

**Forward Plan reference number:** FP/009/01/23

<b>Report title:</b> Residential and nursing placements: annual fee uplift for 2023/24	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Councillor John Spence - Cabinet Member for Adult Social Care and Health	
<b>Date:</b> 21 February 2023	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

## 1. Everyone's Essex

- 1.1 Everyone's Essex sets out the Council's commitment and ambition to improve and support the health and wellbeing of the county's residents. This includes our commitment to support people with care needs to be as independent as possible and to ensure they have the support they need to promote their wellbeing and quality of life.
- 1.2 The Care Act 2014 places a duty on local authorities to promote a sustainable market for care and support that delivers high quality services for all local people (however that care is funded).
- 1.3 Under the Care Act 2014, the Council has a statutory duty to meet eligible needs. Providing access to suitable accommodation with care and support, including residential (with and without nursing) care homes is one way to meet those needs.
- 1.4 The Council recognises the critical and valued work that care workers across Essex perform, supporting the most vulnerable people in our society. The Council also recognises the exceptionally challenging economic climate for the care market, in the light of high inflation, increasing interest rates, and high and rising energy costs. On 6<sup>th</sup> February, the Government published a policy paper on social care alongside the final local government settlement, making clear that additional funding provided to councils should help address discharge delays, social care waiting times, low fee rates, and workforce pressures. The detailed grant conditions are still awaited.
- 1.5 The Council is committed to doing what we can to increase funding in the care market and ensure that the sector as a whole is sustainable. We want to make our framework contracts more attractive for care providers to work with us on, to enable us to grow capacity in some market sectors and enable providers to improve terms and conditions for their workforce. This decision helps the council to meet the national objectives in paragraph 1.4.

- 1.6 This report seeks approval to undertake the annual review process of the Integrated Residential and Nursing (IRN) Framework as well as the proposed price uplift approach for existing and new residential and nursing placements for older people through the IRN Framework. The report proposes uplifts in rates of 8% to be paid to residential care home providers on the IRN Framework, and significant uplifts of 20% to residential homes with nursing.
- 1.7 The recommendations in this report will also help to ensure that when a care home placement is required:
  - it is in a Good or Outstanding Care Quality Commission (CQC) rated care home on the IRN Framework
  - there is sufficient and sustainable supply across the county able to support adults with complex care needs
- 1.8 A further report will come to a future meeting outlining further proposals about how the Council will invest in the care market to address key market challenges and support improved terms and conditions for care workers.

## **2 Recommendations**

- 2.1 Agree to reopen the IRN Framework to new homes and to allow providers of the current homes on the IRN Framework to vary their price point using the price matrix at appendix A to the report which is an increase of each price by:
  - 8% for residential care, with new minimum rate of £647.57 per week
  - 20% for residential care with nursing, with new minimum rate of £796.46 per week.
- 2.2 Note that alongside the above change there will also be an increase in the number of price bands available for:
  - residential without nursing by two bands for Castle Point and Rochford, and
  - residential with nursing by four bands in Basildon, Brentwood, Castle Point, Rochford, and Southend
- 2.3 Agree that IRN Framework placements made between 1 April 2023 and 31 May 2023 will be made at the Provider's current rate uplifted by 8% for residential and 20% for nursing, with the rate transitioning to the Provider's new rate on 1 June 2023.
- 2.4 Agree that the new ranking and prices will apply to placements made after 1 June 2023.
- 2.5 Agree to vary the exceptional needs payment for current and future approved placements via the IRN Framework from £80.01 to £140.00 per week with effect from 1 April 2023.
- 2.6 Agree to increase the weekly rate of all existing care home placements in place on 31 March 2023 delivered via the IRN Framework Agreement by 8% for residential without nursing, and by 20% for residential with nursing, capped at the new maximum framework rates of £746.27 per week for residential and £1,009.40 per week for nursing placements and increase placements on the IRN

Framework which are currently below the new minimum of £647.57 for residential and £796.46 for nursing to the new minimum, with effect from 1 April 2023.

### **3 Background and Proposal**

- 3.1 The Council's strategic ambition is to enable more people to be able to be supported for as long as possible in their own homes, where that is the most appropriate and desired place for them. Some people, however, require more intensive care and support 24 hours a day. When a residential or nursing care home placement is required, it will typically be for people later in life, with complex care needs. Investing in, and ensuring, the right capacity within the residential and particularly the nursing care market is an important way the Council can support people whose needs can only be met in such a setting to access a good quality care home able to meet their needs.
- 3.2 Essex has successfully made progress at reducing permanent admissions into residential care in line with national and local ambitions that people should be able to remain in their own homes for as long as possible. As a result, there is an over-supply of residential care beds in Essex. Nevertheless, as outlined in paragraph 3.1, residential care remains a critical form of care for people with complex needs and the Council needs to ensure that people who need it have access to good quality residential care. Some people also require more complex and high intensive nursing support. Our market shaping strategy has identified this as an area where there are some capacity challenges and a need to address this.
- 3.3 To ensure that a care home placement can be made as simply and cost-effectively as possible, the Council set up the Integrated Residential Nursing Framework (the IRN Framework) on 1 June 2019 to source care in a residential setting for older people and adults with non-complex mental health needs, with or without nursing care. Where placements cannot be made using the IRN Framework or nomination contracts, a spot purchase contract may be used instead. There are currently 2450 people placed under the IRN Framework in 124 care homes in Essex employing approximately 5,500 staff.
- 3.4 The Council has a strategic ambition that a greater proportion of placements into care homes will be through the IRN Framework. The IRN Framework was set up with the target of 80% of residential placements via contracted homes (20% spot) and nursing placements at 60% (40% spot). Residential placements have consistently remained around this target since the IRN Framework inception, whereas nursing peaked at 50% and is currently below that, at 31% for placements made between July and December 2022. This reduction in nursing placements through the IRN Framework is primarily due to higher spot placement prices than IRN Framework prices; the recommendations put forward in this report aim to address this.
- 3.5 The IRN Framework contains provision for the Council to re-open the IRN Framework every year via an 'annual preferred supplier ranked list' review process (the 'review process'). This review process allows existing providers on

the IRN Framework to submit revised prices for new placements, should they so wish, and enables new providers to join the IRN Framework.

- 3.6 In the autumn of 2022, local authorities were asked to undertake a 'fair cost of care' exercise for domiciliary care and also for older people's residential with and without nursing care and to submit findings to Government in October 2022. Under the Health and Care Act 2022, local authorities have a requirement to move towards the fair cost of care and some grant funding has been made available by the Government to support this.
- 3.7 The National Living Wage will increase by 9.7% to £10.42 per hour from April 2023. Providers are incurring other increased costs such as higher prices for fuel, food, and utilities and this impact can be seen through the changes in the Consumer Price Index at 10.5% in the year to December 2022 and while forecast to fall, will remain notably higher than the Bank of England target rate of 2% in the 2023/24 financial year. Based primarily on a weighted average of NLW and CPI increases and applying a deflator for the reversal of the 2022 National Insurance increase, the estimated inflationary impact for 2023/24 is a blended rate of 8%.

### **Proposal**

- 3.8 It is proposed that the annual review process of the IRN Framework in 2023 will commence in February 2023 and will be completed on 31 May 2023, in line with the anniversary of the IRN Framework. It is proposed to vary the pricing matrix for the review process to that at appendix A. This represents an 8% increase for residential care without nursing, and 20% for residential with nursing.
- 3.9 Appendix A also includes a proposed increase to the number of price bands available for:
- residential without nursing by two bands for Castle Point and Rochford
  - residential with nursing by four bands in Basildon, Brentwood, Castle Point, Rochford, and Southend
- 3.10 The process for determining the provider's position in the ranked list will continue following the review process with the CQC overall quality score (good and outstanding first, then requires improvement and not yet rated) and then price. This is consistent with our ambitions that people should be able to access high quality care.
- 3.11 It is also proposed to uplift all current placements through the IRN Framework on 1 April 2023 as well as new placements between 1 April 2023 and 31 May 2023. This would see an increase of 8% for residential with and without nursing, capped at the new maximum IRN Framework rates of £746.27 per week for residential and £1,009.40 per week for nursing placements. As well as increasing placements on the IRN Framework which are currently below the new minimum of £647.57 for residential and £796.46 for nursing to the new minimum.
- 3.12 The rationale for increase is that we are estimating inflationary cost increases at c8% and so are paying this to all placements. In addition, the shortage of nursing

places means that we want to invest in nursing placements to stimulate growth in the nursing Framework where there is currently a shortage of places.

- 3.13 During the two-month period all providers will be kept at their same price band on the price matrix but all points will be increased by 8% or 20%. To incentivise the use of the IRN Framework, it is not proposed to increase the amount paid for spot placements which have been made off the IRN Framework.
- 3.14 The proposed increases to new and existing rates for IRN residential placements are expected to address inflationary pressures, maintain current IRN Framework placement compliance and assist IRN Framework providers with recruitment and retention through workforce investment.
- 3.15 The proposed changes to new and existing rates for IRN nursing placements are intended to address the same issues as residential placements as well as encouraging new homes to join and existing homes to remain on the IRN Framework and to increase the number of nursing placements via contracted care homes to move closer to the 60% target.
- 3.16 Increasing the minimum rates on the pricing matrices will help increase the average rates paid and particularly target those IRN placements furthest away from the average cost of care.
- 3.17 It is also proposed to increase the exceptional needs payment from 1 April 2023. For IRN residential and nursing placements, an exceptional needs payment can be agreed in addition to a care home's IRN rate. This payment is for placements with higher complex care needs. The exceptional needs payment has not been increased since it was introduced in 2012 at £80.01 per placement per week. If this had been increased in line with the national living wage this would be slightly below the proposed rate of £140 per week. This increased exceptional payment will help to encourage care homes to accept and continue to support IRN placements with higher complex care needs.

## **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
- 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 Option 1: Do not re-open the framework (not recommended)**

5.1.1 This option is not recommended as it is not compliant with the current IRN Framework contract, which sets an expectation that the contract will be re-opened annually. It could also impact on the Council's ability to meet its duty under section 5 of the Care Act 2014 and the promotion of a sustainable care home market, to promote choice and control for individuals and their families and to promote consistent quality, with a focus on good and outstanding provision. Providing no placement cost uplifts could risk the Council's ability to source all the residential and nursing care it needs to support the people of Essex.

### **5.2 Option 2: Uplift the weekly rate of current IRN Framework placements as at 31 March 2023 and new IRN Framework placements between 1 April 2023 and 31 May 2023, as well as opening the IRN Framework to allow new providers to join and amend the pricing matrix in the IRN Framework Agreement to increase the weekly rates that providers can select from 1 June 2023, as well as increasing the exceptional needs payment rate (recommended option)**

5.2.1 This option will better equip the market to provide the care home capacity that is needed on an ongoing basis. This supports the strategic intention detailed in sections 3 and 4. The approach of a fixed monetary uplift on existing and new IRN placements is easy to calculate and communicate, reduces the risk of being unaffordable by controlling the uplift, and gives all IRN providers the same opportunities. Opening the IRN Framework to allow new providers to join and allowing existing providers to select a new rate from the revised pricing matrices will help support a more sustainable cost which will assist providers in recovering some of the increased costs set out in this report.

### **5.3 Option 3: Open the IRN Framework to allow new providers to join but do not increase the weekly rates on new or existing placements (not recommended)**

5.3.1 This approach is not recommended as this will not address the additional financial pressures providers are facing detailed in section 3. It could result in providers withdrawing from the IRN Framework and more placements being made through a spot purchase contract. It could also impact on the Council's ability to meet its duty under section 5 of the Care Act 2014.

## 6 Issues for Consideration

### 6.1 Financial Implications

6.1.1 The Council spends a significant proportion of its budget on providing residential and nursing care for older people. The 2023/24 budget plans for a gross cost of £148m and expenditure is expected to be affected in future years by inflationary and demographic pressures. The Medium-Term Resource Strategy (MTRS) takes account of these forecast pressures as part of the budget setting process.

6.1.2 The following table sets out the gross cost of the recommendations from 2023/24.

Financial Impact	2023/24 £'000	2024/25 £'000	2025/26 £'000
Residential	6,675	7,363	7,894
Nursing	2,522	2,794	2,987
<b>Total</b>	<b>9,197</b>	<b>10,157</b>	<b>10,881</b>

6.1.3 The estimated gross cost of the recommendations is £9.2m in 2023/24, rising to £10.2m in 2024/25 and £10.9m in 2025/26. This phasing is due to the higher IRN Framework prices applying to new placements and therefore increasing over time, whereas the cost of uplifting prices for existing placements will reduce through attrition as packages end over the same period.

6.1.4 Many service users contribute to the cost of their care in full, which is likely to reduce the net financial impact of the price rises to the Council. This will vary but based on the current number of full cost clients that would be affected (approximately 440) it would reduce the net cost to the Council by an estimated £1.6m in 2023/24. This would mean the estimated net cost in 2023/24 including the impact of charging is £7.6m.

6.1.5 The recommendations will be funded through the Adult Social Care budget, including £2.4m through the Market Sustainability and Improvement Funding Grant. The final terms and conditions for this grant have not yet been published, however an explanatory note from DLUHC has set out a high-level overview of the expected grant conditions which align to the proposals recommended in this report. Taking the decision ahead of confirmed terms and conditions ensures the annual refresh takes place within the contractual timescales and that providers can consider these proposals when choosing new prices (and in deciding whether to join the framework). Should the detailed conditions of the grant (when published) not allow for the total funding requirement outlined here, the shortfall could be managed through the increase in the Social Care Grant, held within the Adults Transformation Reserve.

6.1.6 The recommendations are expected to mitigate the risks and potential consequences of not supporting the inflationary pressures affecting the cost base of a care home. For example, additional costs to the Council might arise through

provider behaviour on spot prices, or in care home residents being moved due to home closures.

6.1.7 The financial modelling of the recommended option assumes a neutral position on suppliers joining or leaving the IRN Framework. Whilst the process does allow new providers to join, it is uncertain whether providers will choose to do so. It also assumes that existing IRN Framework providers maintain their current position on the pricing matrix (except in the areas where additional rates have been added), and that the proportion of new placements at contracted rates compared with spot will continue in the same average ratios.

6.1.8 If nursing placements through the IRN framework continue at the reduced level, this will over time increase the average rate paid due to the premium cost of spot placements. Compared to an IRN home, a spot placement is on average 24% higher for nursing care, and in many cases significantly higher. Increasing framework rates by 20% (12 percentage points above inflation) is designed to encourage new homes to join the framework by reducing the price barrier to entry, increasing the affordable capacity in the market, and improving the ratio of placements in contracted homes compared with spot.

6.1.9 While many IRN Framework providers are already placed at the highest available price, there is a possibility that existing IRN Framework providers may choose to increase from their current point on the pricing matrix. If all existing IRN Framework providers choose the maximum possible rate for their locality, then this could result in an additional annual pressure of £1.7m by 2025/26, if there were to be no compensating reduction in spot market prices.

## **6.2 Legal Implications**

6.2.1 The IRN Framework Agreement provides that the Council will open the review process annually, on or around the anniversary of the commencement date of the IRN Framework Agreement. Whilst the IRN Framework Agreement does not expressly state that the Council is able to amend the pricing matrices, given that the IRN Framework will be open to new entrants to bid, no one bidder/provider is given a competitive advantage over another. The Annual Review Process will need to give new providers the same length of time to respond to the invitation to tender as was afforded to those bidding in the original tender process, to ensure consistency, transparency and equal treatment.

6.2.2 During the Annual Review Process, providers have the opportunity to amend their pricing from the amended pricing matrix. The newly selected price is then scored in accordance with the published criteria. The ranked list for placements is then updated based on the new scores.

6.2.3 The proposals set out in this report will require a variation to the IRN Framework to increase the weekly rates and permit the uplift to existing placements made via the IRN Framework. Any change to the rates in the IRN Framework Agreement must comply with regulation 72 of the Public Contract Regulations 2015 and be carried out using the change control mechanism in the Framework Agreement.



6.2.4 The increase in rates on contracts for existing placements would be a modification to those contracts during their term. The Council is able to modify the contract 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 There is a risk that introducing a blanket pricing uplift for new placements and existing placements results in a precedent for future refreshes of the IRN Framework. Whilst this is not likely to create legal difficulties, it may create expectations in the market, especially as we have done this in previous years.

## **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. The proposed recommendations will continue to ensure that there is a choice of 'Good' and 'Outstanding' care homes on the IRN Framework in which placements can be made by the Council.

## **8 List of Appendices**

8.1 Appendix A: Proposed IRN Framework Pricing Matrix

8.2 Appendix B: Equality Impact Assessment

## **9 List of Background Papers**

9.1 Essex Adult Social Care Business Plan 2021-25