increase costs at our discretion based on inflationary factors and market conditions.
- 3.3 The Council carries out an annual review of inflationary pressures within the markets for the services we purchase and makes an assessment as to whether an increase in costs paid currently would be appropriate. This remains entirely at the discretion of the Council.
- 3.4 There are an estimated 2,700 staff employed by Supported Living providers in Essex and the increase proposed in this paper will aim to support providers to uplift rates paid to staff, which is critical to improving the recruitment and retention of staff to the industry and the continuing quality of the services. This further supports the Levelling Up agenda by supporting the local economy and local people in employment within social care.
- 3.5 Inflationary pressures within the market will have a substantial impact in the coming financial year for providers, which is amplified by the effects of Covid and the ongoing pressure around recruitment and retention of staff within the care sector more generally.
- 3.6 The Government has confirmed that the National Minimum Wage will be increased to £9.50 per hour from April 2022, which is a 6.6% increase from current levels. This has a significant impact on care providers because a large proportion of their support staff are paid at or around minimum wage, and below the new rate of £9.50, which will mean they must allow an increase.
- 3.7 General inflation is also increasing at higher levels than in past years, with CPI projected to be at 5.5% in April 2022 and an increase of 1.25% to employer National Insurance contributions.

AWD Supported Living

- 3.8 The Council purchases three different types of support from the provider market within Supported Living services and has mandated fixed rates that are to apply for each of these types of support. These types of support are:
 - 3.8.1 Personal Care – which are CQC regulated care services delivered by a provider to an adult during standard day hours (7am to 11pm)
 - 3.8.2 Night Awake – which are regulated care services, but which are delivered by a member of staff who is awake and present at the service during night hours (11pm to 7am)
 - 3.8.3 Night Sleep – which entails a member of staff being present at the service, but sleeping in a designated room during night hours. This staff member can be woken at any time as needed to deliver regulated care to adults.

- 3.9 With effect from April 2021, all Personal Care and Night Awake packages within Essex are purchased at fixed rates of £16.24 per hour, or a higher rate of £18.12 for packages for adults that meet the criteria to be considered as having complex needs. Night Sleep packages are purchased at a fixed cost of £11.76. The Council procures services at fixed rates both through the Supported Living Framework and on a spot basis as required.
- 3.10 The proposal is to increase the hourly rates for Personal Care and Night Awake services to £17.24, and £19.12 for complex needs adults) and apply them to all packages that are below these rates with effect from 3rd April 2022.
- 3.11 These increases have been calculated using ECC's Supported Living Cost of Care Tool (Cost of Care Tool), which was developed in collaboration with providers in 2018 and continues to underpin the rates that are paid for these services in Essex. The Cost of Care Tool calculates the expected costs for services based on a defined rate of pay for staff, and assumed contributions for on costs, organisational overheads, and profit margin/surplus. This model is updated annually to reflect changes in rates paid to staff and calculates the fees which are then payable. This model is being reviewed this year to ensure it remains appropriate and accurately reflects the pressures in the market.
- 3.12 The Council has some packages commissioned with providers that are above the fixed rates and this is typically a legacy arrangement where rates were agreed prior to the introduction of the Cost of Care Tool and Supported Living Framework. Packages above the new rates recommended will not be awarded an increase until such time as the fixed rates exceed the rate at which they are paid, which will over time bring all packages in line with the fixed rates calculated by the Council.
- 3.13 It is proposed to also increase the fixed rate that is applied for night sleep services, from the rate of £11.76 to £12.68 per hour. This rate has been static since 2018 and increases to wages are quickly making it unsustainable for providers. This increase is outside of the Cost of Care model and is proposed in order to bring the rates up to the minimum rate that can be selected on the Live at Home Framework – ECC's mechanism for the purchase of domiciliary care.
- 3.14 Packages placed with homes outside of the administrative area of Essex will not receive an automatic increase and application will need to be made by providers seeking an increase to these packages. Where an application is received, officers will ask for proof from the provider of the host authority's uplift position for the financial year, and where this is provided the increase will be approved. It is estimated that 50% of out-of-County providers may seek increases and that other local authorities will have a similar rationale for calculating the increase percentage.
- 3.15 Based on this approach and the existing packages commissioned, the recommendation is to increase these packages by 6.2% and 5.5% for complex needs placements in line with the Cost of Care Tool. It is estimated that the total uplift to the market will be **£4.5m**.

- 3.16 The approach outlined aligns to our strategic approach to this market, and the existence of the cost of care and fixed rates we have within the market means that an increase must be applied across all providers.
- 3.17 Supported Living remains the preferred option for many adults with learning disabilities and/or autism, and physical or sensory impairments. As such it is critical that the rates paid to the market match what we believe to be the true cost of delivering care, in order to sustain the existing market, seek growth from within the market, and ensure quality levels remain high for the adults we are supporting.

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision
- Enjoy life into old age
 - Strengthen communities through participation
 - Develop our County sustainably
 - Share prosperity with everyone
- 4.2 Approving the recommendations in this report will have a neutral impact on the Council's ambition to be net carbon neutral by 2030.
- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':
- A strong, inclusive and sustainable economy
 - Health wellbeing and independence for all ages
 - A good place for children and families to grow

5 Options

5.1 Do nothing

- 5.1.1 This option would see no increase awarded to the market on current packages. The pro of this approach is that it would increase costs to ECC. The cons are that not uplifting packages will increase financial pressure on providers and could result in a higher number of hand backs of packages which require re-sourcing in a challenging market. The quality of care could decrease as providers cut costs further to ensure they can pay the legally required minimum wages.

5.2 Award an uplift below the recommended amount

- 5.2.1 This option would provide an increase to the market on current packages, but below the amount that has been calculated and recommended within this paper. The pros of this approach are that it would result in a smaller cost to ECC, and any increase will assist the market with financial pressures. The cons of this approach are that failing to uplift to the calculated amount will increase financial pressure

on providers, leading to a higher number of hand-backs of packages which require re-sourcing in a challenging market. This could also mean that the quality of care could decrease as providers cut costs further to ensure they can pay the legally required minimum wages

5.3 Award an uplift in line with the recommended amounts (recommended)

5.3.1 This option would provide an increase to the market and current packages, which have been calculated as the minimum required to enable providers to keep pace with financial pressures from inflation and wage increases. The pros of this option are that it would significantly reduce the likelihood of package hand-backs from providers for reasons of financial viability and should allow providers to continue to deliver high quality services. The con is that this will be a more costly option for the Council.

6 Issues for Consideration

6.1 Financial implications

6.1.1 The current working assumption in the Medium-Term Resource Strategy (MTRS) includes an allowance for annual price increases; the impact of the recommendation in this to uplift by 6.2% and 5.5% for complex needs placements is estimated to be a cost of £4.5m, which includes a cost of £551,000 in respect of the increased cost of National Insurance from April 2022 and an assumption around the number of out-of-County placements that will need uplifting. The cost includes uplifting all existing packages and the night sleep rate. Both will be funded from within the Adult Social Care budget, where provision has been made to help address potential cost of care and demand risks in the care market.

6.1.2 The actual cost of uplift will be continually monitored as part of the monthly budgetary control processes.

6.2 Legal implications

6.2.1 The contracts for all types of services detailed in this report enable ECC to award uplifts to prices in accordance with policy. The Council is therefore able to modify these contracts to include revised pricing as permitted by Regulation 72 of the Public Contracts Regulations 2015. Any contracts that do not contain the right to modify pricing will need to be amended, and whether such modifications are permitted under the provisions of Regulation 72 will need to be considered

6.2.2 There is a risk that introducing a blanket pricing uplift for new placements and existing placements results in a precedent for the future; this is not likely to create legal difficulties, but may create expectations in the market.

6.2.3 These proposed payments are not required to be made by law or under the terms of any contracts and therefore could amount to a gratuitous payment and potentially a subsidy. The European Union (Future Relationship) Act 2020 places the ECC in a very similar position to that in which it would have been had the Council remained in the EU. However, subsidies to offset the harm done by a global pandemic are likely to be lawful under the subsidy control regime. The staffing difficulties at present can be attributed, at least in part, to the destabilising influence of the pandemic, although no doubt this is not the sole cause. The subsidies awarded will need to be recorded on the BEIS website.

6.2.4 ECC can only be confident that price increases will result in encouraging sustainable retention and recruitment approaches if this is a contractual requirement of the variations.

7 Equality and Diversity Considerations

7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8 List of Appendices

Equality Impact Assessment

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor John Spence, Cabinet Member for Adult Health and Social Care	05.04.22

In consultation with:

Role	Date
Executive Director, Corporate Services (S151 Officer) Stephanie Mitchener on behalf of Nicole Wood	29/03/22
Director, Legal and Assurance (Monitoring Officer) Laura Edwards on behalf of Paul Turner	25/3/22