



12th March 2020

To Whom it May Concern,

Please find below a response on behalf of the Sheffield Care Association (SCA) in respect of the recently published report for Cabinet relating to the annual uplift of fees for the financial year 1st April 2021 – 31st March 2022. Before I begin, I would like to say this letter does not contain an exhaustive list of all of our concern, but an outline of these that we could produce within the timescales provided bearing in mind we were only provided with the report at 11:51am on Thursday 11th March with a response required by 9am on Monday 15th March. On any level, this is insufficient time to allow us to collate a fully considered response.

By way of an introduction; the Sheffield Care Association is a membership organisation for people and organisations that work in – or with - the care sector. Its role is to advocate for the **care** sector and champion the work **care** providers do every day to help, support and look after people in **Sheffield** – including some of our most vulnerable people. We represent 1530 number of beds which equates to almost 50% of the total elderly care beds in the City.

Whilst we welcome the decision to propose a higher level of fee increase than previously advised to care providers, we are concerned that the proposed increase does not go far enough to address the real and pressing concerns of providers. Many of these concerns are set out set out in detail in Appendix One of the report for Cabinet. We are concerned that the summary report provided to Cabinet does not truly reflect the feedback of providers and does not portray the true challenges that providers face, particularly in light of the impact of Covid-19. Notwithstanding the increase in the proposal, it remains insufficient to provide for a viable and sustainable care home market in Sheffield.

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Our primary concerns from reading the report are:

- The summary report is misleading. It does not fully provide the weight of concern amongst the providers we represent for the future of their Homes. The summary report skims over the detailed provider feedback and gives undue weight to matters which are favourable to the Council and presents the providers who have been negative as being in the minority. Also, the proposal has been provided two working days before the deadline for comment. This does not comply with the legal framework surrounding lawful consultation. Rather, it feels like a rather crass attempt to be seen to be 'consulting' with providers, whereas failing to do so in substance and in reality presenting what is now a 'fait accompli';
- The increase proposed at 4.9%, which has been presented to link to investment in workforce and staff wages, is a great aspiration for us all to work towards. However, to link the enlarged increase to increasing pay now, fails to pay any or any adequate consideration to the financial pressures on the market at this time; costs per resident have never been higher. It is therefore impossible for providers to commit to this given the level of the Council's underfunding (even with the proposed increase) and suggest that the Council has fundamentally misunderstood and/or paid insufficient regard to the feedback provided on costs and occupancy. Indeed, higher costs per resident are recognised at the top of page 10/29 but then remarkably never addressed in the Council's replies;
- It is unclear, from the report for Cabinet, as to how the increase in fees that are being proposed this year have been calculated. This is important information without which we are not in a position to provide a fully considered response. We therefore ask for full disclosure as to how the Council has calculated and arrived at the fees it is now proposing. Using the Joseph Rowntree, Fair price for Care Calculator, we estimate the fee for Residential Care to be circa £591.01 and the fee for Nursing Care £643.17 (excluding FNC), hence would be keen to understand what assumptions and parameters the Council have used in setting their proposed fee;
- Furthermore there have been increased costs of registration fees, insurance, utilities without focussing on the increased requirement for medical supply/equipment hire costs, which have been passed onto Care Home Providers;
- As the report for Cabinet references, current fees have been determined at level of operating efficiency of 95% which is not present in the market, nor likely to be for some time beyond the forthcoming financial year. The formulation of the fee is therefore based upon a market which the Council is fully aware does not exist, bearing no reflection to the current local economic conditions. This is patently irrational and in breach of the Council's market obligations arising under section 5 of the Care Act 2014. This must be fully remodelled to properly reflect the impact that current occupancy levels have on costs and sustainability. This is information that has been requested but never provided. The Council relied on this model for determining historic fee rates and it is perverse to not apply the same adjusted model with updated inputs;
- Due to the lack of responses received to information requests by SCA, we instructed David Collins Solicitors to correspond with the Council on our behalf. To date, there remains no substantive response to the issues raised within David Collins' letter dated 18 December 2020 nor their letter dated 9 February 2021. Whilst the first of these letters is included within Appendix One to the Cabinet report, it does not feature in the report to Cabinet which I expect is what Cabinet members will read. Both of David Collins' letters contain legitimate relevant concerns raised by care providers and it is unreasonable that these have not been addressed by the Council despite a written undertaking to do so dated 22 December 2020;
- Despite numerous requests we have still not seen the terms of reference provided to Cordis Bright or Kingsbury Hill Fox despite point 3.6 of the report to Cabinet stating that SCA have had input into the specification. The scope of works is key in determining how relevant this information is to the exercise and hence we cannot be sure that this work is being submitted in its full form nor in line with the scope. We are concerned that we are not seeing the full reports either and by default neither are the Council's members; and

- Persisting with flat fee rates is non-sensical and, as the report mentions, Sheffield are one of very few Councils in the country to do this. The cost of caring for nursing residents or dementia residents is higher than for residential placements and hence when the weighted average of the fee is taken, this compares even more poorly against neighbouring authorities. Furthermore as the report demonstrates, Sheffield does not compare well to its neighbouring authorities despite this way of demonstrating its fees; however the way the data is presented does not demonstrate how poorly.

As you will be well aware, section 5 of the Care Act 2014 (supported by statutory Guidance) sets out the Council's market shaping duties. These require the Council to promote the efficient and effective operation of the market, which requires regard to the importance of ensuring the sustainability of the market. See for example paragraph 4.6 of the statutory Guidance, which speaks to the need for local authorities to "ensure the market as a whole remains vibrant and sustainable".

Paragraph 4.31 of the statutory Guidance, underscores the nature of this obligation further:

"When commissioning services, local authorities should ensure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with the agreed quality of care. This should support and promote the wellbeing of people who receive care and support and allow for the service provider ability to meet statutory obligations to pay at least the national living wage and provide effective training and development of staff. It should allow attention of staff commensurate with delivering services to the agreed quality, and encourage innovation and improvement. Local Authorities, should have regard to guidance on minimum fee levels necessary to provide this assurance, taking account of the local economic environment. This assurance should understand that reasonable fee levels allow for a reasonable rate of return by independent providers that is sufficient to allow the overall pool of efficient providers to remain sustainable in the long term"

Further, the Statutory Guidance requires:

- Local authorities to "ensure the overall provision of services remains healthy" and to "understand the business environment of the providers offering services in their area and seek to work with providers facing challenges and understand their risks" [paragraphs 4.33 and 4.34].
- Local authorities to understand the impact that its approach to commissioning will have on the local market and mandates against local authorities undertaking any actions (which also includes any failure to act) which may threaten the sustainability of the market as a whole; such action being expressly stated to include the "setting of fee levels below an amount which is not sustainable for providers in the long-term" [paragraph 4.35].

While recognising the increase, the present proposals still remain insufficient. They are insufficient and considerably below an amount which is sustainable for providers in long term; thus undermining the market contrary to the Council's section 5 statutory duty. We are deeply concerned that in its formulation of the fees for the coming year, the Council has failed to have proper regard to its statutory obligations and the guidance in reaching its funding decision. To that end, please would you provide me with the following at your earliest please:

- 1) As requested above - Information as to how your fee has been calculated for the coming year including the full model of how fees were calculated in 2017 and how this has been revised to determine the fee for 2021/2;
- 2) What agreed 'care package' has been assumed in this calculation.

- 3) How this supports providers in meeting statutory obligations of paying National Living Wage;
and
- 4) How the fee encourages 'innovation and improvement'.

It is essential that the Council sets sustainable fee rates. The care market is a critical front line service and has been neglected by the Council over many years. If the Council fails to increase the proposal and adopts it as a final decision, it will be acting unlawfully and in breach of its statutory duties to the market as a whole.

We look forward to your prompt response and ask that this letter be placed before and drawn to the Cabinet's attention.

Kind regards

Sheffield Care Association