

Forward Plan reference number: FP/261/12/21

Report title: Live at Home Framework Agreement Pricing Refresh and Pricing Increase for Domiciliary Care Placements	
Report to: Cabinet	
Report author: Councillor John Spence - Cabinet Member for Health and Adult Social Care	
Date: 15 February 2022	For: Decision
Enquiries to: Matthew Barnett, Head of Commissioning (matthew.barnett@essex.gov.uk) and Zoe Harriss, Procurement Lead (zoe.harriss@essex.gov.uk)	
County Divisions affected: All Essex	

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 vulnerable people to live independently and free from abuse and neglect, by enabling an effective care market and strong domiciliary support.
- 1.2 The Adult Social Care sector in Essex is currently experiencing unprecedented pressure. The long-term trend towards care in the home has accelerated at a speed which has been hard for the market to absorb. At the same time, the impacts of the Covid pandemic are still being felt and wider economic factors are exacerbating matters.
- 1.3 This paper is to seek approval to increasing rates for new placements on the Live at Home Framework Agreement and then commencing a contractual pricing refresh thereby allowing providers to select higher rates for new placements. It is also proposed to increase the hourly rate for existing personal care packages (including carer's support, carer's break and night awake) by £1.44 per hour and increase the hourly rate for existing night sleeping and 24-hour live in care placements by £0.92 per hour. This pricing increase is to encourage sustainable retention and recruitment approaches in the domiciliary care sector, through making more funds available to increase wage levels on an ongoing basis.
- 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 vary the Live at Home Framework Agreement by increasing the hourly rates by 7.1% for all care types excluding target supply area rates, as set out in Appendix B, with such change taking effect from 3 April 2022.

- 2.2 Agree to commence the Annual Review Process in the Live at Home Framework Agreement to allow existing providers to amend their framework prices with such price increases to be effective from 3 April 2022 until the next pricing refresh.
- 2.3 Subject to the Executive Director, Adult Social Care being satisfied that it is lawful in each case to do so, to increase the hourly rate as set out below for all existing placements in place on 2 April 2022 delivered via the Live at Home Framework Agreement with such price increase coming into effect from 3 April 2022 until the end of such placement:
 - a. an increase of £1.44 per hour for personal care (including carer's support, carer's break and night awake) placements;
 - b. an increase of £0.92 per hour for night sleeping placements; and
 - c. an increase of £0.92 per hour for 24-hour live-in care placements.
- 2.4 Agree to vary the Live at Home Framework Agreement to permit the changes set out in recommendation 2.3 above.
- 2.5 Subject to the Executive Director, Adult Social Care being satisfied that it is lawful in each case to do so, to increase the hourly rate as set out below for all existing placements commissioned by the Council in the administrative area of the Council for domiciliary care, in place on 2 April 2022, delivered via spot purchase contracts with such price increase coming into effect from effect from 3 April 2022 until the end of such placement:
 - a. an increase of £1.44 per hour for personal care (including carer's support, carer's break and night awake) placements;
 - b. an increase of £0.92p per hour for night sleeping placements; and
 - c. an increase of £0.92p per hour for 24-hour live-in care placements.
- 2.6 Agree that the Executive Director, Adult Social Care is authorised:
 - a. to agree the terms of the variation to the Live at Home Framework Agreement referred to in paragraphs 2.1 and 2.4 above
 - b. following the conclusion of the Annual Review Process set out in recommendation 2.1, to re-rank providers in accordance with the published criteria set out in the Live at Home Framework Agreement; and
 - c. to agree the terms of the contract variations required for existing placements referred to in paragraphs 2.3 and 2.4 above.

3 Background and Proposal

- 3.1 The Council has a responsibility to provide care to those adults who need it. As far as possible we provide that care in people's own home. Most of this care is

provided by external providers. In order to ensure that we can buy this care as easily and cost effectively as possible the Council has set up a framework agreement for personal care services and support services to be provided at home so that there are known prices for each district. However, where placements cannot be made using the Framework Agreement, a spot purchase contract may be used.

- 3.2 The current Live at Home Framework Agreement ('LAHFA') commenced in August 2021 for a four-year term and provides a contractual mechanism to place adults requiring long term domiciliary services with good quality providers that can meet their eligible assessed needs. The LAHFA covers a number of service types including personal care, carer's support, carer's break, night awake, night sleep and 24-hour live-in care.
- 3.3 This proposal does not impact services commissioned through the Supported Living contracts, Reablement contracts, In Lieu of Reablement Services contracts, Extra Care contracts and the contract for the 'Test and Learn' on the Dengie peninsula.
- 3.4 The Care Act 2014 places duties on local authorities to facilitate and shape their market for adult care so that it meets the needs of all people in their area who need care and support. High quality, personalised care and support can only be achieved where there is a vibrant and responsive market of suppliers. This can be achieved through commissioning, market shaping and contract management. People working in the care sector play a central role in the delivery of high-quality services. The Council must therefore consider how to help foster and enhance this workforce to underpin effective, high quality services. This includes encouraging training and development of care staff but also collating evidence on whether staff are remunerated so as to retain an effective workforce. Local authorities may need to adapt their commissioning arrangements such that contract terms and fee levels are appropriate to provide the agreed quality of care and not compromise the service providers ability to meet statutory pay obligations.
- 3.5 There are 287 CQC registered domiciliary care providers in Essex, employing approximately 10,000 staff. The 73 providers on the LAHFA employ approximately 3,500 staff. Whilst salaries will vary, the Council's cost of care modelling assumes a new average hourly care worker pay rate of £11.07 for 2022/23 (an increase from £10.38 in 2021/22). Raising wages for typically low paid staff in the Essex Care sector will have a positive impact on residents and on the Essex economy.
- 3.6 Over the last two years, the Council has seen a rapid growth in demand for domiciliary care, with volumes increasing by around 16%. The capacity of providers commissioned by the Council to deliver the increased demand for services has fallen for a number of reasons, including the longer-term impact of the pandemic and wider economic recovery and labour shortages. Due to the challenges in the workforce, providers have been unable to recruit and retain staff because they are unable to offer competitive hourly rates of pay.

- 3.7 The provider capacity issues are affecting the Council's ability to provide personal care and support services at home. There are currently in the region of 270 packages of care that cannot be resourced. The current number of outstanding packages is around ten times the level seen in Spring 2021. Market pressure is further evidenced by the number of packages of care for which the Council has received notice from providers that they cannot fulfil the care requirements. In the period August to October, ECC received notification from providers that 209 packages of care could not be delivered. This is around three times the volume of returned care packages that ECC would normally receive during this period.
- 3.8 The main reason cited for the outstanding packages and returning work was capacity issues caused by staff shortages. Engagement with the market has told us that providers are struggling to retain staff because of competition from other sectors that offer more attractive pay rates or better working conditions. The Council has recently created a £3 million workforce fund (FP/186/10/21), which aims to help the market deal with this pressure in the short term. In addition, central government has created a workforce retention and recruitment fund of £4m (FP/202/10/21) which it is anticipated will be used to fund retention bonuses. These initiatives are for all homes and domiciliary providers registered in Essex, irrespective of whether they have a contract with the Council. While these are helpful for providers of domiciliary care services generally, they are not targeted at personal care and support services at home or linked to the hours of care that are directly commissioned by the Council which are still facing significant capacity issues.
- 3.9 In order to address some of these capacity issues and to provide support for providers, in November 2021 a decision was taken by the Leader of the Council to put in place a temporary 70p per hour uplift for personal care packages delivered via the LAHFA to a maximum cost of £1.1m in total. A further decision was taken by the Leader in January 2022 to put in place an additional 74p per hour uplift for personal care packages delivered via the LAHFA to a maximum cost of £1.2m in total. Both temporary uplifts expire on 2 April 2022.
- 3.10 In order to support providers in the LAHFA on a longer term basis, it is proposed to commence the annual review of prices in the LAHFA. There is a contractual mechanism for the Council to do this annually. Prior to commencing such annual review, it is proposed that the table of rates in the LAHFA is varied such that the rates in the Live at Home Framework Agreement are increased by 7.1% for all hourly rates except the target supply rate. As part of the refresh process, all Tier 1 and Tier 2 providers shall be permitted to select new prices from the updated table of rates, the score for which shall be combined with their quality score and then providers will be re-ranked accordingly. New care packages will then be offered based on the new ranked list.
- 3.11 This increase in the hourly rate will enable providers to select a higher rate should they choose with the new rates coming into effect from 3rd April 2022. This increases the ability of providers to fund wage levels on an ongoing basis to reflect cost pressures associated with the increase in National Living Wage and

National Insurance which in turn will support retaining capacity for the Essex Health and Care system.

- 3.12 An increase of £1.44 per hour (£0.92 per hour for night sleep and 24-hour care) for existing placements made via the LAHFA and for existing 'spot' placements is also proposed to reflect the increased staffing costs that providers are facing and to mitigate the risk that providers will bid a higher price for new packages to offset rates for existing packages that are no longer financially sustainable. This price increase will remain for the duration of the placement.
- 3.13 The proposed approach for this refresh has been put forward due to the uniquely challenging environment in which the health and social care system finds itself in winter 2021-22. The approach to Live at Home price refreshes in future years will be determined based on the circumstances at that time.

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision:
- Enjoy life into old age
 - 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. We are working on wider improvements as part of our longer-term market shaping strategy which will have an impact on this ambition.
- 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

5 Options

5.1 Do nothing (not recommended)

Doing nothing would mean not increasing fee levels for existing personal care and support services or increasing the Live at Home list of rates in the LAHFA which will enable providers to select higher rates for placements with effect from 3 April 2022. Doing nothing would expose the Council to the risk that it would not be able to source all the home care it needs to support the people of Essex and that there would continue to be an increase in the number of placements that are outstanding or returned.

5.2 Increase the rates in the Live at Home Framework Agreement and uplift existing packages by £1.44 per hour (£0.92 per hour for night sleep and 24-hour care) (recommended option)

This option will mean that the market is better able to provide the home care capacity needed on an ongoing basis and should result in building some resilience into the personal care system resulting in reduced outstanding or returned placements. This supports the strategic intention of a vibrant and healthy market of community care providers, able to help maintain the independence and wellbeing of people in the community.

The approach of a fixed monetary uplift on existing packages is easy to calculate and communicate, reduces the risk of being unaffordable by controlling the uplift, and treats all providers equally, irrespective of their pricing strategy / size.

6 Issues for Consideration

6.1 Financial implications

6.1.1 The Adult Social Care budget for 2022/23 includes provision for long-term domiciliary care packages (excluding Supported Living and Extra Care). The budget was based on packages in September 2021 and assumptions around growth on both spot and the Live at Home framework.

6.1.2 The recommendation is to increase the prices on the Live at Home pricing matrix by 7.1% for all care types. This aims to cover the estimated increase in the cost of care to providers (as a result of the increase in National Living Wage and National Insurance contributions) for new packages. Additionally, existing packages would increase by £1.44 per hour (£0.92 per hour for night sleep and 24-hour care).

6.1.3 For financial modelling purposes, a dataset from October 2021 was used. Where a package is re-purchased it has been assumed that providers will choose the framework price on the same pricing point on the matrix as currently, albeit at the revised rate. There is a risk that providers may choose higher pricing points on the framework and that spot prices may increase.

6.1.4 Modelling also assumes that the current split of hours paid for through the Live at Home framework and spot arrangements will be maintained. It is assumed that all packages will churn once a year.

6.1.5 The current working assumption in the Medium-Term Resourcing Strategy (MTRS) includes an allowance for annual price increases; the impact of the recommendation in this report is estimated to cost £125.8m, which includes a cost of £1.2m in respect of the increased cost of National Insurance from April 2022. The cost of uplifting all existing packages (rather than only those below the revised minimum rate), along with uplifting night sleep and 24 hour packages, is £3.2m (£4.4m inclusive of the cost of the National Insurance uplift). 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.

6.1.6 Consideration must be given to the impact of churn within the market as existing packages expire and new packages are contracted either at new framework rates or at spot. The financial modelling assumes the churn rates will not change between 2021/22 and 2022/23, although there is a risk that if providers continue to hand back packages, churn rates could increase. Covid-19 continues to cause uncertainty around the demand for domiciliary services.

6.1.7 It should be noted that the cost of domiciliary care activity covered by this report will depend on the actual split of framework and spot provision. Estimates in this report are based on current market insight from Procurement but there is a risk that prices may be higher as spot prices are inherently volatile, especially given current market pressures, and the balance of spot to framework placements could change. The spend and placement types will be regularly reviewed during the year to ensure any issues are identified and to ensure that timely and appropriate mitigations can be put in place.

6.1.8 There is the opportunity that providers' repricing may change the balance of spot to framework provision.

6.1.9 There is the risk that uplifting all packages for the year 2022/23 could set a precedent for future uplift policy.

6.2 Legal Implications

6.2.1 The agreement contains provisions relating to the Annual Review Process which the Framework Agreement states that the Council intends to carry out annually. The Council is to notify service providers of its intention to carry out such review no later than 28 calendar days prior to publication of the Annual Review Process. During the Annual Review Process, service providers have the opportunity to amend their pricing from the table of rates set out in the agreement. The newly selected price is then scored in accordance with the published criteria in the LAHFA. The ranked list for placements is then updated based on the new scores.

6.2.2 The proposals set out in this report result in a blanket increase in the hourly rates in the LAHFA (excluding the target supply rate which is not being increased) and for existing placements made via the LAHFA. It is proposed that the new pricing will apply to new placements with effect from 3 April 2022. This will require a variation to the LAHFA both to include the increased hourly rates but also to permit the blanket uplift to existing placements. Any variation to the LAHFA must comply with Regulation 72 of the Public Contract Regulations 2015 (the "Procurement Regulations") and be carried out using the change control mechanism in the contract.

6.2.3 There is a risk that introducing a blanket pricing uplift for new placements and existing placements results in a precedent for future annual review processes under the LAHFA. Whilst this is not likely to create legal difficulties, it may create expectations in the market.

6.2.4 The Council is able to modify spot purchased contracts to include the revised pricing where Regulation 72 of the Procurement Regulations permits. This will need to be considered on an individual contract basis before such uplift is agreed.

6.2.5 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.

6.2.6 The Council 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.

6 Equality and Diversity Considerations

6.1 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.

6.2 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).

6.3 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.

7 List of Appendices

7.1 Appendix A: Equality Impact Assessment

7.2 Appendix B: Proposed new hourly rates for the Live at Home Framework Agreement for 2022/2023.

8 List of Background Papers

None declared.