

Report for:	Formal Shadow Executive
Meeting Date:	10th March 2020

Title of Report:	Adult Social Care Fee Uplift 2020/21
Shadow Portfolio Holder	Angela Macpherson
Responsible Officer	Elaina Quesada – Director Integrated Commissioning
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Recommendations:	<ul style="list-style-type: none"> • It is recommended that option 2 be adopted: Uplift of up to 2% based on evidence of increased cost. Contractually required uplifts awarded to Heritage and Freemantle block contracts. • Utilisation of the following monies to meet fee uplift costs: <ul style="list-style-type: none"> ○ £1,142,000 earmarked for fee uplifts from the £9.5m demand growth monies ○ Up to £750,000 from the corporate contingency budget set aside to fund increases in the NLW ○ The balance from the additional £1m released to Adult Social Care from contingencies as part of the final approved budget.
Corporate Implications:	The decision on fee uplifts needs to be informed by consideration of a number of factors. This includes whether Adult Social Care is meeting its contractual obligations in relation to providers, Care Act obligations to take account of the costs of delivering care for providers and considerations of current pressures faced by our care and support market. There is a potential reputational and legal risk for Adult Social Care, which may impact on the Council more broadly, if due regard is not made to these considerations in taking the decision.
Options: (If any)	<ul style="list-style-type: none"> • Option 1: Universal uplift of between 1% and 2% across the adult care and support market. Contractually required uplifts awarded to Heritage and Freemantle block contracts. • Option 2 (recommended): Uplift of up to 2% on a case by cases basis, based on evidence of increased cost. Contractually required uplifts awarded to Heritage and Freemantle block contracts. • Option 3: Contractually required uplifts awarded to Heritage and Freemantle block contracts only. No further uplifts awarded.

Reason:	<p>The key advantages of option 2 are:</p> <ul style="list-style-type: none"> • Contractual and statutory commitments to providers will be met based on an assessment of evidence by each provider who chooses to submit a business case. • This approach takes account of the fact that providers are in different positions and will not all have been impacted in the same way by cost increases. • The business case approach supports transparency around provider costs, and the information provided could help commissioners and providers to continue to work together – for example on areas where further cost reductions may be an option. • This option allows us to try and develop the market in areas where our provision is not currently meeting need.

1. Purpose of Report

1.1 Ahead of a Key Decision, inform Formal Shadow Executive of the options and the recommendation for fee increases in 2020-21 for the providers of adult care and support services.

1.2 Formal Shadow Executive is asked to comment on and endorse the options and proposal for fee increases to care market providers in 2020-21, specifically:

- **It is recommended that option 2 be adopted: Uplift of up to 2% based on evidence of increased cost. Contractually required uplifts awarded to Heritage and Freemantle block contracts.**
- **Utilisation of the following monies to meet fee uplift costs:**
 - **£1,142,000 earmarked for fee uplifts from the £9.5m demand growth monies**
 - **Up to £750,000 from the corporate contingency budget set aside to fund increases in the NLW**
 - **The balance from the additional £1m released to Adult Social Care from contingencies as part of the final approved budget.**

There could be a potential further pressure of up to £600,000 for sleep-in night rate increases should the Supreme Court decides to support the Mencap case which will not be before July 2020. However it is recommended that this is recorded as a risk rather than provision being set aside from the growth budget at this time.

2. Executive Summary

2.1 Each year the Council considers, via a Cabinet Member Key Decision, whether to award a fee increase to adult care and support services. This decision needs to take account of a range of factors including contractual obligations to providers, the costs of delivering care for providers and considerations of current pressures faced by our care and support market.

2.2 In making the decision, we need to take account of contractual uplift requirements for our two block providers Freemantle and Heritage. Increases to the National Living Wage (NLW) from April 2020 are also noted. Overall, the decision needs to consider what represents **best value and affordability**, in the context of increasing demand, challenges about recruitment of the workforce, balanced against the risks of **financial sustainability** in the marketplace.

2.3 For 2020/21 3 options for fee uplifts are proposed:

- Option 1: Universal uplift of between 1% and 2% across the adult care and support market. Contractually required uplifts awarded to Heritage and Freemantle block contracts.
- Option 2: Uplift of up to 2% on a case by cases basis, based on evidence of increased cost. Contractually required uplifts awarded to Heritage and Freemantle block contracts.
- Option 3: Contractually required uplifts awarded to Heritage and Freemantle block contracts only. No further uplifts awarded.

2.4 Option 2 is recommended, with an uplift of up to 2% awarded based on evidence of need. The key reasons for this are that it:

- Contractual and statutory commitments to providers will be met based on an assessment of evidence by each provider who chooses to submit a business case.
- This approach takes account of the fact that providers are in different positions and will not all have been impacted in the same way by cost increases.
- The business case approach supports transparency around provider costs, and the information provided could help commissioners and providers to continue to work together – for example on areas where further cost reductions may be an option.
- This option allows us to try and develop the market in areas where our provision is not currently meeting need.

2.5 It is recommended that a mix of monies is used to fund this fee uplift. This includes:

- £1,142,000 which was earmarked for fee uplifts from the £9.5m demand growth funding allocated to Adult Social Care
- Up to £750,000 from the remaining £1,159,000 corporate NLW contingency budget
- Any balance to be funded from the additional £1m released to Adult Social Care from contingencies as part of the final approved budget.

3. Background

3.1 In line with other local authorities, Buckinghamshire County Council considers on an annual basis what fee increases to offer providers of adult care and support services. This decision takes account of inflation and other pressures that may be faced within the market and helps ensure our provers can remain sustainable and willing to provide services to the Council. This decision sits in the context of evidenced continuing pressures and ongoing fragility of the care market nationally.

3.2 In making a decision, the Cabinet Member should include consideration of the following elements – these elements are not necessarily independent of each other.

- 3.3 **Contractual obligations** the Council has with its providers. Specifically, where we have block contracts for older people care home provision in place with providers, annual uplifts that are specified within contacts must to be awarded.
- 3.4 **Statutory changes in law:** Under the 2014 Care Act there is a statutory obligation for the Council to consider and take account of the costs of delivering care for providers. Although it is not the only issue, the biggest single matter remains the increase in the National Living Wage (NLW) from 1 April 2020 (see table 2 below).

Table 2: National Minimum and Living Wage increases from April 2020

Year	25 and over	21 to 24	18 to 20	Under 18	Apprentice
April 2019 (current rate)	£8.21	£7.70	£6.15	£4.35	£3.90
April 2020	£8.72	£8.20	£6.45	£4.55	£4.15
Percentage increase	6.2%	6.5%	4.9%	4.6%	6.4%

- 3.5 For the impact of NLW, the cost varies from provider to provider. Generally providers in Buckinghamshire already pay higher hourly rates than the NLW to be competitive in the labour market. However, domiciliary care, Direct Payments and sleeping nights are three areas that continue to be potentially affected in meeting NLW legislation.
- 3.6 On 13 February 2019, the Supreme Court granted Unison leave to appeal the Court of Appeal judgment on rates for sleep-in staff. The Supreme Court hearing will take place in February 2020, with a decision expected by July 2020. Dependent on the outcome, this could introduce an additional unfunded cost for all local authorities including Buckinghamshire. This relates to staff on sleep-in shifts who may have historically been paid flat rates for these shifts at below what would be the corresponding hourly NLW pay.
- 3.7 Other legislative factors cited by local providers as impacting costs include the increase to the auto-enrolment scheme for pensions, increased costs by CQC from 1st April 2019, and an increase in the Apprenticeship Levy.
- 3.8 **Recognition of costs due to inflationary pressures:** Inflationary pressures appear to have remained broadly static. The Consumer Prices Index (CPI) 12-month rate was 1.3% in December 2019, down from 1.5% in November 2019. However, nationally the continued process around Britain's exit from the EU means considerable uncertainty remains in relation to businesses economic performance. This includes the potential for far-reaching impact on workforce supply, delivery of care services and costs of consumables.
- 3.9 What represents **best value and affordability**, in the context of ongoing increasing demand, challenges about recruitment of the workforce, balanced against the risks of **financial sustainability** in the marketplace. Fee uplifts requested from across the local market for 2019/20 ranged from 2% through to 41%, with average requests around 4%. There is not much conclusive evidence of a failing market in Buckinghamshire at this time though there have been challenges. Generally, some providers have reported that ongoing recruitment challenges are causing cost pressures – for example where posts need to be advertised at a higher rate to enable successful recruitment.

- 3.10 For 2019-20 our SE regional ADASS Commissioning Group colleagues indicated that other Councils in the area were seeking fee uplifts, with percentages varying between 1-6%. For 2020-21 the position is likely to be similar, with uplifts applied either using a blanket approach or on a case by case basis.
- 3.11 When considering figures from other areas, it should be noted that local authorities do not all have the same starting point for fee uplifts or particular demands and comparisons should be viewed in that context.

4. Options Appraisal

- 4.1 We have developed three options and are recommending option 2 (an uplift of up to 2% based on evidence of increased cost) for the Key Decision.

Option 1: Universal uplift

- 4.2 This option is to pay a universal uplift of between 1% and 2% on the whole contract value, in recognition of increased costs to the sector and to support financial stability in the market. This blanket uplift would be inclusive of any increased costs through inflation or legislative changes such as increases to the National Living Wage.

4.3 Benefits:

- Would support financial stability in the market
- Would address the growing challenge that a standard 0% uplift has been in place for the vast majority of providers for the last 4 years
- Would support our ability to work effectively and collaboratively with providers to further develop the market in line with the ambitions set out in the Better Lives Strategy
- Would be straight forward to implement
- Does not require providers to spend time on submitting business cases and supporting evidence
- Contractual and statutory commitments to providers will be met

4.4 Disadvantages:

- A blanket approach does not allow us to recognise that not all providers will have been impacted by cost increases in the same way, or that increased costs will not have impacted across all elements of the contract.
- This approach does not give us any opportunity to stimulate or develop the market to offer particular models of care, improved quality or in areas of the county where provision does not currently meet need

Option 2: Uplift based on evidence of increased cost

- 4.5 Under this option, for the Heritage and Fremantle **block contracts**, the uplifts within contracts would continue be applied as outlined in the confidential appendix.
- 4.6 This option would adopt a zero % fee uplift in principle for all other commissioned care and support provision. However, an uplift of up to 2% would be available on a case by case basis, based on evidence of need.

- 4.7 The following factors could be considered in reviewing whether an uplift is awarded:
- Whilst we have had a standard 0% uplift for at least 4 years, providers who have predominantly provided care and support under spot contracts with a high degree of turnover have had other ways of levering price increases. For example where packages of care are put in place for new service users at a higher spot rate than for existing service users. This option would allow us to consider uplifts for providers who have been in a position where they have not been able to lever this type of fee increase. This includes the 4 additional block providers we have in addition to Fremantle and Heritage but on production of evidence, could also include providers who have offered placements for a number of years for a static group of service users.
 - We have three preferred domiciliary care providers (Westminster Care, Prime Care and All Care). For areas where these providers continue to operate under contract, this option would allow us to consider where these providers are supporting our most complex service users and maintaining them in their family homes.
 - Whether the provider is operating in an area of the market where there are known gaps or challenges in meeting need.
 - Impacts on the cost of care as a result of legislative changes.
- 4.8 Based on evidence supplied, the uplift could be applied across the whole contract value, or only across those elements of the contract where there is evidence of increased need.
- 4.9 If providers request to be considered for this uplift, they will be asked to submit a business case with supporting evidence. The evidence would be reviewed by a panel, with an uplift awarded on a case by case basis to individual providers based on an evaluation of the information and evidence submitted.
- 4.10 The business case will consider factors including:
- Current fee schedule and proposed increase
 - Provider profit margin
 - History of previous fee uplifts
 - Efficiency measures already taken and planned
 - Existing or opportunities to implement new models of care or for discount arrangements
 - Value for money and outcomes achieved for service users
- 4.11 For **direct payments** an increase would be awarded based on sector averages derived from spot contract business cases. The key sectors for direct payments are as follows.
- Domiciliary care agencies
 - Employed personal assistants
 - Self-employed personal assistants
 - Community opportunity providers
- 4.12 This option allows for a maximum 2% uplift across the whole market meaning the maximum cost impact would be in line with the 2% uplift option outlined under option 1. However, in practice because this is not a blanket award, but is based on individual evidence, the cost impact would be less than this.
- 4.13 **Benefits:**
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- Contractual and statutory commitments to providers will be met based on an assessment of evidence by each provider who chooses to submit a business case.
- This approach takes account of the fact that providers are in different positions and will not all have been impacted in the same way by cost increases.
- The business case approach supports transparency around provider costs, and the information provided could help commissioners and providers to continue to work together – for example on areas where further cost reductions may be an option.
- This option allows us to try and develop the market in areas where our provision is not currently meeting need.

4.14 **Disadvantages**

- Asking all providers to complete and submit a business case and evaluating these is a much more time consuming process for both commissioners and providers.
- Where providers are unhappy with the outcome of the process, managing disputes can be time consuming for both commissioners and providers. Such disputes can also put pressure on commissioner / provider relationships at a time where we are seeking to work more collaboratively providers to transform the market and ensure we can provide the right care and support for our residents.
- The lack of a blanket approach means some providers will not receive any uplift. This may be challenging given the fragility of the market overall and the lack of an uplift for the majority of providers for the last 4 years. The associated risk is that some providers may service notice on current placements, putting additional pressure across the rest of the market.
- Despite the provision of a standard business case template, the 2019/20 fee uplift process demonstrated that providers will present information in varied ways. This can make it difficult for commissioners to compare responses across providers and undertake a consistent evaluation.
- For direct payments, there will need to be clear planning and communication to ensure clients understand the fee uplift process and pass on any uplift to relevant providers.

Option 3: Meet contractual obligations only

4.15 This option is only to award an uplift where we have a contractual obligation. This would mean only awarding an uplift for block contracted providers as outlined in the confidential appendix. There would be no uplifts on spot contracts or for direct payments.

4.16 **Benefits:**

- This option would be straight forward and quick for commissioning to implement.
- This option puts less pressure on Council budgets compared to options 1 and 2.

4.17 **Disadvantages:**

- Our ability to meet statutory commitments to providers may be challenged if providers can evidence they have increased costs based on legislative changes. This risk is mitigated to an extent by evidence that within Buckinghamshire the majority of providers already pay above the NLW.
- In the context of 0% fee uplifts having been awarded for the last 4 years, this option will not be well received by the market. It is likely to impact on our relationship with providers at a time where we are seeking to work collaboratively to transform the market to ensure we can provide the right care and support for our residents in line with the Better Lives Strategy.
- Some providers may service notice on current placements, putting additional pressure across the rest of the market.

- Commissioners are likely to have to spend significant amount of time responding to challenges or disputes from providers over fee uplifts and this will impact on business as usual activity.

5. Financial Implications

5.1 The financial implications for each option are set out in the main body of the report.

5.2 For 2019/20 the corporate NLW contingency budget and Growth Fund were used to fund free increases. For 2020/21 it is recommended that a mix of NLW contingency budget and other monies are used to fund the uplift as follows:

- **£1,142,000 from the £9.5m demand growth:** £9.5 million (originally 5.3m for growth but topped up to 9.5m through ASC precept) is available to CHASC to support demographic growth. It is recognised that there is demand on this contingency budget in terms of meeting the obligations of current year growth carried forward, as well as the additional growth forecast for 2020/21. However, when the original £5.3m was set aside, 0.9% was included for fee uplifts which amounts to £1,142,000.
- **Up to £750,000 from the corporate NLW contingency budget:** £1,159,000 is the total amount that is still available in this budget for use across the whole Council. It is therefore proposed that up to £750,000 could be taken to support the adult care and support fee uplifts to ensure there are remaining funds to meet demands across the remainder of the authority.
- **Any balance from the £1m additional contingency released for Adult Social Care as part of the final approved budget.**

5.3 This would provide a total of £1,892,000 from across the demand growth budget and NLW budget. It would provide a maximum available budget of £2,892,000 when the £1m contingency is also taken into account. Whilst the maximum cost of implementing option 2 would be £3,052,780 this would be based on every provider being awarded the maximum 2% uplift across the whole contract. As uplifts will be awarded on a case by case basis upon production of sufficient evidence, and will not necessarily be awarded across the whole contract value, in practice the total cost of option 2 will be less than £3,052,780. It is difficult to predict the number of providers who will chose to submit a business case, and from those the number that will be able to provide evidence of increased cost. However, based on the outcome of the fee uplift process for the current financial year, we would expect option 2 could be managed within a budget of £1,892,000. However, any costs over and above this would need to be met from the additional £1m contingencies released to Adult Social Care but with a maximum cost not exceeding £2,892,000,

6. Legal Implications

6.1 Section 3 sets out the legal context for this decision, both in terms of contractual obligations to providers, and our duties under the Care Act 2014.

7. Other Key Risks

7.1 As outlined in the main body of the report.

8. Dependencies

8.1 No dependencies.

9. Consultation

9.1 Not applicable.

10. Communications Plan

10.1 Not applicable.

11. Equalities Implications

11.1 An Equalities Impact Assessment is not required.

12. Data Implications

12.1 A Data Protection Impact Assessment is not required.

13. Next Steps

13.1 Following endorsement from CIG, this paper will go forward for a Key Decision in March 2020.

Background Papers	It is a legal requirement to make available background papers relied upon to prepare a report and should be listed at the end of the report (copies of background papers for executive decisions must be provided to Democratic Services). Hyperlinks to papers published online should be used where possible. Where there are no background papers, insert None.
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