

13 March 2024 (Deferred from 21 February 2024)		ITEM: 13 Decision: 110694
Cabinet		
Annual fee consultation outcome and uplift recommendations – Adult Social Care		
Wards and communities affected: All	Key Decision: Key	
Report of: Councillor George Coxshall, Portfolio Holder for Health, Adults Health and Community		
Accountable Assistant Director: Les Billingham – Assistant Director, Adult Social Care and Community Development		
Accountable Director: Ian Wake – Director for Adults, Health and Housing		
This report is Public		
Version: Cabinet		

Executive Summary

The report sets out the proposed uplifts for adult social care service for 2024/25, the financial impact of which has been reflected in the Medium Term Financial Strategy

In recent years there have been a number of legal challenges from care providers against local authorities for the process used to set care provider fees. Councils cannot be challenged legally on the level and fairness of the fee itself, but on whether the process behind it has complied with specific legal duties. Providers have claimed that many councils have failed to have due regard to the cost of care in their decision-making process. These cases have made it clear that there must be transparent and real consultation before fees are agreed - whatever the contractual arrangements are.

Government Intervention & Section 114

On 2 September 2022, the then Secretary of State for Levelling-up, Housing and Communities made directions under section 15(5) and (6) of the Local Government Act 1999 to implement an intervention package for Thurrock Council.

On 16 March 2023 the Secretary of State confirmed the expanded recommendations and the appointment of Managing Director Commissioner replacing the original directions from 2 September 2022.

The updated directions set out the actions to be taken by the Council. The actions relating to the Improvement and Recovery Plan are:

- an action plan to achieve financial sustainability and to close any short and long-term budget gaps identified by the Authority across the period of its Medium-Term Financial Plan (MTFP), including a robust multi-year savings plan.
- an action plan to ensure the Authority’s capital, investment and treasury management strategies are sustainable and affordable.
- a strict debt reduction plan, and an updated Minimum Revenue Provision (MRP) policy in line with all relevant rules and guidelines.
- an action plan to ensure the Authority is complying with all relevant rules and guidelines relating to the financial management of the Authority.
- a suitable scheme of delegations for financial decision-making.
- an action plan to reconfigure the Authority’s services commensurate with the Authority’s available financial resources.
- a plan to ensure that the Authority has personnel with sufficient skills, capabilities, and capacity to deliver the Improvement and Recovery Plan, within a robust officer structure.
- an action plan to strengthen the Authority’s governance function, to secure improvements in transparency and formal decision making. This should include measures to improve the Authority’s scrutiny function, including the taking and recording of formal decisions.
- arrangements to secure the proper resourcing and functioning of the system of internal controls, including risk management and internal audit.

The 2024/25 budget has been set in the context of the above directions with the key priorities and objectives shown below:

Table 1:

Priorities	Workstreams	Objectives
Improving Leadership to Accelerate Change	Leading with purpose and direction	A long-term purpose and direction for the Council
		Develop a medium-term Corporate Plan that continues the change and improvement programme of the Council.
		Strategy-led business planning
	Building our corporate capability	Develop, consult, and approve a new operating model for the Council
		Redesign and restructure the Council
		Stand-up a Programme and Project Management Office
Improving Governance and Controls	Establishing the foundations for governance excellence	Review and refresh all of our governing policies
		Build a capable and effective scrutiny function
		Undertake a governance review for all external companies or partnership bodies that the Council has an interest in

Priorities	Workstreams	Objectives
	Creating an exemplary control environment	Create a Council-wide strong risk managed operating environment
		The Council's assurance and audit functions are re-set
		Proportionate processes that maximise transparency and accountability are developed
Improving Financial Sustainability	Divestment of the Council's investments	Dispose of investments
	Improving our stability through budgetary savings and maximisation of income	Through implementing a savings programme, alongside a programme to maximise income over each of the next five years and beyond, the Council's budget moves towards achieving a balanced position.
		Detailed plan to generate capital receipts
		Develop a Capital Programme which leads to General Fund borrowing which is significantly smaller and aligned to the Corporate Plan.
	Improving our financial management capability and practice	We will demonstrate exemplary corporate financial leadership
		We will redesign and restructure the Council's financial service
		Corporate Financial Capability

These Directions shall remain in force until 1 September 2025 unless the Secretary of State considers it appropriate to amend or revoke them earlier.

Commissioner Comment:

None.

1. Recommendation(s)

- 1.1 That the Committee comment on the proposed 8.87% increase on the weekly rates paid to Thurrock care home providers for older people**
- 1.2 That the Committee comment on the proposed 8.87% increase on the rates paid to CQC regulated domiciliary home care providers.**
- 1.3 That the Committee comment on the proposed 8.87% increase on the core fee rates paid to Thurrock care home providers for adults of a working age.**
- 1.4 That the Committee comment on the proposed 8.87% increase on the core fee rates paid to Thurrock supported living providers.**
- 1.5 That the Committee comment on the proposal to negotiate with out of Borough providers for adults of a working age and supported accommodation providers on a case-by-case basis, and to award up to an 8.87% increase to the core fee rates.**

1.6 That the Committee comment on the proposed 8.87% increase in the Direct Payments rates

1.7 That the Committee comment on the proposal to delegate the decision making for agreeing care provider fee uplifts to the Executive Director of Adults Housing and Health, in consultation with the PFH for Health, Adults Health and Community

2. Introduction and Background

2.1 The 2024/25 fee consultation ran from the 9th November until 15th December 2023. The Council held consultation meetings with care providers to detail the 2024/25 fee setting process and gave the opportunity to raise pertinent issues. Providers were asked to submit supporting documentation to evidence the financial challenges they are currently experiencing in the delivery of care services for Thurrock Council clients. This was done by either submitting their own documentation in a format of their choice, or alternatively they could complete and return the Council's pro-forma template, detailing their business and finances.

2.2 Providers were asked to consider, and brought forward a number of relevant factors, including, but not limited to the following:

- Work based pension schemes
- Voids rates
- Increased cost of utilities
- Local competition for staff recruitment such as The Port of Tilbury, Amazon warehouse and Lakeside shopping Centre
- Economies of scale for larger providers
- Challenges facing smaller providers
- Increased National Living Wage (NLW) rates
- Increased cost of insurance
- Increased mortgage/rental costs as a result of changes in interest rates
- Increased cost of fuel

3. Issues, Options and Analysis of Options

3.1 The result of the consultation concluded that the Council needs to offer providers the recommended uplifts in order to support the local care sector. Failure to do so could result a judicial review of the Council's process, and in light of continuing increases in cost of living, it would be difficult to justify offering any lower than the recommended 8.87%

3.2 The proposed uplift of 8.87% was formulated through a combination of the consultation with care providers, as well as consideration of external inflationary factors and key indicators

3.3 The summary of the basis of the formula is detailed as follows:

- National living wage increase from £10.42 to £11.44, equal to a 9.8% increase, as announced in the government Autumn Statement.
- CPI (as per September 2023 detailed in the Government Autumn Statement) of 6.7%

- The methodology is to apply the NLW increase to 70% of the contract value for direct staffing costs, and 6.7% to the remaining 30% of the contract value.

This results in the recommendation blended increase of 8.87%

4. Reasons for Recommendation

- 4.1 It has been recognised nationally that life expectancy has increased, and as a result, people are living for longer, and therefore a likely to develop far more complex care and support needs. Local authorities try to support people to remain living in their own homes for as long as possible, which consequently means that when people need to be admitted into residential and nursing care, they have far more complex care and support requirements. This has been further exacerbated as a result of the COVID 19 pandemic, where people have been more reluctant to be placed in a residential care setting, or to permit a relative to be admitted. This is mainly due to concerns regarding contracting the virus or visiting restrictions that could prohibit relatives and friends from being able to visit.

In addition, there has been a change in the hospital discharge criteria from medically fit, to medically optimised, which remains in place. This means that care homes for older adults are now supporting people with far more complex needs.

Home Care Providers

- 4.2 Staffing ratios and training requirements have also increased at a time when recruitment and retention has become much more challenging. The issue is further compounded through the increase in agencies rates charged for the provision of temporary staff, which is often essential to be able to provide adequate staffing levels to ensure people are cared for safely, whilst also respecting the cared for person's dignity.
- 4.3 Insurance premiums increased exponentially during since the pandemic, which has resulted in many insurers exiting the market, or no longer indemnifying care providers. Furthermore, there continues to be significant inflationary increases in the cost of utilities, food, fuel, and interest rates, which have a direct impact on the financial viability of care providers. This is most prevalent for residential care homes for older adults in particular, as they tend to be larger establishments offering greater levels of provision.
- 4.4 Providers continue to subsidise local authority rates though the higher rates charged to private clients (those who are not placed through the Local Authority). They are able to continue to do so as the implementation of S18 (3) of The Care Act has been postponed. In short, the change will mean that privately paying care home residents will be able to ask their upper-tier council to arrange care for them, at the usual council rate

However, the Council has a lower-than-average number of self-funders (e.g., those that both fund and arrange their own care directly with the provider), and a higher-than-average number of people who pay full cost contributions for placements commissioned by the local authority. This limits the opportunity for local providers to subsidise their businesses through self-funder revenue.

- 4.5 The ability to be able to recruit and retain care staff has and continues to be increasingly problematic within the sector. This is a nationally recognised issue but is more prevalent in

Thurrock though local competition for staff recruitment, namely in the retail sector which offer a similar rate of pay.

Working Age Adults Providers

- 4.6 Over the last four years, the Council has seen more than a 20% increase in demand for domiciliary home care services. The demand is currently being managed well, and there is not currently an operating waiting lists for home care. As a result of initiatives to support people to remain living safely in their own homes, the care needs of the clients are being increasingly complex.
- 4.7 The ability to be able to recruit and retain staff is difficult for the home care provider group and has led to the need to employ staff at increased agency rate. This in turn has a significant impact on home care providers operating costs, where they are often having to pay hourly staff rates which are in excess of the hourly rates, they receive from the Council to deliver support services, leading to a financial deficit. This is coupled with an increased cost of fuel and has been cited as a reason for people leaving the sector.
- 4.8 Since the introduction of the requirement to undertake annual fee setting consultations in 2011, the Council has only ever awarded two blanket uplifts to in borough providers that operate care homes for adults of a working age, one increase of 3% and one increase of 8.74% to core services only.

The Council has maintained the stance that fees for working age adults are negotiated individually, so a blanket uplift was not applied. However, some of these fees had remained stagnant for over 10 years prior to the award of the 3% uplift.

With the current economic factors within the sector, this is no longer a realistic approach. As with the other provider groups, working age care providers, are faced with the same inflationary costs pressure, and are not exempt to these drivers. Recruitment and retention difficulties is also prevalent for these providers, as are the significant increase in the rates that agencies are charging for staff. The sector faces local competition for recruitment from companies such as Lakeside, Amazon, and Uber and Deliveroo drivers.

Supporting Accommodation Providers

- 4.9 Supported living accommodation offers independent living, with care and support.
- As with working age adults, Supported Accommodation providers have also only ever received two blanket uplifts, also of 3% and 8.74% since the introduction of the requirement to conduct annual fee setting consultations.
- 4.10 Many out of borough placement fees will only have been negotiated within the last year so any increase requests can be negotiated on a case-by-case basis.

Direct Payments

- 4.11 Direct payments allow people to receive a Personal Budget to allow them to arrange and fund their own care needs. This can be through employing a personal assistant or purchasing their own care directly from a registered care provider.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 This year's consultation ran from the 9th November until 15th December 2023. As part of this process the Council held a consultation meeting with providers to discuss the 2024/25 fee setting consultation process and to raise any pertinent issues. Providers were also asked to submit documentation to evidence what financial challenges they are currently experiencing as a provider of care services for Thurrock Council. They could do this by either submitting their own documentation in a format of their choice, or alternatively they could complete and return the Council's template documentation concerning their business and finances.

5.2 Providers were asked to consider a number of relevant factors including, but not limited to the following:

- the work based pension scheme.
- any voids
- increased cost of utilities
- local competition for staff recruitment such as The Port of Tilbury, Amazon warehouse and Lakeside shopping Centre
- economies of scale for larger providers
- challenges facing smaller providers.
- increased NLW/NMW rates
- increased cost of insurance
- increased mortgage/rental costs due to increased interest rates
- increased cost of fuel

5.3 Consultation meetings were arranged on the 11th December with the invitation extended to all provider groups. This gave providers an opportunity to discuss the current fees paid and the main financial challenges they were currently facing.

6. Impact on corporate policies, priorities, performance and community impact

6.1 The Community Strategy, the Corporate Plan and the Medium Term Financial Strategy (MTFS) require the Council to commission services at the highest possible standard whilst delivering value for money for the Council.

7. Implications

7.1 Financial

Implications verified by: **Mike Jones**
Interim Assistant Director for Strategic and Corporate Finance

The financial implications are detailed below.

The proposed fees in increase have a direct financial implication of £4.671m. This is detailed as follows across the care provision and client groups:

£'000s

Residential Homes		
Older People	983	
Learning Disabilities	742	
Mental Health	105	
Physical Disabilities	172	
Respite	46	
		2,048
Nursing Homes		
Older People	183	
Physical Disabilities	6	
		189
Homecare		
Older People	731	
Learning Disabilities	12	
Mental Health	9	
Physical Disabilities	102	
		854
Supported Living		
Older People	34	
Learning Disabilities	449	
Mental Health	231	
Physical Disabilities	113	
		826
Direct Payments		
Older People	210	
Learning Disabilities	294	
Mental Health	19	
Physical Disabilities	232	
		754
Total		4,671

The increase will be funded through the following sources:

Growth Requirements - Adult Social Care Provider Uplifts		
	£000's	£000's
National Living Wage @ 9.8%	3,613	
Inflation @ 6.7%	1,059	
		4,671
<i>Financed by:</i>		
ASC Precept	(1,679)	
Social Care Grant	(1,838)	
MTFS Corporate Growth	(281)	
Market Sustainability Grant	(872)	
		(4,671)

Providers that operate outside of the Borough are able to make representation to apply for the fee uplift. This is due to the different contracting arrangement which are in place, and in many instances, care packages for working ages clients are negotiated on an individual basis and have varying fees.

Final Version ready for Cabinet/ Executive decision

An estimate for the cost of this have been made in the financial projects and will awarded as agreements are reached.

The table below details the current and proposed rates of care upon application of the uplifts:

Thurrock	2023/24 Rate	2024/25 rate after uplift
Nursing (weekly)	£ 688.32	£748.20
Residential (weekly)	£ 621.99	£676.10
Home Care (hourly)	£ 20.58	£ 22.37

7.2 Legal

Implications verified by: **Kevin Molloy**
Principal Solicitor, Contracts Team

The Council is obliged to follow the Care Act 2014 in the setting of the fees above referred to. Section 5 of the Care Act 2014 is titled “Promoting diversity and quality in the provision of services” and is part of the section titled “general responsibilities of local authorities”. The duty is mandatory in nature, but it is to “promote the efficient and effective operation of the market in services” to enable a variety of provision, that are high quality (s5(1)). Various matters are required under s5(2), which include the need to ensure the sustainability of the market (under s5(2)(d)) and fostering continuous improvement, and fostering a workforce that can deliver high quality services.

Section 5(3) provides that the Council must also have regard to the need to ensure that sufficient services are available for meeting the needs for care and support of all adults in its area, and that services must promote wellbeing. It is for the Council to determine how these duties are discharged, and a degree of latitude is allowed in this regard including being able to take account of the budgetary and resources considerations outlined above. What the Council must do, however, is to ensure that it does comply with the obligations set out in any guidance issued by central government as to fee setting and market review in order to have the evidence to be able to rebut any potential challenges relating to fee setting.

The requested price reviews were made pursuant to the terms of the contracts the Council has with its providers. When considering such a review the Council will need to have regard to the general level of competitiveness of the market and the claims made by any provider in any specific request’.

There have been a number of legal challenges against several local authorities by care providers about the process setting for care fees. Case law highlights the tension between the Council’s obligation to provide statutory care services that it is required to do and its fiduciary duty towards those who provide public funds.

As a result of this there are certain requirements that Directors Board must be satisfied have been met before a final decision is made in relation to setting fees, to minimise the risk of a potential successful legal challenge by providers.

These are:

- whether the Council's process for setting fees has been consulted on properly and adequate time has been given to providers to respond, taking into account the consultation period was 4 weeks.
- whether the Council has a robust methodology in place to calculate the fees to be paid to care providers setting care
- Whether due regard has been given to the relevant government care and support and market sustainability guidance.
- Whether there is sufficient and relevant information available in the report setting out the relevant considerations to be taken into account before a decision is reached

Relevant considerations arising from case law include but are not exhaustive.

- The consultation responses received.
- the Council's budget.
- the factors it has to consider in care and support and market sustainability government guidance.
- The actual cost of providing care.
- use appropriate local data.
- the residents who require nursing care, who require more non-nursing care.
- all care homes in the area, having based its calculations on data homes in the area.
- The legitimate current and future costs faced by providers, as well as the factors affecting those costs.
- inflation. cost of living costs
- the impact that decision would have on the quality of care provided to residents and the effect of rising costs on the care providers.

The Council is entitled to take into account its own financial position when determining the level fees However in doing so it must properly take into account all other relevant considerations, including the potential adverse consequences of the decision for providers and residents, which the Council required to balance against the constraints on its own resources. Compelling reasons for the decision taken would be required.

To comply with the Council's equalities duties an equalities analysis will need to be completed as the outcome of the analysis is a matter which the is required to have due regard to as part of the decision-making process.

7.3 Diversity and Equality

Implications verified by: **Becky Lee**
**Team Manager – Community Development and Equalities,
Adults, Housing & Health**

Services to vulnerable adults are likely to be at risk if providers are not in a position to meet inflationary cost pressures.

All information regarding Community Equality Impact Assessments can be found here:
<https://intranet.thurrock.gov.uk/services/diversity-and-equality/ceia/>

7.4 **Risks**

The risk associated with not increasing provider fees are centred around failures in the provider market, and in inability to provide essential services to vulnerable people. This also presents a significant financial risk of bring service back in-house as the Council has a statutory duty to provide care

7.5 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, or Impact on Looked After Children

None

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Data submitted by providers as part of the annual fee consultation (commercially sensitive so individual submissions cannot be included)
- Benchmarking data of current fees and uplift proposal across the Eastern region (included in the financial implications in the report)

9. **Appendices to the report**

- Community & Equality Impact Assessment

Report Author:

Louise Brosnan
Service Manager – Contracts & Brokerage
Adults, Housing and Health